

Strengthening Transparency Around Lobbying

Committee on
Standards in
Public Life

November 2013

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Chair: Lord Paul Bew

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The Seven Principles of Public Life

The Seven Principles of Public Life¹ apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the civil service, local government, the police, courts and probation services, NDPBs, and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The Principles also have application to all those in other sectors delivering public services.

SELFLESSNESS

Holders of public office should act solely in terms of the public interest.

INTEGRITY

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

OBJECTIVITY

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

ACCOUNTABILITY

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

OPENNESS

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

HONESTY

Holders of public office should be truthful.

LEADERSHIP

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

¹ The Seven Principles were established in the Committee's First Report in 1995; the accompanying descriptors were revised following a review in the Fourteenth Report, published in January 2013.

November 2013

Dear Prime Minister

I am pleased to send you the report of the Committee on Standards in Public Life's review of transparency around lobbying.

This report is the result of work started by the Committee early this year. It is not intended as a commentary on the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill. Previous reports of this Committee have considered a number of the subject matters of the Bill.

This Committee has a long-standing interest in the implications of the cumulative effect of money, influence and power for standards in public life. Lobbying is one activity whereby those with vested interests seek to influence decision makers; it therefore raises issues of transparency, accountability and equality of access.

We have applied the Nolan principles to lobbying and considered how best the lobbied and lobbyists, can live out those principles. We have concluded that a package of measures is urgently required to deliver a greater culture of openness and transparency around lobbying; provide greater clarity for public office holders on the standards expected of them; and to reassure the public that a more ethical approach to lobbying is actively being applied by all those individuals and organisations involved in lobbying.

Transparency and high ethical standards are mutually supportive and together can strengthen public accountability, increase public engagement and improve public trust. I commend the report to you.



Paul Bew

Chair, Committee on Standards in Public Life

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Executive summary

1. Thirteen years ago, this Committee said:

The democratic right to make representations to government – to have access to the policymaking process – is fundamental to the proper conduct of public life and the development of sound policy²

2. We reaffirm that lobbying is a legitimate and potentially beneficial activity. Finding opportunities for individuals and organisations to talk to policy and decision makers and legislators is part of the process by which policy is formulated, implemented and tested. Free and open access to government is necessary for a functioning democracy as those who might be affected by decisions need the opportunity to present their case.

3. However, lobbying must be carried out transparently and ethically. Recent individual examples of abuse (real or perceived) have contributed to a growing public cynicism which has led to a lack of trust and confidence in political decision making.

4. David Cameron articulated the problem with lobbying in 2010:

“secret corporate lobbying, like the expenses scandal, goes to the heart of why people are so fed up with politics. It arouses people’s worst fears and suspicions about how our political system works, with money buying power, power fishing for money, and a cosy club at the top making decisions in their own interest.”³

5. At the heart of the concern is the confluence of money, influence and power and vested interests: it is often not known who is influencing decisions or what may have been done to achieve the influence. This arises from suspicions:

- that some lobbying may take place in secret – people do not know who is influencing a decision and those who take a different view do not have the opportunity to rebut arguments and present alternative views;
- that some individuals or organisations have greater access to policy makers, because they or someone they know works with them, because they are significant donors to a political party or simply because they have more resources;
- of the way lobbying can be carried out; either because it is being accompanied by entertainment or other inducements or because there is a lack of clarity about who is financing particular activities.

6. This Committee has had a long-standing interest in the implications of the cumulative effect of money, influence and power for standards in public life. This review is not intended as a commentary on the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill (the Bill) which is currently progressing through Parliament. We have in past reports considered a number of the subject matters of Parts 2 and 3 of the Bill.⁴ In relation to lobbying, the Bill is concerned with one particular reform, a register of consultant lobbyists.⁵ We doubt that the register, of itself, will be enough to allay public concern.

2 Committee on Standards in Public Life *Reinforcing Standards, Review of the First Report of the Committee on Standards in Public Life* (Sixth Report) (CM 4557) (January 2000).

3 *Rebuilding Trust in politics*.

4 Political party finance: Ending the big donor culture (Thirteenth Report (Cm8208))(November 2011) and MPs’ Expenses and Allowances: Supporting Parliament, Safeguarding the Taxpayer (Twelfth Report (Cm 7724))(November 2009).

5 The Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill 2013-14 [Bill 97].

7. The government's commitment to localism and an increase in public policy and delivery devolution means that a wide range of bodies and holders of public office, are taking decisions of great public interest and of high value. This is at a time of growing disengagement and disconnection from the political system.⁶ It is all the more important therefore that the public has confidence that decisions are made fairly and on merit; without undue influence from vested interests; and in an open and transparent manner – the process by which a decision is made matters.
8. Evidence from recent independent research⁷ published by this Committee demonstrates that confidence in public standards is not a fixed feature of British society that shows inevitable long term decline, but rather part of the British political scene that is influenced by events and their reporting. This suggests that the public's perceptions of standards in public life can be repaired as well as damaged. It is therefore all the more important that high standards of behaviour are understood as a matter of personal responsibility, embedded in organisations and actively and consistently demonstrated, especially by those in leadership positions.
9. The Leader of the House commented when introducing the Bill that one way of regulating conduct in political life *"is to be clear about the standards expected, based on the Nolan principles, and to ensure that all those who exercise responsibilities – and all those who seek to influence them – are subject to the necessary transparency in their actions and contacts, and held accountable for their actions, so that we can see who is doing, what and why."*⁸
10. We agree and have focused primarily upon the approach to be adopted when those in public life are on the receiving end of lobbying activities. The core of the Committee's work is a commitment to high ethical standards by all holders of public office,⁹ not just those in the most senior positions. In this review we have therefore applied the Nolan principles to lobbying wherever it impacts on public life and considered how best all individuals and organisations involved in lobbying, the lobbied and the lobbyists can live out those principles to ensure high ethical standards.
11. Credible and effective reform of lobbying needs to address the broader issues of public concern. As respondents to our call for evidence recognised, these are issues that go beyond a statutory register of lobbyists and the regulation of the lobbying industry to much wider questions of how those with vested interests seek to influence decision makers; and to issues of transparency, accountability and equality of access.
12. Success will only come, in time, through the cumulative effect of a package of measures which is urgently needed to:
 - deliver a culture of openness around lobbying;
 - secure maximum transparency where specific activities seek to influence public office holders;
 - provide greater clarity on the standards expected of public office holders; and
 - reassure the public that an ethical approach to lobbying is understood and actively being applied by all those involved in lobbying.

These include:

- adoption of codes or guidance to cover lobbying activity;

⁶ See further discussion in chapter 2.

⁷ Survey of public attitudes towards conduct in public life 2012 September 2013 Prepared for the Committee on Standards in Public Life by Isabel Taylor, Nicole Martin and the Committee's Research Advisory Board p7. The research suggests public responses to events and to their reporting can become more negative or positive.

⁸ Hansard 25 June 2013; vol. 565, c. 175.

⁹ All holders of public office encompasses all those involved in the delivery of public services not solely those appointed or elected to public office. See the clarification of the Committee's terms of reference at Hansard (HC) 5 February 2013, 7WS.

- revisions to existing codes of conduct and guidance for public office holders;
- increased transparency through proactive and accessible disclosure by public office holders;
- increased transparency and a review of the arrangements for post-public employment and secondments and interchange to and from the public sector;
- ethics training; and
- an annual certification by accounting officers of the adequacy of their organisation's arrangements for safeguarding high ethical standards.

13. Transparency and high ethical standards are mutually supportive and together can strengthen public accountability and increase public engagement. It is for public office holders and those regulating them to consider how best to implement our recommendations and to help restore public trust and confidence.

Our recommendations in full

Recommendation 1

To maintain integrity in decision making, public office holders should proactively and as a matter of course, satisfy themselves as to the identity of the person or organisation lobbying them (and where appropriate their client or employer), the reason for the approach and should keep a record of such meetings.

Recommendation 2

Public office holders should decline all but the most insignificant or incidental gifts, benefit or hospitality from professional lobbyists. Public office holders' registers of interest, gifts and hospitality should be published regularly and in an easily accessible format.

Recommendation 3

The Committee on Standards and the House of Commons should reconsider implementing the recommendations of the Parliamentary Commissioner for Standards to the Code of Conduct for Members of Parliament to:

- impose restrictions on parliamentary lobbying by former Members by extending the lobbying rules to them for two years in respect of approaches to Ministers, other Members or public officials; and
- require former Members to register for two years any occupation or employment which involves them or their employer in contact with Ministers, other Members or public officials.

Consideration should be given to:

- whether Chairmanship of a Select Committee brings with it a particular influence on matters of public policy that justifies the imposition of additional restrictions in relation to conflicts of interests; and
- providing explicitly that Members should not accept all but the most insignificant or incidental gift, benefit or hospitality or payments from professional lobbyists.

The House of Lords Commissioner for Standards and the Committee for Privileges should review the Code of Conduct and guidance to its Members on registering employment payments, gifts, benefits and hospitality and in relation to lobbying.

Recommendation 4

As a matter of good practice, any guidance on lobbying should remind all public office holders of the principle of equality of access and the need proactively to consider, after any meeting, whether a balance of views should be obtained.

Recommendation 5

Public bodies should routinely publish information about all significant meetings and hospitality involving external attempts to influence a public policy decision. This should include significant contact (including private meetings) where a specific matter is raised which has a bearing on official business.

The published information should include dates of meetings, details of attendees and meaningful descriptors of subject-matter. It should normally be published within one month on a relevant website in an easily accessible format.

In the case of central government, the disclosure arrangements should cover special advisers and senior civil servants as well as Ministers, Permanent Secretaries and Departmental Boards.

Public office holders who are outside the scope of the Freedom of Information Act (including Members of Parliament, Peers and Councillors) should be encouraged to disclose the same information and consideration should be given to including this in relevant Codes of Conduct.

Recommendation 6

The Code of Conduct for Members of Parliament should be revised to allow complaints to be made against an MP who is a former Minister and who takes on outside paid employment but does not follow advice provided by the Advisory Committee on Business Appointments (ACoBA).

Recommendation 7

For transparency and public confidence reasons, Departments (and other bodies) should be required, regularly, to publish consistent summary information on cases they consider under the Business Appointment Rules.

Recommendation 8

ACoBA should publish their assessment of overall compliance with the Rules by Departments (and other bodies) in their Annual Report. Certification of compliance with the Business Appointment Rules would necessarily form part of the annual certification of the adequacy of ethical standards by accounting officers.

Recommendation 9

Given the lack of available evidence and data, the Cabinet Office, in considering the government response to the Public Administration Select Committee Report on the Business Appointment Rules, should undertake a best practice post-implementation review of the Rules including consideration of the extent to which post – public employment restrictions should be applied to all public office holders and whether a risk based approach can and should be adopted to the implementation of the Rules.

Recommendation 10

As a matter of best practice, before any individual agreement for secondment or interchange is entered into, consideration of the possible conflicts of interest that may arise should actively be discussed and managed by public bodies. This may require recording the possible conflict of interest, the imposition of restrictions or conditions as part of the agreement in order to manage that conflict, or ultimately refusing to agree to the secondment or interchange.

Recommendation 11

For transparency and public confidence reasons, Departments and their Agencies should be required to publish, on an annual basis, in an easily accessible format, the number of secondment and interchanges in and out of their organisation. Other public bodies should similarly proactively disclose such information.

Recommendation 12

Effective management of secondment and interchange would necessarily form part of the annual certification of the adequacy of ethical standards by accounting officers.

Recommendation 13

The relevant codes of conduct and guidance are essential information to be received by Members of both Houses of Parliament on induction. Ethics training should be included in their induction and training programme.

Recommendation 14

Scenario based ethics training is recommended as an approach to raising consciousness of and adherence to high ethical standards in lobbying.

Recommendation 15

Accounting officers personally should certify annually that they have satisfied themselves about the adequacy of their organisation's arrangements for safeguarding high ethical standards.

This annual certification should include ensuring that officials are vigilant about contact by lobbyists, and in the case of Permanent Secretaries, that their Ministers and special advisers are reporting relevant contacts.

Chapter 1:

Introduction

- 1.1** This Committee¹⁰ was set up in October 1994, following revelations about paid advocacy in the House of Commons. Following the First Report¹¹ the House of Commons adopted a resolution prohibiting paid advocacy by MPs of “any cause or matter on behalf of any outside body or individual”. The Committee considered the application of that rule in its Sixth Report¹² together with the regulation of lobbyists and the relationship between lobbyists and the Executive more generally. The Committee therefore has had a long-standing interest in the implications of lobbying for standards in public life, its potential to raise concerns about privileged access and undue influence, and the systems in place for maintaining ethical standards in lobbying. In the Committee’s most recent report *Standards Matter*¹³ we highlighted concerns about unequal access to decision makers and inadequate transparency of lobbying activities as one of the most important of the current, significant and continuing risks to ethical standards.
- 1.2** The Committee issued a call for evidence in June to look at what more could be done to bring greater integrity to existing lobbying arrangements. The Committee received written evidence¹⁴ in response to an Issues and Questions paper in July and ran an evidence gathering seminar¹⁵ in September. The Committee has received evidence from the lobbying industry and their representatives, charities, campaign bodies, academics and think tanks. We are grateful to all those who participated in our review.
- 1.3** Over recent years Parliamentary Select Committees, the Government and others have made various proposals to regulate lobbying. Further detail is set out in Appendix 2.
- 1.4** Since the Committee’s call for evidence was issued, the Government introduced the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill (the Bill).¹⁶ The Bill proposes a register for consultant lobbyists.
- 1.5** The Political and Constitutional Reform Committee commenced an inquiry into the Bill in July. This Committee submitted evidence to that inquiry. Whilst this Committee generally welcomes proposals that third-party lobbyists should be obliged to register and disclose the names of the clients on behalf of whom they act, we doubt that a register of third-party lobbyists is the key to reform. We considered that the narrow definition of “consultant lobbyist” would significantly limit the Bill’s potential to enhance transparency around lobbying. Much of the written evidence this Committee received is highly critical of the lobbying provisions contained in the Bill as drafted when introduced.
- 1.6** The Political and Constitutional Reform Committee reported in¹⁷ September 2013 and recommended substantial changes to the Bill. The Committee on Standards also produced a short report in September¹⁸

¹⁰ See About the Committee on Standards in Public Life Appendix 1.

¹¹ Members of Parliament, Ministers, Civil servants and Quangos (First Report (Cm 2850)) (May 1995).

¹² Ibid. 1.

¹³ Standards Matter: *A review of best practice in promoting good behaviour in public life* (Fourteenth Report) (Cm 8519) (January 2013).

¹⁴ See Appendix 3 for a list of the written submissions received, copies of the written submissions and a summary of the responses can be found on the Committee’s website at: www.public-standards.gov.uk

¹⁵ See Appendix 4 for a list of the seminar participants and a summary note of the meeting can be found on the Committee’s website at: www.public-standards.gov.uk

¹⁶ Ibid. 5

¹⁷ Political and Constitutional Reform Committee *The Government’s lobbying Bill*. Seventh Report of Session 2013-14 HC 601-1 4 September 2013. <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpolcon/601/60102.htm>

¹⁸ Committee on Standards *The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill*. First Report of Sessions 2013-14 HC 638 3 September 2013. <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmstnprv/638/63802.htm>

on the way in which the legislation interacted with the Code of Conduct of Members and recommended an amendment to make clear that Members of Parliament's ordinary work is not caught by the lobbying provisions of the Bill. Further criticisms of the Bill have followed in reports of the Constitution Committee and the Joint Committee on Human Rights.¹⁹

- 1.7 Given that the Bill is currently before the House, this Committee's review has not focused on the merits of the Bill, although we note Members of Parliament of all parties like our respondents have been severely critical of the detail. Rather, we have considered what further reforms of lobbying may be desirable, given our view that high standards of ethical behaviour need to be understood as a matter of personal responsibility, embedded in organisational cultures and consistently demonstrated, especially by those in leadership positions. We believe a broader approach is required covering the lobbied as well as the lobbyists and alongside whatever register of lobbyists emerges.
- 1.8 In this report we consider the spectrum of lobbying activity; the application of the Nolan principles to lobbying; and against that background, what is required from both individuals and organisations to ensure high ethical standards in lobbying.

19 Joint Committee on Human Rights *Legislative Scrutiny: Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill*. Fifth Report of Session 2013-14. HC 755 18 October 2013. Constitution Committee *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill* Third Report of Session 2013-14. HL Paper 62.

Chapter 2:

The lobbied and lobbying

Who are the lobbied?

- 2.1** This Committee has wide terms of reference to “*examine current concerns about standards of conduct of all holders of public office*” which encompasses all those involved in the delivery of public services, not solely those appointed or elected to public office.²⁰
- 2.2** The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill²¹ is concerned with communications to UK Government Ministers or Permanent Secretaries. However, people may seek to influence government in a range of ways, particularly given the breadth of the industry definition of lobbying and lobbyists.²² Key members of the executive are omitted, for example special advisors, Departmental Board members or key officials responsible for individual policies.
- 2.3** In addition, not all lobbying is executive lobbying. Recent cases brought to light by the media have involved Parliamentarians, who can put issues on the political agenda by advocating interests on behalf of others. They can influence matters of public policy by speaking in or initiating parliamentary proceedings or through approaching other public officials, even if, they may not be making individual decisions. All holders of public office including those involved in the delivery of outsourced and contracted public services, and the officials who support them, will be taking a wide range of decisions on which they may be lobbied and should be expected to behave with high ethical standards.
- 2.4** As Democracy Matters noted in their submission:

*the government’s commitment to localism and increased devolution of public service commissioning to local authorities, general practitioners, schools and a wide range of other agencies means that lobbying activities is increasingly directed at public bodies below the level of central government.*²³

For example, Police and Crime Commissioners will be taking decisions about issues of considerable public interest, including possible outsourcing of some police functions. Clinical Commissioning Groups now control two thirds of the NHS budget and commission most of the services funded by the National Health Service.²⁴ Elected Mayors, Councillors and council officers regularly take decisions with wide discretion afforded to them on a broad range of matters. Local Government in the United Kingdom controls around one-quarter of public spending²⁵ and is responsible for decisions which can be high value and complex relating to the commissioning and procuring of public services, education and social care provision, and applications for permits, planning²⁶ or licences.

20 Ibid. 9.

21 Ibid. 5.

22 On the 29 April 2013 UKPAC published their definition of lobbying and lobbyists: “*Lobbying means, in a professional capacity, attempting to influence, or advising those who wish to influence, the UK Government, Parliament, the devolved legislatures or administrations, regional or local government or other public bodies on any matter within their competence.*”

23 Ev 11 written submission from Democracy Matters.

24 Kings Fund and Nuffield Trust “*Clinical Commissioning Groups: Supporting improvement in general practice?*” April 2013.

25 Transparency International UK “*Corruption in UK Local Government – The Mounting Risks*” October 2013 p 19. In 2014, total public spending is projected at £712.9 billion, of which 24% is spending by local government.

26 In relation to planning the Daily Telegraph reported on 19 August 2013 that the Local Government Secretary ‘wants to expose the “shadowy” world in which highly paid lobbyists seek to persuade officials and councillors to approve developments.’

- 2.5** For many members of the public these decisions can have a major impact on their daily lives and quality of life. The services procured can be essential and the individual may have limited or no choice in the provider. It is therefore all the more important that where public money is being spent on public services or public functions that decisions are made fairly and on merit and not influenced by personal and private interests.

The spectrum of lobbying

- 2.6** The lobbying industry body UK Public Affairs Council (UKPAC) defines lobbying as “*in a professional capacity, attempting to influence, or advising those who wish to influence, the UK Government, Parliament, the devolved legislatures or administrations, regional or local government or other public bodies on any matter within their competence.*”²⁷ It is a broad definition and includes working to influence legislative measures and also to influence public programmes, or policies such as the negotiation, award or administration of public contracts, grants, loans, permits or licences. The majority of the respondents to our call for evidence similarly provided all encompassing definitions, whilst acknowledging that there is a gradation involved in lobbying.

- 2.7** As one of our respondents argued:

*Lobbying plays a vital role in the political process as it enhances informed debate and ensures that expert information can be fed into the policy development process. Politicians and decisions makers do not have specialist knowledge of all the areas on which they legislate. It is therefore essential that those with expert knowledge, including businesses, charities and trade associations should seek to educate, inform and advise decision makers.*²⁸

- 2.8** We agree. Public office holders need to be exposed to a range of views and expertise. They need to converse, debate and discuss. There is also a need to take account of the fundamental principles of freedom of expression and association. However, not everyone has the same access to policy or decision makers or legislators.
- 2.9** Preferential access might result because of:
- past relationships or positions – such as through past employment, membership of a board, think tank, professional association or trade representation;
 - public statements of support or providing financial support for office holders such as funding a private office or a parliamentary group;²⁹
 - the holding of a Parliamentary pass which allows privileged access to legislators;³⁰
 - donations to or membership of political parties.
- 2.10** Some lobbying may take place behind closed doors and in secret. Thus it is not known who is influencing decisions or what they may have done to achieve that influence. There is no opportunity for those who have a different view to present an alternative perspective. Effective lobbying campaigns also use a variety of techniques to influence such as the use of research, public opinion surveys, online petitions, exposure in the media.

27 <http://www.publicaffairsCouncil.org.uk/en/resources/lobbying-definition.cfm>

28 Ev 29 written submission from Ranelagh Communications

29 The Speakers' Working group on All Party Groups reported in June 2012. In a survey of members and Peers undertaken by that working group 48% of those who responded “agreed strongly” or “tended to agree” with the proposition that “APGs are prone to be manipulated by public affairs and lobby groups for their own purposes”. The Committee on Standards is commenced an inquiry looking at All Party Groups in January 2013 to consider what should be done to implement the Working Group Report and that Inquiry is currently ongoing.

<http://www.parliament.uk/business/committees/committees-a-z/commons-select/standards/inquiries/parliament-2010/all-party-groups/>

30 The Speakers' Working group on All Party Groups also made recommendations in respect of eligibility for APG passes which we would expect the Committee on Standards to consider in their Inquiry.

- 2.11** The concern is that there is not always a level playing field of fair and equitable access to decision making and to the development or implementation of public policies. At the heart of this concern is the confluence of money, influence and power and vested interests. We acknowledge that there is a legitimate debate about *“how much lobbying influence coming from organisational or individual power we think is compatible with equality on one side and political freedom on the other.”*³¹ The citizen has a right to know the process by which a decision has been arrived at and for the decision maker to be accountable for it.
- 2.12** As the lobbying industry and politicians have become more professionalised, the number of multi-client lobbying firms, in house lobbyists and public affairs experts has grown. Professional associations and industry bodies seek to have more influence. The movement between the private and public sector has increased. The development of think tanks contributes to a political agenda. With special advisers and other political appointees increasingly advising decision makers, the boundaries of what is regarded as acceptable and unacceptable lobbying activity have become more blurred.
- 2.13** The Committee has not been presented with evidence of widespread systematic abuse of lobbying but recurring individual cases around the manner of lobbying, and access to policy makers, recent media stings involving legislators and perceptions of conflicts of interest have raised public concern and seemingly contributed to a growing public cynicism of the democratic process. This can result in a lack of trust and confidence in the ethical standards of holders of public office, and in political decision making and leads to disengagement from the political process. All of these are reflected in recent research.
- 2.14** The Hansard Society’s Audit of Political Engagement 10 shows a continuing decline in the public’s propensity to vote and increasing disengagement from and a low level of understanding of politics.³² In addition trends in public perceptions of the honesty and trustworthiness of British Governments show that perceptions are volatile over time and *“can be understood to be the product of both policy delivery and the policy process.”* It is suggested in relation to the latter that if individuals feel they are being treated fairly in the policy process, even if the decision goes against them, then they will be more reconciled with the decision and trust the government. Perceptions of fairness therefore significantly influence perceptions of government honesty.³³
- 2.15** Research published recently by this Committee found firstly, consistent with the Hansard Society findings referred to above, that there is an increasing number of people (especially young people) who feel disconnected from the political system and political parties. The growth in the size of this group *“presents a challenge to political parties, politicians, and local organisations and community groups to work to provide the British public with a sufficiently attractive and relevant set of political options from which they can choose.”*³⁴ Secondly, the research found that public confidence in standards can be both positively and negatively influenced by events, how they are reported, and by the way in which governments and public bodies respond to them.³⁵ This suggests that public perceptions of standards in public life can be repaired as well as damaged.
- 2.16** It is therefore all the more important in our view that people holding public office and leadership positions understand that high ethical standards are a matter of personal responsibility, actively considered and visibly demonstrated.

31 Ev 10 written submission from Dr David Hine and Miss Gillian Peele.

32 Hansard Society *Audit of Political Engagement 10: The 2013 Report*. Chpt 3. There has however been a *“significant improvement”* in the perceived efficacy of Parliament holding government to account and debating and making decisions about issues that matter to the public. There has also been an increase in the number of people who say they would like to be involved in local and national decision – making.

33 *Why do Voters Lose Trust in Governments? Public perceptions of Government Honesty and Trustworthiness 1997-2013* by Paul Whiteley, Harold. D. Clarke, David Sanders, Marianne Stewart. Paper presented at the Conference on *“Citizens and Politics in Britain Today: Still a Civic Culture?”* London School of Economics. 26th September, 2013.

34 Survey of public attitudes towards conduct in public life 2012 September 2013 Prepared for the Committee on Standards in Public Life by Isabel Taylor, Nicole Martin and the Committee’s Research Advisory Board page 7.

35 Ibid.

Chapter 3:

Applying the Nolan principles to lobbying

- 3.1** Given the broad definition of lobbying, what then should those involved in lobbying bear in mind to ensure they are operating to high ethical standards, and what more can be done to bring greater integrity to existing arrangements?
- 3.2** In *Standards Matter* the Committee reviewed the key lessons that had been learnt since the Nolan Committee first reported in 1995 on how to improve ethical standards in public life. We concluded the basic building blocks for promoting high standards remain much as identified in the Committee's First Report:³⁶
- a set of broadly expressed values which everyone understands;
 - codes of practice elaborating on what the principles mean in the particular circumstances of an organisation;
 - effective internal processes to embed a culture of high standards, leadership by example; and
 - proportionate, risk-based external scrutiny.
- 3.3** To put this into effect, we concluded that standards needed to be addressed actively at an organisational level and involve consideration of all factors which affect individual behaviour, including recruitment processes, appraisal and reward structures. Good leadership and prompts to good behaviour, alongside formal codes and sanctions for poor behaviour, are key elements to promote an ethical culture. We have borne these conclusions in mind in considering the responsibilities of those involved in lobbying, whether they are lobbyists or public office holders, to ensure that lobbying is carried out transparently and ethically.

Principles and codes

- 3.4** The seven principles of public life (the Nolan principles) – selflessness, integrity, objectivity, accountability, openness, honesty and leadership - are a set of broadly expressed values which have been widely disseminated and adopted by most public services and public office holders and incorporated into codes of conduct.
- 3.5** All the principles apply when considering lobbying. In particular, the principle of honesty requires holders of public office to be truthful. Objectivity requires that holders of public office must act and take decisions impartially, fairly and on merit using best evidence and without discrimination or bias. Openness requires that decisions are taken in an open and transparent manner. Integrity requires holders of public office to declare and resolve any interests and relationships, whilst Leadership requires them to exhibit all the seven principles in their own behaviour. These principles need to underpin the actions and behaviour of public office holders when making decisions on which they may be lobbied. More than that, we think they can be applied to both the lobbied and the lobbyists.

³⁶ Ibid. 2

- 3.6** Participants at our seminar spoke of the importance of these principles in creating a culture of high ethical standards in any organisation. The point was made that individuals can argue their actions and behaviour were within the rules, but their peers or the general public regard them as having flouted the underlying principles.
- 3.7** *Standards Matter* considered that ethical principles need to be elaborated in codes of conduct which reflect the individual organisation and expand on their practical implications, so that the individual and those who hold them to account can be clear what is expected of them.
- 3.8** To be effective codes of conduct need to be:
- seen as relevant to every day and not exceptional;
 - proportionate;
 - adapted to the needs of the organisation;
 - clear about the consequences of not complying with the code;
 - framed positively and personalised; and
 - reinforced by positive leadership and embedded in the culture of an organisation.
- 3.9** In undertaking this review we examined existing codes of conduct and specific guidance on lobbying and received several examples of codes of conduct and guidance and practice on managing lobbying and dealing with conflicts of interest. We have also heard from the lobbying industry, the professions and business on how they conduct their contact with public officials. Some common themes and issues emerged.
- 3.10** The lobbying industry has established a system of self regulation to promote standards of ethical behaviour which includes a voluntary register of members and a code of conduct which is independently enforced. Further detail is set out in Appendix 2. We agree with the OECD that *“to maintain trust in public decision making, in-house and consultant lobbyists should also promote principles of good governance”*.³⁷ As transparency around decision making increases and more government information and data becomes accessible, the behaviour of lobbyists as well as public office holders will come under greater public scrutiny. All lobbyists should be expected to operate professionally and adhere to ethical principles. As such, any registration of lobbyists, be it voluntary or statutory, can only meaningfully increase accountability and drive up ethical standards if registrants are required to sign up to an accompanying code of conduct.
- 3.11** It is time for all organisations involved in lobbying to adopt specific codes or guidance, adapted to the needs of their organisation whether public, private or third sector,³⁸ to cover lobbying activity. The purpose of such codes or guidance would be to provide a common understanding of expected standards. We set out below and in the following chapters some of the specific matters organisations should have regard to. Whilst our primary focus is public office holders, we consider much of what we set out could equally apply to lobbyists.

Openness about lobbying

- 3.12** We discuss in more detail the benefits of transparency in the next chapter, but several of the codes and guidelines we have received refer explicitly to the principle of transparency³⁹ and encourage openness. For example, the Code of Conduct for Members of Parliament refers to the code *“providing the openness and*

³⁷ OECD *“Transparency and Integrity in Lobbying”* July 2012.

³⁸ We welcome the recent announcement of the National Council for Voluntary Organisations to establish a “Campaigning and lobbying standards group” which to create standards which “will set out high-level principles for good practice in campaigning and lobbying. Press release 26 September 2013.

³⁹ Association of Professional Political Consultants Code of Conduct and Chartered Institute of Public Relations Code of Conduct.

accountability necessary to reinforce public confidence in the way in which members perform those duties."⁴⁰

- 3.13** The main aim of the Australian Lobbying Code of Conduct for public servants is to *"ensure that Government representatives who deal with lobbyists are able to establish which interests the lobbyist represents in order to make appropriate judgements about their motives."*⁴¹
- 3.14** The National Assembly for Wales – Standards of Conduct Committee report on Lobbying and Cross Party Groups⁴² recommended the adoption of 'Guidance on lobbying and access to Members', together with a Code of Practice on contact with lobbyists. The Code encourages the recording of meetings and ascertaining information about the identity of the person or organisation who is lobbying and their motivations. Similarly the Scottish Parliament's provisions in their Code of Conduct on lobbying and access to MSPs state that *"Before taking any action as a result of being lobbied, a member should be satisfied about the identity of the person or organisation who is lobbying and the motive for lobbying. A member may choose to act in response to a commercial lobbyist but it is important that an MSP knows the basis on which the member is being lobbied in order to ensure that any action the member takes complies with the standards set out in this Code."*⁴³
- 3.15** The Greater London Authority "Guidelines on representation: Lobbying" states that it is for the person being lobbied to establish the identity of the lobbyist and what their aim is.⁴⁴ A register of lobbyists whether statutory or voluntary would assist office holders in that regard.
- 3.16** The lobbying industry itself supports mandatory disclosure of relevant information and the OECD survey of lobbyists found a consensus among lobbyists of the need for transparency in their profession. The type of information they believed should be disclosed included the name of client and employer, issues lobbied upon and contributions.⁴⁵ The Canadian Lobbyists Code of Conduct is founded on a principle of free and open access to government and goes on to state that lobbyists shall, when making representations to a public office holder *"disclose the identity of the person or organisation on whose behalf the representation is made, as well as the reason for it."*⁴⁶
- 3.17** The Institute of Business Ethics also recommends that companies in their lobbying policy are transparent: *"Be open about your position and aims. Publicise these widely, for example by posting position papers on the company website."*⁴⁷ There is therefore widespread acknowledgment of the need for openness about lobbying. Given this, as part of any guidance:

Recommendation 1

To maintain integrity in decision making, public office holders should proactively and as a matter of course, satisfy themselves as to the identity of the person or organisation lobbying them (and where appropriate their client or employer), the reason for the approach and should keep a record of such meetings.

40 The Code of Conduct together with The Guide to the Rules relating to the Conduct of Members 2012 HC 1885 <http://www.publications.parliament.uk/pa/cm/cmcode.htm>

41 www.apsc.gov.au

42 Report 03-13 May 2013. On 26 June 2013 the Assembly debated the Committee's report on Lobbying and Cross-Party Groups and agreed new Guidance on Lobbying and Access to Assembly Members and Rules for the Operation of Cross-Party Groups. The rules on cross-party groups came into effect on 23 September 2013.

43 Volume 2, Section 5, paragraph 5.1.4 <http://www.scottish.parliament.uk/msps/42778.aspx>

44 <http://www.london.gov.uk/sites/default/files/Guidelines%20on%20lobbying.pdf>

45 OECD *"Lobbyists, Government and Public Trust, Volume 2: Promoting Integrity by self regulation"*. 2012.

46 www.ocl-cal.gc.ca

47 Institute of Business Ethics *"The Ethics of Influence"* Chpt 4 p42.

Avoiding conflicts of interest

- 3.18** Many organisations now retain registers of interest and the means to declare gifts and hospitality. Such registers differ for various public office holders. The submissions we have received and the opinions we heard at our seminar confirm the strongly held view that public office holders should not receive any financial incentive (directly or in kind) to promote a specific point of view or to advocate for a specific cause. It risks creating a conflict of interest by placing them under an obligation to a third party, which may affect them in their work including when they take decisions, which is relevant to the Nolan principle of Integrity.
- 3.19** Clear rules already exist for Ministers, civil servants and special advisers concerning the acceptance of gifts and hospitality – in particular such gifts and hospitality should be refused where it might reasonably appear to compromise judgement or place the person under an obligation, or which can be seen as compromising personal judgement or integrity. Disappointingly, as a result of changes made by the Localism Act 2012 there is no longer a specific requirement for elected members of local government to declare gifts and hospitality. We consider this to be a retrograde step and out of step with practices elsewhere.
- 3.20** The Greater London Authority “Guidelines on representation: Lobbying”⁴⁸ states Members and officers should declare the acceptance of any hospitality, gifts or benefits, from any source, where they have been lobbied. It goes on to state that all but the most insignificant or incidental hospitality, benefit or gift should be declined from a company or individual who lobbies on a fee basis on behalf of clients. The National Assembly for Wales – Standards of Conduct Committee report on Lobbying and Cross Party Groups also recommends that members should decline any gift given by a professional lobbyist. The reasoning given is that *“since the basis on which many people believe professional lobbyists sell their services is by claiming to provide clients with influence over decision makers, it might reasonably be thought that acceptance of a benefit of any significance from such a source could influence a Member’s judgement in carrying out their official duties.”*⁴⁹ The Scottish Parliament Code of Conduct provides similarly.⁵⁰ The Houses of Parliament Codes of Conduct currently do not.
- 3.21** At the very least, accepting a benefit could be perceived as creating a conflict of interest and the UKPAC Guiding Principles of Conduct⁵¹ which registrant lobbyists subscribe to, appears to recognise this. Under that principle of integrity it states *“Never offer financial or any other inducement, including direct or indirect payments, offers of employment or substantial gifts or entertainment, to any holder of public office in an attempt to influence the decision making process.”*

Recommendation 2

Public office holders should decline all but the most insignificant or incidental gifts, benefit or hospitality from professional lobbyists. Public office holders’ registers of interest, gifts and hospitality should be published regularly and in an easily accessible format.

- 3.22** Both Houses of Parliament have developed Codes of Conduct. Despite the existence of such codes, the arrangements for dealing with conflicts of interest in both Houses of Parliament generated substantial comment in our call for evidence. As one respondent noted *“there is evidence from recent events in both Houses of Parliament, albeit among a minority of members, of a more casual attitude towards influence and lobbying, and a suggestion that registers of interest and declarations of interest release individuals from deeper if less formal ethical obligations.”*⁵² There was also some support in the response to our call for evidence for the rules of both Houses being tightened. Suggestions included tightening the House of Lords rule on paid advocacy to bring it into line with the House of Commons;⁵³ parliamentarians (and civil servants) being banned from any paid role within a lobbying organisation whilst a Member of Parliament or

48 Ibid. 44.

49 Ibid. 42.

50 Ibid. 43 para 5.1.6.

51 www.publicaffairscouncil.org.uk/en/resources/

52 Ev 10 written submission from Dr David Hine and Miss Gillian Peele.

53 Ev 2 written submission from APPC and Ev 23 written submission from Paul Flynn MP.

for five years after leaving Parliament;⁵⁴ and additional rules of conduct to deal with the potential for conflicts of interest for Committee chairs.⁵⁵

- 3.23** The Group of States Against Corruption (GRECO) whose report of the United Kingdom in its Fourth Evaluation Round “*Corruption prevention in respect of members of Parliament, judges and prosecutors*” was adopted on 16 and 17 October 2012,⁵⁶ made recommendations in relation to Codes of Conduct and guidance for Members of both Houses of Parliament, namely:
- clearer guidance should be provided for Members of the House of Commons and
 - the House of Lords concerning the acceptance of gifts, and consideration should be given to reducing the current thresholds for registering accepted gifts;
 - the Codes of Conduct and the guidance for both the Commons and the Lords should be reviewed in order to ensure that the Members of both Houses and their staff have appropriate standards/guidance for dealing with lobbyists and others whose intent is to sway public policy on behalf of specific interests.
- 3.24** The Parliamentary Commissioner of Standards also recommended revisions to the Guide to the Rules relating to the Conduct of Members in the Commons to the then Committee on Standards and Privileges in September 2012.⁵⁷ These recommendations included changes to the thresholds for registering employment payments and gifts, benefits and hospitality and in relation to lobbying were to:
- require all Members to register in a new category the details of any family members involved in public sector lobbying;
 - impose restrictions on parliamentary lobbying by former Members by extending the lobbying rules to them for two years in respect of approaches to Ministers, other Members or public officials; and requiring former Members to register for two years any occupation or employment which involves them or their employer in contact with Ministers, other Members or public officials;
 - tighten the lobbying rules so that Members receiving outside payment may not initiate parliamentary proceedings or approach Ministers, other Members or public officials in the interests of those from whom they receive such reward or consideration, while continuing to allow Members to take part in (but not initiate) such proceedings and meetings as long as they do not act for the exclusive benefit of those paying them.
- 3.25** The Committee has supported these proposals both for reasons of transparency and because it is possible for former members to take on significant and influential roles in public affairs and exploit the contacts and knowledge gained through membership of the House. It is important for public confidence in Parliament to ensure that, during their time in the House, members are not perceived to be influenced in their behaviour by the hope or expectation of future personal gain. This is discussed further in chapter 5.
- 3.26** We note that the Committee on Standards and Privileges, whilst accepting most of the recommendations⁵⁸ of the Parliamentary Commissioner for Standards, instead recommended that the restriction on lobbying by former members should be for six months and not two years and that it was not necessary to introduce a new register for former Members. We are not convinced by their proposed changes to these recommendations of the Parliamentary Commissioner.

54 Ev 6 written submission from Chartered Institute of Journalists.

55 Ev 29 written submission from Ranelagh Communications.

56 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4\(2012\)2_UnitedKingdom_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4(2012)2_UnitedKingdom_EN.pdf)

57 Committee on Standards and Privileges *Proposed Revisions to the Guide to the Rules relating to the Conduct of Members*. Third Report of Session 2013-14 HC 636 6 December 2012 <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmstnprv/636/636.pdf>

58 The Committee also accepted the recommendation from CSPL that members who were Ministers in the preceding two years should state in their register entry whether they sought the advice of the Advisory Committee on Business Appointments before accepting any employment they register.

- 3.27** The Committee on Standards and Privileges was “concerned that a two year rule for former Members would operate unnecessarily harshly and more fiercely than the rules for former Ministers.”⁵⁹ The two year ban on lobbying for former Ministers, whilst it has been eased on occasion, is generally applied and there is an expectation that a similar ban will apply to Permanent Secretaries and Directors General. The Committee argued that Members do not have direct involvement in making policy or direct decision making powers.
- 3.28** For the reasons we have outlined earlier, Parliamentarians have great power of influence and advocacy and can, particularly through chairmanship or membership of Select Committees or All Party Groups, put public policy matters on the political agenda. We also believe the introduction of a register would provide full transparency about lobbying activities once Members leave the House of Commons and therefore enable public scrutiny and effective enforcement of the rules.
- 3.29** In the light of the renewed public concern about Parliamentarians lobbying activities and given that the House has not yet had an opportunity to debate and decide on the Committee on Standards proposals:

Recommendation 3

The Committee on Standards and the House of Commons should reconsider implementing the recommendations of the Parliamentary Commissioner for Standards to the Code of Conduct for Members of Parliament to:

- impose restrictions on parliamentary lobbying by former Members by extending the lobbying rules to them for two years in respect of approaches to Ministers, other Members or public officials; and
- require former Members to register for two years any occupation or employment which involves them or their employer in contact with Ministers, other Members or public officials.

Consideration should be given to:

- whether Chairmanship of a Select Committee brings with it a particular influence on matters of public policy that justifies the imposition of additional restrictions in relation to conflicts of interests; and
- providing explicitly that Members should not accept all but the most insignificant or incidental gift, benefit or hospitality from professional lobbyists.

The House of Lords Commissioner for Standards and the Committee for Privileges should review the Code of Conduct and guidance to its Members on registering employment payments, gifts, benefits and hospitality and in relation to lobbying.

Equality of access

- 3.30** Equality of access is important in enabling decision makers to act in accordance with the Nolan principle of Objectivity and take decisions impartially, fairly and on merit using best evidence and without discrimination or bias.
- 3.31** One of the express principles of the Greater London Authority “Guidelines on representation: Lobbying” is equality of opportunity, in terms of access to both the Mayor and Assembly members. The guidelines state that a member will not give a lobbyist any indication that they will receive preferential access or treatment compared to that which will be accorded to any other person or organisation.

⁵⁹ Ibid. 57. p12, para 29.

- 3.32** The Scottish Parliament Code of Conduct⁶⁰ states “*The public must be assured that no person or organisation will gain better access to, or treatment by, any member as a result of employing a commercial lobbyist either as a representative or to provide strategic advice.*”
- 3.33** The Civil Service guidelines on lobbying, which sit behind the Civil Service Code, state that not considering whether a balance in views should be obtained after meeting with one group making representation on a particular issue could amount to behaviour which would trigger disciplinary procedures.
- 3.34** Special advisers are treated as temporary civil servants and appointed to serve the Government as a whole. They are subject to the Civil Service Code but are exempted from the requirement to behave with impartiality and objectivity. There is no guidance we are aware of, as to the implications of this for special advisers managing contacts with lobbyists.
- 3.35** Special advisers⁶¹ do have their own code of conduct⁶² to which they must adhere. They are required to conduct themselves with integrity and honesty and not misuse their position to further their private interests or those of others. That Code sets out the sort of work a special adviser may do for a Minister and acknowledges that such advisers are specifically employed to help the Minister on matters “*where the work of Government and the work of the Government party overlap and where it would be inappropriate for permanent civil servants to become involved.*” This could include “*liaising with outside interest groups including groups with a political allegiance to assist the Minister’s access to their contribution.*” It is therefore envisaged that the special adviser will be a conduit of access to the Minister and that access may reflect a particular type of view. Given the political nature of this role and the proximity of their relationship with decision makers, we would argue that specific published guidance for special advisers on managing lobbying activity is required, as are additional reporting requirements, in order to ensure an appropriate level of transparency and accountability.
- 3.36** For all public office holders, including special advisers, we consider that:

Recommendation 4

As a matter of good practice, any guidance on lobbying should remind all public office holders of the principle of equality of access and the need proactively to consider, after any meeting, whether a balance of views should be obtained.

60 Ibid. 39. para 5.1.3.

61 Special advisers are distinct from policy ‘Tsars’ who are independent policy advisers to government and appointed by Ministers. On that see proposals from Kings College London researchers Dr Ruth Levitt and William Solesbury for a new code of practice designed for use by Ministers, government officials and ‘tsars’ to secure higher standards. <http://www.kcl.ac.uk/sspp/departments/politiceconomy/research/tsars.aspx>

62 <https://www.gov.uk/government/publications/special-advisers-code-of-conduct>

Chapter 4:

Transparency around lobbying

- 4.1 The Nolan principle of Openness is described as follows: “*Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for doing so.*” The need for greater transparency is a matter of perception and substance. The more that lobbying activity is hidden from public view, the more it will be seen as “murky” and the greater in fact will be the concerns about lobbying in general. Lobbying which is secret without good reason inhibits even-handedness, results in distorted evidence and arguments, fuels suspicions, facilitates excessive hospitality, corruption and other impropriety, hides or clouds accountability, undermines trust and confidence in political processes, and is inconsistent with modern democratic standards.
- 4.2 The Prime Minister has made a commitment to lead “*the most open and transparent government in the world.*” The Open Government Partnership – UK 2013 Draft National Action Plan “From Open Data to Open Government” June 2013 sets out a transforming vision of open government in the UK:

*Transparency, supported by citizen participation, generates accountability. We want transparency to enable individuals and organisations to understand the decisions being made and to see the flows of funding to different parts of the public and private sectors.*⁶³

- 4.3 Transparent decision-making means more rounded decisions, taking on board a range of views and revealing the stance and motives of those offering views. It was U.S. Supreme Court Justice Louis Brandeis who famously said that “*Sunlight is the best disinfectant*”. Openness and transparency expose and deter malpractice, improve accountability encourage the highest standards of integrity and promote public trust.
- 4.4 What is more, recent research shows that if the public are asked how they want politics reformed, suggestions focusing on transparency and accountability come out top. Suggestions for reform from focus groups were directed to issues of process. The top preference being that those who made decisions, especially elected representatives, were open in what they did and accountable for their performance – changing processes to make them more accountable and transparent. Another concern was around improving communication and ensuring that fair and accessible information about decisions and why they are made is provided.⁶⁴ Very similar findings were found as part of a survey undertaken as part of the Hansard Society’s Audit of Political Engagement 10 where making “politics more transparent so that it is easier to follow” was the top reform preference.⁶⁵
- 4.5 The Committee recognises the risk of “*information overload*” – that too much information could swamp the public and (as Dr David Hine⁶⁶ suggests) blunt the inhibiting effect on the behaviour of office holders or feed more suspicion and speculation. Proportionality is needed and there must be limits for policy and practical reasons. We recognise private and professional lives can intersect, but as one of the respondents to our call for evidence said “*recognising that ministers and MPs have a certain responsibility towards transparency in the lobbying equation is critical, especially when we recognise that they are working for, and being paid by citizens, to act in the citizens’ interest. Reporting to your employers what you are doing for them cannot be*

63 <https://www.gov.uk/government/consultations/open-government-partnership-uk-draft-national-action-plan-2013>

64 “*Exploring the Consequences of Fast Thinking about Politics*”. A paper for the PSA/University of Kent conference on “Citizens and Politics in Britain Today: Still a “Civic Culture”?” 26th September 2013, London Gerry Stoker, Colin Hay and Matt Barr.

65 Hansard Society *Audit of Political Engagement 10: The 2013 Report*. London 2013.

66 Ev 10 written submission from Dr David Hine and Miss Gillian Peele.

that onerous".⁶⁷ The same could be said of other public office holders. We also share the scepticism of the Information Commissioners Office (ICO) that greater transparency could lead to poorer record keeping or (for example) shift lobbying to private email accounts.

- 4.6 The Political and Constitutional Reform Committee pre-legislative scrutiny report⁶⁸ of the Government's proposals for a statutory register considered that regardless of any such register changes could be made to improve transparency about who is lobbying whom, through enhanced disclosure of Ministerial meetings. This Committee agrees and sees benefit in going further.

The impact of Freedom of Information

- 4.7 The Freedom of Information Act (FOIA) has significant implications for lobbying. Since 2005 FOIA has given individuals and organisations the right to request disclosure of recorded information held by any public authority. This right is subject to various exemptions. For example, information is exempt from disclosure if it relates to the formulation and development of government policy or to ministerial communications (section 35). Likewise, there is an exemption where disclosure would, or would be likely to prejudice commercial interests (section 43).
- 4.8 In order to rely upon these and most others exemptions the public interest in withholding the information must outweigh the public interest in releasing it. For example, to rely upon section 35 there is no automatic public interest in withholding all such information, on the basis of good government or to consider policy options in private. In each case, such arguments must be stronger than the public interest arguments favouring disclosure.
- 4.9 The appeal case of *Department for Business v Information Commissioner and Friends of the Earth* comprehensively covered the approach to disclosing details of departmental meetings with CBI as a lobbying organisation. The decision analysed in considerable detail the extent to which both government and lobbyist may be entitled to private space. The Information Tribunal weighed the competing issues:

'..there is a strong public interest in understanding how lobbyists, particularly those given privileged access, are attempting to influence government so that other supporting or counterbalancing views can be put to government to help ministers and civil servants make best policy. Also there is a strong public interest in ensuring that there is not, and it is seen that there is not, any impropriety.there is public interest in the disclosure of information in relation to such deliberations even at the early stages of policy formulations.'

*'However we do accept that there is a strong public interest in the value of government being able to test ideas with informed third parties out of the public eye and knowing what the reaction of particular groups of stakeholders might be if particular policy lines/negotiating positions were to be taken.'*⁶⁹

After applying these tests to details of each meeting, the Tribunal upheld the Commissioner's ruling that most, but not all, of the data requested by Friends of the Earth should be disclosed.

- 4.10 In summary, current FOIA case law⁷⁰ (from the Information Commissioner and the Tribunal) indicates that a significant range of information related to lobbying is already disclosable under FOIA, for example for most meetings:
- names of ministers, senior officials and lobbyists attending;
 - dates;

67 Ev 12 written submission from Dr John Hogan, Professor Gary Murphy and Professor Raj Chari.

68 Political and Constitutional Reform Committee *Introducing a statutory register of lobbyists* Second Report of Session 2012-13 HC 153 *Published 13 July 2012* <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpolcon/153/15302.htm>

69 Information Tribunal Appeal Number EA/2007/0072 paragraphs 117 and 119.

70 See for example Cases FS50429932, FS50445422, FS50312407.

- subject(s) discussed; and
- minutes.

- 4.11** Where a request is refused the outcome of a complaint is therefore often disclosure of such information. The ICO summarises in their submission to the call for evidence⁷¹ *“The case-law highlights a strong public interest in disclosure but has recognised some strictly defined circumstances in which information can be withheld, recognising that lobbying can be a legitimate and potentially beneficial activity, which may be deserving of confidentiality in respect of certain information and timeframes. However it is clear that lobbyists should not have an expectation of general confidentiality under FOIA.”*
- 4.12** The ICO published document⁷² – “Public interest arguments presented in favour of maintaining a relevant exemption for withholding information on lobbyist” – is used by its case officers in dealing with FOIA cases involving lobbyists. It indicates that the ICO is often asked to consider questions of influence in the context of the transparency of the decision making and accountability for decisions when deciding if the release of information is in the public interest. Requests relating to ongoing policy-making call for particularly finely-balanced judgements. It is acknowledged that there is a public interest in making the contribution of lobbyists public *before* policy decisions are finalised to allow counterbalancing views to be presented. But this may be precisely the time when the public interest in providing “safe space” protection is strongest. In such cases, the public interest in disclosure is likely to be greater where the reality “behind the scenes” does not match the public position and the disputed information reveals the actual influence of a lobbyist or the nature of the relationship with government. The ICO is planning to develop new external guidance on handling FOIA requests relating to lobbyists in 2013/14.
- 4.13** As to the number of FOIA requests relating to lobbyists, the ICO commented further in their submission, *“it is difficult to gauge the number of freedom of information (FOI) requests made about lobbying, and the number of complaints received by the Commissioner. However, there is enough evidence to suggest that the legislation is used to a significant extent by those seeking to hold lobbyists to account or find out more about their activities.”*⁷³
- 4.14** Some evidence of the level of FOI requests can be found on www.whatdotheyknow.com. This website is an engine through which people can make FOI requests. It maintains a public archive of these requests and any answers, including any attached files received and allows searches by keywords in the FOI request or by department. Users are also able to link to similar requests made on the site, although the site does not aggregate data. The site estimates that around 15-20% of all FOI requests are made through them. The ICO noted in their submission that a search of the site revealed 55 requests using the term “lobbyists” and 969 requests the term “lobbying”.⁷⁴

The limitations of Freedom of Information

- 4.15** The use of FOIA requests relating to lobbyists is still in its early days and there are various limitations to its use and applicability as some of our respondents to the call for evidence and participants at our seminar acknowledged.⁷⁵
- 4.16** Disclosure depends upon the specific requests for information being made, which can be a fragmented and haphazard process. The motivations of the requesters is relevant – the ICO notes in their submission that *“it is reasonable to conclude that a significant percentage of requests about lobbying are from journalists and NGOs”*. Some requests can be refused on cost grounds.

71 Ev 15 written submission from Information Commissioner’s Office.

72 <http://www.ico.org.uk/foikb/FOIPolicyPublicinterestindisclosinginformationaboutlobbyists.htm>

73 Ev 15 written submission from the Information Commissioners Office.

74 This in the context of The Ministry of Justice website recording that a total of 49,464 FOI requests were made to central government alone in 2012 see <https://www.gov.uk/government/publications/earlier-editions-statistics-on-implementation-in-central-government-earlier-editions-in-the-series>

75 See for example Ev 36 written submission from William Dinan & David Miller.

- 4.17** The ICO's main statutory duty is in relation to complaints regarding the handling of FOIA requests. As a consequence the extent of their interest is largely dependent on the volume and nature of complaints over which it has no control. The jurisprudence (from Commissioner, Tribunal and the courts) is helpful in delineating boundaries, but it is still relatively small and not widely known.
- 4.18** Making a request, and the reviews and appeals which may follow, can be costly both for the requester in terms of time, effort and fees and for the public body. A study by Ipsos Mori in 2012 which was carried out as part of post legislative scrutiny of the FOIA by the Ministry of Justice estimated (using a cross sectional study of hours spent dealing with requests multiplied by number of requests in 2011) total staff cost of approximately £8.5m per year for dealing with FOI requests submitted to central government departments.⁷⁶ Research from UCL suggests that between January and December 2010 the 353 local authorities in England received 197,737 requests for information under the FOI Act or the Environmental Information Regulations. The figures also suggest that FOI requests to Local Authorities increased every year from 2006 to 2010, with a 20% increase from 2009-2010. Financial information was found to be the most requested (33%) among respondents. The researchers estimated that the annual cost of local government complying with FOI requests (using an estimate of time spent dealing with requests given by the 125 respondents) was approximately £31.6 million.⁷⁷
- 4.19** The process for FOI requests, including a determination by the ICO can also take up to 12 months. Disclosure so long after the event can be pointless and damage public trust and confidence that decisions were made fairly. Notwithstanding the argument for "safe space" protection, at least some information on who is influencing a decision is often needed in real or near-real time in order to provide an opportunity for those who have a different view to present an alternative perspective.
- 4.20** It is important that all those providing public services are transparent to enable effective public scrutiny and ensure accountability but the FOIA has limited scope. The Act gives rights of public access to recorded information held by public authorities. The definition of a public authority is found in Section 3 FOIA and Schedule 1 sets out detailed categories and named public authorities. The Act does not treat MPs, peers, or councillors or individual officials as public authorities and therefore only impacts upon them indirectly.
- 4.21** There is also a grey area around the applicability of the Act when services are contracted out to the private sector and whether such information is "held on behalf of the authority" for the purposes of the FOIA. This issue may become increasingly relevant as services are contracted out and functions outsourced. In a recent case the Tribunal analysed the contractual relationship to determine whether information was "appropriately connected" to the contract and considered that information collected by a contractor for the purpose of meeting their contractual reporting requirements to the public authority was held on the local authority's behalf.⁷⁸ We note recent calls to extend the application of the FOIA to private companies when operating services in the public interest.⁷⁹

Proactive disclosure

- 4.22** Although the FOIA has established a presumption in favour of disclosing a great deal of information about lobbying activity, the dependency upon requests limits its effectiveness in securing sufficient transparency. In the Committee's view proactive and routine disclosure is likely to prove more effective (and more efficient) as the primary instrument of transparency for public office holders. The Open Government Partnership acknowledges⁸⁰ that *"access to information allows people to work together more effectively, collaborating with each other, with policy makers and with service providers to improve governance, public life and public services to make more informed decisions."*

⁷⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217390/investigative-study-informing-foia.pdf

⁷⁷ <http://www.ucl.ac.uk/constitution-unit/research/foi/foi-and-local-government/2010-foi-officers-survey.pdf>

⁷⁸ William Visser V (1) Information Commissioner (2) London Borough of Southwark EA/2012/0125, 11 January 2013

⁷⁹ See recommendation 22 *ibid* 21, or the Freedom of Information (Private Health Care Companies) motion for leave to bring in a Bill Grahame M. Morris Hansard 8 October 2013

⁸⁰ Draft National Action Plan *ibid* 62

- 4.23** Electronic ways of working such as diaries, emails, and websites, the use of social media and digital records make proactive disclosure much easier and less onerous than previously.
- 4.24** The Committee welcomed the Government's decision at the beginning of the current Parliament to publish quarterly details of Ministers' and Permanent Secretaries' official meetings with outside interest groups, as well as information about hospitality received by ministers and members of departmental boards. The existing transparency regime is provided for by the Ministerial Code requirement at paragraph 8.14 to publish, at least quarterly, details of Ministers external meetings which has been extended voluntarily to Permanent Secretaries and to some degree to special advisers. In July 2011 the Code was amended to provide that all meetings with newspaper and other media proprietors, editors and senior executives will be published quarterly regardless of the purpose of the meeting.⁸¹
- 4.25** But significant questions remain about how well this is working in practice, whether sufficient detail is published, how the span of such transparency might be widened and what should be the limits of greater transparency.
- 4.26** In summary, the information currently published is as follows:

Box 1: Outlining current information published on official meetings and hospitality

Categories	Current information published
Ministers and Permanent Secretaries' meetings with external organisations	Details of Ministers' meetings with external organisations including with newspapers and the media given. Includes the month and brief explanation of what was discussed. Published by quarter (usually one quarter in arrears) ⁸²
Special advisers' meetings with external organisations	Details of special advisers' meetings with media proprietors, editors and senior executives given. Published information includes date of meeting, name of person or organisation and purpose of meeting.
Hospitality received by Ministers, Permanent Secretaries and Special Advisers	Details of hospitality received includes: exact date received (not just month). Name of organisation. Type of hospitality received.
Meeting descriptors	Meeting descriptors usually brief and use phrases such as "general meeting" and "catch up".

- 4.27** Specific issues about the detail and value of information currently provided on official meetings (which appears to be considerably less than provided in response to most FOIA requests) include the following:
- exact dates of meeting are not stated – only the month. This prevents anyone seeing the sequence of meetings;
 - details of who attended the meeting are not usually given, for example whether special advisers were present or officials from other departments, or if a group or organisation is listed which individual attended and what role they may have in the organisation;
 - the subject descriptors are usually vague and it is not possible to search meetings by theme. Whoslobbying.com argued in 2011 that over 1100 of the 5144 ministerial meetings recorded, were reported as "introductory meeting/introduction" "catch up" or "discussion;"⁸³ and

81 <https://www.gov.uk/government/publications/ministerial-code>

82 <https://www.gov.uk/government/organisations/cabinet-office/series/ministers-transparency-publications>

83 Written evidence submitted by Rob Mckinnon to Political and Constitutional Reform Committee para 19. See <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpolcon/153/153we15.htm>

- timeliness is poor. The Government is committed to publishing transparency data quarterly. However it can be published any time in the following quarter and notwithstanding this on the last two occasions has been published late. The data for January – March 2013 was published on 12 July 2013. The data for April – June was not published until 7 October 2013.

FOIA publication schemes

4.28 The FOIA already includes a measure of proactive disclosure alongside the main request regime. Section 19 requires every public authority to have a “publication scheme”. The ICO has a model scheme available for public authorities to adopt and provides guidance for each sector. In relation to central government the ICO has already stipulated that the Commissioner expects publication schemes to include disclosure of Ministerial, Permanent Secretary and Special Adviser meetings.

4.29 The ICO indicated in their written submission that *“from considering a sample of central government websites it is clear that the provision of this information is patchy – in terms of accessibility, findability and regularity of updates. There is a need for more consistent information about dates, times, names and subject matter of meetings. It may be possible for the Commissioner’s publication scheme definition document to go further in this aspect.”* We agree, whilst noting the limitations on the Commissioner’s ability to monitor publication schemes.

Accessibility and format of information

4.30 The existence of the whoslobbying.com website and other similar sites such as those run by My Society⁸⁴ highlights the current transparency and accessibility difficulties with government data.

4.31 The stated objectives of the whoslobbying.com website are to:

- give the public easy access to information about who is trying to influence government;
- inform the government as to what information is and is not available; and
- show government how to put this type of information on the web in an easy to browse, consistent format.

84 Whatdotheyknow.com and theyworkforyou.com

4.32 The following table compares the information that is available in relation to Ministerial meetings on gov.uk and whoslobbying.com.

Box: 2 comparing information available on government and whoslobbying websites

Type of information available	Gov.uk	Whoslobbying.com
Total times a Minister has met with a group	Yes*	Yes
Total number of external meetings across government	Yes*	Yes
Total meetings with same industry	No	Yes
Total times a group has met with Ministers	No	Yes
Specific subject of meeting	No	No
Meeting attendees	No	No
Meeting initiator	No	No
Private meetings with external organisations**	No	No

* to obtain this information would require aggregating data in spreadsheets or alternatively making a Freedom of Information request.

** Ministers are only required to declare meetings held as part of Ministerial duties and not other meetings.

4.33 The way information is captured is not uniform across departments and information has not always been provided in a machine-readable accessible format. The usability of the data on whoslobbying.com is enhanced by aggregating and cross referencing cross departmental published returns. As the Government's draft National Action Plan states *"for effective open government, the public must be provided with easy access to accurate, credible, high value information in a format that can be easily read and understood."*⁸⁵ The Institute of Government recently set out suggested principles that government data should adhere to covering accessibility, quality and comparability and we commend their suggestions.⁸⁶

4.34 We also welcome the recent open data rights amendments to the FOIA which came into force on 1 September 2013. These changes enable the public to request data in a re-usable format and under a specified licence for re-use and require public authorities to publish any requested datasets as part of their publication scheme, if appropriate. It is possible that this will over time improve consistency in how lobbying data is made available and allow aggregation by the requester, if such data is classed as a data set for the purpose of the legislation. We encourage public authorities to adopt the "open data by default" approach encouraged by the ICO as a further means of enhancing transparency.

Summary

4.35 The Committee wishes to encourage maximum transparency about lobbying activities, by both organisations and individuals, with rules which are clear and consistent and with simple mechanisms for disclosing information. We recognise that there will need to be limits – for reasons of public interest, policy, and practicality. We wish to avoid both excessive administrative burden and information overload. But public bodies and office holders which make information about the lobbying to which they have been subjected routinely available will demonstrate transparency, increase accountability and as a consequence improve public trust.⁸⁷ The prospect of open disclosure will also have a welcome deterrent effect upon questionable activities.

⁸⁵ Draft National Action Plan. Ibid. 62

⁸⁶ *Whitehall Monitor 2013 – Annual commentary and analysis on the size, shape and performance of Whitehall*, Justine Stephen, Petr Bouchal, David Bull August 2013 Annex A: Improving data on Whitehall

⁸⁷ See on this the contribution by Lord Norton of Louth on Second reading of the Bill Hansard 22 October 2013; vol.748, c. 929

- 4.36** Neither requests under the Freedom of Information Act, nor the current extent of proactive disclosure, are providing sufficient transparency around lobbying. The request regime will play a role in securing greater or more specific detail in some cases and in keeping proactive disclosure honest. FOIA and its case-law have provided valuable guidance on how the boundaries should be drawn (across a wide spectrum of circumstances and issues); about the nature and extent of proactive disclosure – i.e. a presumption of disclosure, but subject to all the exemptions, and (where applicable) the public interest test. However, more is required to provide sufficient transparency and accountability to enable effective public scrutiny of lobbying.

Recommendation 5

Public bodies should routinely publish information about all significant meetings and hospitality involving external attempts to influence a public policy decision. This should include significant contact (including private meetings) where a specific matter is raised which has a bearing on official business.⁸⁸

The published information should include dates of meetings, details of attendees and meaningful descriptors of subject-matter. It should normally be published within one month⁸⁹ on a relevant website, in an easily accessible format.

In the case of central government, the disclosure arrangements should cover special advisers and senior civil servants as well as Ministers, Permanent Secretaries and Departmental Boards.

Public office holders who are outside the scope of the Freedom of Information Act (including Members of Parliament, Peers and Councillors) should be encouraged to disclose the same information and consideration should be given to including this in relevant Codes of Conduct.

- 4.37** These recommendations are consistent with the Nolan principle of Openness and with the Open Government Partnership which the Prime Minister has championed. The information to be disclosed will go beyond the limited disclosure arrangements introduced at the beginning of the current Parliament, but will not include substantive information which would (in line with established case law) remain confidential in response to an FOI request. We hope that the ICO will use its definition guidance on publication schemes to elaborate these recommendations, linked to its forthcoming guidance on lobbying-related FOI requests. Training is also needed to reinforce these transparency requirements.
- 4.38** We also hope that the Cabinet Office will issue guidance so that all such factual information, as well as the existing publication of Ministerial, Permanent Secretary and Special Adviser meetings, should be regarded as a dataset and should be published in a consistent, open and re-usable format (with easy to browse and search facilities) so as to enable information to be easily located and aggregated and to maximise value to the public.

⁸⁸ In the Committee's response to the government consultation on the statutory register we said: "Any contact with ministers which has a bearing on their official duties should be included in the published lists of ministerial meetings; however that contact occurs, not just meetings arranged by their departments."

⁸⁹ We endorse these recommendations as made by the Political and Constitutional Reform Committee in their report on *Introducing a Statutory register of Lobbyists* HC 153 Published on 13 July 2012.

Chapter 5:

The “revolving door” of employment

Post-public employment

- 5.1** We consider that for reform of lobbying to be meaningful, it should also include consideration of the arrangements for movement of office holders between the public and private sectors, sometimes referred to as the “revolving door.” Such movement is on the increase as public services are outsourced or managed through public-private partnerships, interchange in the public sector is actively encouraged and the notion of a lifetime career in public service diminishes. There are also continuing debates about the shifting boundary lines between the public and private sectors.
- 5.2** Interchange occurs in many OECD countries. It can drive innovation, enable the sharing of best practice and expertise and provide an opportunity for individuals to develop their careers. The knowledge, understanding and skills gained from another sector can enable better working in both sectors individually and when working together on complex problems. This benefits the consumer and taxpayers.
- 5.3** The revolving door raises the risk of potential conflicts of interest and particular cases often generate close media attention or other public scrutiny. Hiring people either permanently or temporarily with contacts or knowledge gained from their time in government or the public sector can be seen as an attempt to buy access and influence. The concern is that public office holders’ *“behaviour before leaving employment is altered in a way that is not in the public interest in anticipation of future employment or, post-public office, commercial or other organisations are given unfair advantages over others as a result of the knowledge or contacts of people they employ post-office”*.⁹⁰
- 5.4** If such movements across sectors are not managed carefully, they can present *“opportunities for public officials to use their position for personal gain, and may give rise to public anxiety about the probity of former, and serving, public officials”*⁹¹ and have the potential to damage public trust and confidence in public office holders and the decisions they take generally. There is a need to balance the freedom of individuals to earn a livelihood and the desire to attract expert and skilled candidates for public office with the public interest and principles of public life, particularly the principles that office holders should act with Integrity and Objectivity.
- 5.5** The OECD has recognised post-public employment as an area for concern and its recent publication on Post-Public Employment Good Practices for preventing conflict of interest⁹² provides guidance to policy makers and managers on how to prevent and manage resulting conflicts of interest. We commend the Post-Public Employment principles⁹³ as a source of reference against which organisations can review the strengths and weaknesses of their systems. This report confirms that the vast majority of OECD countries have established basic post-employment standards to avoid conflict of interest. Only a few countries have tailored standards to risk areas, something we will refer to below.

90 Sir Christopher Kelly evidence to the Public Administration Committee 6 March 2012.

91 Public Administration Select Committee *Business Appointment Rules* (Third Report) HC 404 July 2012. Summary.

92 Post-Public Employment – Good Practices for preventing conflict of interest OECD 2010.

93 Ibid p38.

5.6 In the UK, the Business Appointment Rules⁹⁴ apply to Former Ministers and Crown servants namely civil servants (including special advisers⁹⁵) and members of the Diplomatic Service, Intelligence Agencies and Armed Forces. Before accepting any new appointment or employment up to 2 years after leaving their role, the individual is required to consider if an application under the rules for approval is required. Compliance with the rules is part of the Ministerial Code and forms part of the Civil Service Management Code.⁹⁶ There are corresponding requirements for other Crown servants.

5.7 The aim of the Business Appointment Rules is to avoid any reasonable concerns that:

- an individual may be influenced in carrying out their official duties by hope or expectation of future employment; or
- on leaving might exploit privileged access to contracts or information; or
- an organisation may gain improper advantage by employing someone who has had access to certain information.

The Business Appointment Rules for former Ministers set out specific tests against which ACoBA will consider each request.

5.8 Whilst former Ministers are covered by the rules, former Members of Parliament or Parliamentary staff are not⁹⁷. Neither are public officials who are not crown servants but who, depending on their role, might be considered capable of meeting the concerns outlined above. This will potentially include a wide range of staff in local authorities, councillors, police, the NHS and other services. We are convinced that this position remains tenable given, as outlined in chapter 2, the nature and value of decisions some of these public office holders will be taking.

5.9 The Rules are prepared by the Cabinet Office and approved by the Prime Minister but they have no statutory basis. The independent Advisory Committee on Business Appointments (ACoBA) advises the Prime Minister on the application of the rules to the most senior Crown servants including former Ministers and special advisers and Permanent Secretaries. ACoBA advises former Ministers directly. Decisions on all applications at lower grades are made by the employing Department or Agency.

5.10 ACoBA can recommend that restrictions or conditions to a maximum period of two years⁹⁸ be observed before the appointment is taken up. The interaction with lobbying is acknowledged as the rules specifically provide for conditions to be imposed to an approval requiring a waiting period and/or prohibition on the individual being involved in lobbying. In this context lobbying is defined as meaning that the former public office holder "*should not engage in communication with Government (including Ministers, special advisers and officials) with a view to influencing a Government decision or policy in relation to their own interests, or the interests of the organisation by which they are employed, or to whom they are contracted.*" The definition does not therefore extend, for example, to regional or local government or other commissioning agencies all of whom may be taking a range of decisions on which they might be lobbied or Parliamentarians who may have influence over public policy and their staff. All Ministers are given a standard 2 year ban on lobbying Government as set out in the Ministerial Code. There is a general expectation that a similar ban will apply to Directors General and Permanent Secretaries.

5.11 Once it has been notified that the appointment has been taken up, ACoBA publishes its advice on its website and any restrictions that it recommended. We welcome this transparency and would encourage Departments to do likewise.

⁹⁴ http://acoba.independent.gov.uk/former_ministers/rules_and_guidance_ministers.aspx and http://acoba.independent.gov.uk/former_crown_servants/rules_and_guidance_civil_servants.aspx

⁹⁵ Following a recommendation made by this Committee in 1995.

⁹⁶ Section 4.3 and Annexes A and B.

⁹⁷ Although we note as referred to in chapter 3 above the proposals from the Committee on Standards to impose restrictions on parliamentary lobbying by former members.

⁹⁸ ACoBA state that the two year maximum is based on legal advice it has received see Annual Report 2011-12 p6 para 9.

- 5.12** ACoBA can advise that it considers a particular appointment “unsuitable” but because it is an advisory committee and does not have a statutory basis, it has no power to veto appointments or to monitor or enforce its recommendations. ACoBA’s annual report for 2011-12 (the last one published) states that during that reporting period 5 applications were advised upon and not taken up.⁹⁹ There is no data on whether the applicants have complied with the ACoBA recommendations. Whilst the Ministerial Code is clear that former Ministers must abide by the advice of the Committee, there is currently no real sanction other than public criticism if they do not. Transparency is therefore the means by which the office holder and ACoBA are accountable to the public. That said, if an application for approval from ACoBA is withdrawn, any advice given informally would not be published and would not form part of ACoBA’s published statistics. If the individual went on to accept the position in the absence of ACoBA’s advice the risk for them is purely reputational.
- 5.13** In our 12th report on MP’s expenses and allowances¹⁰⁰ we recommended that the Code of Conduct for MPs should be revised to allow complaints to be made about a former Minister who does not follow the advice of ACoBA. We are pleased to see that the Committee on Standards and Privileges accepted that recommendation in its proposals to the House on revisions to the Guide to the Rules relating to the Conduct of Members in the Commons,¹⁰¹ although those proposals have yet to be debated by the House. We therefore renew our previous recommendation that:

Recommendation 6

The Code of Conduct for Members of Parliament should be revised to allow complaints to be made against an MP who is a former Minister and who takes on outside paid employment but does not follow advice provided by the Advisory Committee on Business Appointments (ACoBA).

- 5.14** ACoBA provides a model business appointments application form for Departments, guidelines for Departments on administering the rules and there are frequently asked questions on its website. These are largely confined to matters of information and process. Whilst Departments can approach ACoBA for informal advice there is not, for example, publicly available detailed guidance on the matters to which a Department may wish to have regard in considering whether to impose conditions, such as a lobbying ban on an employee, although the model application form does set out a series of questions for the applicant to answer. There are no illustrative case studies or scenarios or examples of best practice, so it is difficult to ascertain to what extent, if any, ACoBA is proactively playing a role in providing best practice advice to Departments. It may be that they are not sufficiently resourced or asked to do so.
- 5.15** When the rules were last revised in 2011, ACoBA was required to undertake informal compliance checks on departmental arrangements for handling business appointment applications. The guidelines set out what those checks will include, for example, promoting awareness, managing areas of high risk, ensuring fairness and consistency and that ACoBA may comment on how its compliance monitoring will operate. The most recent published report explains the compliance monitoring process which will involve all Departments certifying compliance with the rules, a selection of self assessments and from that group a number of detailed assessments by ACoBA, although the report does not set out the basis on which those selections will be made or the nature of the assessments.

⁹⁹ <http://acoba.independent.gov.uk/media/26724/acoba%20thirteenth%20annual%20report%202011-12.pdf>

¹⁰⁰ Committee on Standards in Public Life MP’s expenses and allowances Supporting Parliament, safeguarding the taxpayer Twelfth Report Cm 7724 (November 2009)

¹⁰¹ Ibid. 40

- 5.16** As yet no information has been published by ACoBA on the outcome of these compliance checks and the guidance to Departments says only that ACoBA may comment on their overall assessments of overall compliance with the Rules in their Annual Report. So we do not currently know whether Permanent Secretaries (and equivalents) have sent in their annual confirmation of compliance to ACoBA or ACoBA's findings in relation to those checks. It is therefore difficult to assess Departmental capability and performance in implementing the rules.
- 5.17** We have however considered the written evidence from Dr David Hine and Miss Gillian Peele¹⁰² as to the approach of ACoBA and Departments to the imposition of conditions on employment after crown service. Their finding was that restrictions imposed on lobbying by ACoBA, in areas where previous employment was relevant to the proposed new roles, have increased markedly and waiting periods have also been imposed more often. They point out that this was the case before the rules were changed and tightened in 2011 and argue that what seems likely is that “ACoBA was responding to changing perceptions (both public/media perceptions and its own) of the appearance of ethical risk, and tightening up its response”.
- 5.18** What was also noticeable in their research was the difference between the rate of conditionality imposed for ACoBA scrutinised appointments and that for all crown applicants. For example in 2008-9 conditions were imposed on 38.3% of all crown applicants (including those considered by ACoBA) compared with 70.4% for ACoBA applications. This may reflect the more senior and sensitive nature of ACoBA applicants but we agree that this doesn't necessarily follow given the nature and responsibility of some crown servants roles. There is currently insufficient information available to sufficiently understand the difference in treatment and there is not a comparative analysis in ACoBA's most recent Annual Report. There is currently therefore a lack of clarity as to whether the current rules are being implemented, enforced and monitored sufficiently robustly and consistently both by ACoBA and Departments.

Recommendation 7

For transparency and public confidence reasons, Departments (and other bodies) should be required, regularly, to publish consistent summary information on cases they consider under the Business Appointment Rules.

Recommendation 8

ACoBA should publish their assessment of overall compliance with the Rules by Departments (and other bodies) in their Annual Report. Certification of compliance with the Business Appointment Rules would necessarily form part of the annual certification of the adequacy of ethical standards by accounting officers.

A risk based approach

- 5.19** Any proposals for reform need to be proportionate to the risk of impropriety and quite rightly at our seminar questions were raised about the extent of the problem and the harm caused. Given, as set out above, that the large majority of OECD countries have implemented basic post-employment standards to avoid conflicts of interest, there is generally considered to be a real or potential problem.
- 5.20** Transparency International UK in their April 2012 policy paper “Fixing the revolving door between Government and business”¹⁰³ noted that in their survey of public perceptions of what constituted the most corrupt sections of British public life, carried out in 2010, “*the revolving door between government and business comes a close second in the public's ranking of potentially corrupt activities. A public official taking a job with a company that s/he was previously responsible for regulating was rated as potentially corrupt by 80% of respondents, a close second to the 86% who rated a peerage for a businessman who has been a large political party donor as potentially corrupt. A survey conducted by YouGov in January 2012 found that*

¹⁰² Ev 10 written submission from Dr David Hine and Miss Gillian Peele.

¹⁰³ <http://www.transparency.org.uk/our-work/publications/200-policy-paper-series-2---fixing-the-revolving-door-between-government-&-business>

69% of respondents agreed that it was “too easy for former ministers to get jobs that allow them to make improper use of their time in government”. There is ongoing media interest and scrutiny of post-public employment which of itself is arguably indicative of continuing public concern.¹⁰⁴

- 5.21** It is difficult to know the extent of the problem or harm caused partly as a result of the lack of available data already referred to. There may therefore be a case for post-implementation review of the rules to gather such evidence.
- 5.22** We acknowledge that in considering the extent of the problem or harm caused a distinction may need to be drawn between different degrees of such activity, such as attempting to influence specific procurement decisions based on privileged information held, using knowledge about processes more generally to help an employer better influence policy or access procurement processes.
- 5.23** We also consider it likely that there will be different roles in different bodies that present different levels of risk. Participants in our seminar referred specifically to the employment in the defence and financial sectors, of office holders who are responsible for contracting and procurement decisions, and regulators. A wide range of public bodies including the police, local authorities and the NHS are now procuring, outsourcing and commissioning public services and not all are within the current scope of the Business Appointment Rules. Some office holders from those bodies will similarly have an expertise and understanding of their sector which is valuable to the new supplier of services. Similar concerns about the potential for conflicts of interest will arise.
- 5.24** We think there is scope for considering to a greater extent how post-public appointment rules should be applied to all public office holders by way of a risk based approach. We note that this already happens to some degree already with civil servants, in that applications from senior civil service grade 1 and below are only required in certain circumstances. In that respect we do not think that seniority is necessarily the only risk factor. We think there is potential to go further and this may result in ACoBA, Departmental and other public body resource being freed up to deal with the more high risk cases. Generic rules and conditions could be deemed to apply to all public office holders whatever grade unless varied on application. This would provide certainty, consistency and clarity both for the public and for office holders and help minimise the bureaucratic burden for ACoBA and other public bodies.
- 5.25** Specific categories of cases could then be determined to be of higher risk requiring an application and consideration of additional conditions. Whilst top level officials are the primary focus of post-public employment restrictions across the OECD, some countries have developed specific post-public employment measures for risk areas such as procurement and contract management, regulators, and customs and tax administrators. In Australia, for example, there is specific guidance for those agencies employing public servants involved in market testing or outsourcing and requirements for the inclusion of contractual provisions in the request for tender and in service agreements which restrict the subsequent employment, or engagement as contractor, of key decision makers in the outsourcing process for a certain period.¹⁰⁵ In the United States, generally applicable post-public employment restrictions for federal employees are supplemented by additional provisions for those involved in procurement and contract administration and financial regulatory industries.
- 5.26** There is some evidence from scrutiny of the published ACoBA recommendations that additional conditions are imposed, particularly where applicants are proposing to set up as independent consultants and where they have been involved in sensitive areas such as customs and tax, health or defence. It may be that additional and tailored conditions are also being imposed by Departments through application of the rules and more generally in employment contracts, but we have not seen evidence of this. In either case, there is a lack of clarity as to what is regarded as a risk area or role and the restrictions that should be applied to minimise the risk.

¹⁰⁴ See for example Daily Mail 12 August 2013 “£100k Huhne job ‘puts politics in disrepute’”, The Independent 26 September 2013 “Conflict row as MOD top brass join contractors”, The Guardian 27 May 2013 “Deloitte appoints official criticised over ‘sweetheart’ tax deals”

¹⁰⁵ Ibid.90. p59

- 5.27** Finally, we also note the Government did not, as recommended by the Public Administration Select Committee (PASC) Report in July 2012 on Business Appointment Rules,¹⁰⁶ *“take the opportunity afforded by its proposed legislation on the statutory registration of lobbyists to establish clear, statutory, conflict of interest and business appointment rules for former Ministers, civil servants and special advisers.”* We agree with the Committee’s recommendation to apply a ban on lobbying that, unless varied in individual cases, should apply for two years to former Ministers, special advisers, and senior civil servants, and for at least one year for civil servants at lower grades.
- 5.28** We also believe that consideration should be given to public office holders who are outside the scope of the Business Appointment Rules being subject to post-public employment rules.¹⁰⁷

Recommendation 9

Given the lack of available evidence and data, the Cabinet Office, in considering the government response to the Public Administration Select Committee Report on the Business Appointment Rules, should undertake a best practice¹⁰⁷ post-implementation review of the Rules including consideration of the extent to which post – public employment restrictions should be applied to all public office holders and whether a risk based approach can and should be adopted to the implementation of the Rules.

Interchange

- 5.29** We also heard evidence at our seminar of the increasing use of interchange through secondments, loans and career breaks to move in and out of public sector organisations. Like post-public employment it is a means of both the individuals and the organisations involved increasing their understanding of each other, gaining expertise, building capability, developing skills and sharing ideas and best practice. Such interchange has been very positively encouraged as part of senior civil servant career development for many years. However possible conflicts may arise around individuals or organisations using the knowledge and contacts gained for their own advantage. Left unmanaged and without transparency or proper checks it can raise ethical concerns and be used as a means of circumventing post-public employment rules.
- 5.30** The extent of secondments at a departmental level can be illustrated by some departmental responses to FOI requests. HM Treasury advised on 25 August 2011 in response to a letter from Caroline Lucas MP that there had been 209 secondments into the HM Treasury since January 2007 largely from the major accountancy firms and with 94 secondments out including the European Commission and UK Financial Investments Ltd. A response from the Department of Energy & Climate Change dated 2 September 2011 to the same request since the formation of DECC in 2008 indicated over 50 inward secondments including from regulators, legal, accountancy and consultancy businesses and energy companies and 50 outward secondments.¹⁰⁸

Recommendation 10

As a matter of best practice, before any individual agreement for secondment or interchange is entered into, consideration of the possible conflicts of interest that may arise should actively be discussed and managed by public bodies. This may require recording the possible conflict of interest, the imposition of restrictions or conditions as part of the agreement in order to manage that conflict, or ultimately refusing to agree to the secondment or interchange.

¹⁰⁶ Ibid. 89.

¹⁰⁷ As set out in the Better Regulation Executive Impact Assessment Toolkit particularly Annex 9.

¹⁰⁸ <http://www.carolinelucas.com/in-parliament/letters1/government-secondments-response-to-my-foi-requests.html>

- 5.31** The Greater London Authority guidelines on representation¹⁰⁹ for example, state explicitly that staff will not be seconded from political parties or organisations or from political lobbying companies.
- 5.32** We note the Civil Service Best Practice Secondment Guide¹¹⁰ includes template agreements which make express provision for awareness, notification and management of conflicts of interest. Every government department and agency should have a secondment and interchange programme, or at least a nominated individual (usually in the HR team) who can advise on and arrange interchange. We commend this approach and draw it to the attention of other public bodies. Given this, we were surprised to hear from participants at our seminar that information about the number of such secondments was not publicly available and freedom of information requests were required to obtain such information.

Recommendation 11

For transparency and public confidence reasons, Departments and their Agencies should be required to publish on an annual basis, in an easily accessible format, the number of secondment and interchanges in and out of their organisation. Other public bodies should similarly proactively disclose such information.

Recommendation 12

Effective management of secondment and interchange would necessarily form part of the annual certification of the adequacy of ethical standards by accounting officers.

- 5.33** Public trust and confidence in decision making requires public office holders to act in accordance with the principles of Integrity and Objectivity. The revolving door of employment and the increasing use of interchange have the potential to generate conflicts of interest and give rise to concerns about the probity of all public office holders (not just former Ministers and crown servants). Clarity, consistency and transparency of post-public employment rules are key to minimising the risk of impropriety and to enable effective public scrutiny.

¹⁰⁹ <http://www.london.gov.uk/sites/default/files/Guidelines%20on%20lobbying.pdf>

¹¹⁰ <http://www.civilservice.gov.uk/recruitment/secondments>

Chapter 6:

Embedding high ethical standards

6.1 In the preceding chapters we have talked about the application of the Nolan principles to lobbying activity. In *Standards Matter* we said that prime responsibility for upholding high ethical standards should always rest first with the individual and then with the organisation and that ethical standards should be addressed actively at an organisational level. There are a wide range of approaches designed to reinforce principles and codes, creating what some of our seminar participants called “a culture of compliance”, and embedding ethical principles.

Compliance

- 6.2** We heard at our seminar that membership of the Association of Professional Political Consultants requires members to undertake an annual compliance procedure. This involves re-endorsing the code of conduct each year and producing an annual statement of compliance. We also heard about employers compelling employees to complete an annual test on or certification to their code of conduct. We know of third sector organisations which require employees to file an annual accountability statement. There are therefore a wide range of approaches designed to reinforce codes.
- 6.3** Views arising from our call for evidence and seminar reflected general support for sanctions for breaches of ethical standards. Dr John Hogan, Professor Gary Murphy and Professor Raj Chari summarised in their submission¹¹¹ *“From our experience, looking at a lot of different lobbying regulating systems, we found that systems with weak or no sanctions were most vulnerable to abuse. Such systems also failed to gain the respect of those the regulations were meant to monitor (the lobbyists), and those they were meant to protect (the public).”*
- 6.4** There were differing views on appropriate sanctions. There was support for breaches of code of conduct to be treated as a disciplinary matters for employees, up to and including dismissal. The risk of potential overlap with existing criminal offences such as for fraud or bribery and existing professional regulatory regimes such as those for solicitors, were raised as issue.
- 6.5** In relation to lobbyists there was support for various “hybrid options” including those put forward by the Political and Constitutional Reform Committee¹¹² such as requiring registered lobbyists to sign up to a non-statutory code of conduct. Enforcement would entail removal from the register. Ministers and officials would only meet with registered lobbyists. Removal from the register for a breach of the code would be a meaningful sanction and encourage adherence to ethical principles.
- 6.6** There was broad agreement that any sanctions had to be timely and enforced consistently to be effective. Those who investigate complaints should be independent. Criticisms about the current enforcement mechanisms were most readily made in relation to Parliamentarians. Concern was expressed both as to the level of the sanctions imposed and whether they were providing a sufficient deterrent. Parliament and those responsible for the oversight of the Codes of Conduct may wish to explore further.

¹¹¹ Ev 12 written submission.

¹¹² Ev 25 written submission from Political and Constitutional Reform Committee and their report <http://www.publications.parliament.uk/pa/cm201314/cmselect/compolcon/601/60102.htm>

- 6.7** In relation to local government, we have expressed our reservations in *Standards Matter* and in our recent Annual Report of August 2013¹¹³ about the effects of the removal of sanctions other than censure for elected members that violate their local authority's code of conduct. We identified that local standards were therefore an area of risk "*particularly in relation to public confidence that any wrong doing is tackled promptly and transparently in the absence of any external investigation and scrutiny.*" We intend to continue to monitor the implementation and effectiveness of the new regime and will investigate if necessary. We note that weakened oversight of elected members is one area identified by Transparency International UK as increasing the risk of corruption in local government.¹¹⁴
- 6.8** Several participants in our seminar commented on the role the media plays as a watchdog in ensuring compliance. Recent independent research published by this Committee has found that respondents' views about confidence in the commitment of public authorities to uphold standards by uncovering wrongdoing by those in public office and punishing them has remained relatively stable. However, public perception of the media's ability to uncover wrong doing has declined, although substantially more people indicate confidence in the media than authorities to uncover unacceptable behaviour.¹¹⁵ This is disappointing given the positive role the media can play, via openness and transparency, in promoting high ethical standards and exposing impropriety and conduct which is questionable.

Education, training and active governance

- 6.9** In *Standards Matter* we reflected that principles and rules are necessary but not sufficient to ensure that the organisation maintains high ethical standards. People's awareness of rules does not necessarily make them more motivated to follow them. People need not only to know what unacceptable behaviour is but also to understand the principles behind good ethical behaviour and to internalise them. Education, training and active governance is key to embedding ethical principles and internalising high ethical standards.
- 6.10** Induction provides the opportunity for an organisation to provide new employees, appointees and elected officials with an understanding of the expectations about their behaviour. Ongoing training can reinforce learning about ethical issues and remind people of their individual responsibilities for ethical leadership.
- 6.11** It can be seductive for public office holders to think that good conduct is an intuitive matter. In relation to Parliamentarians, research referred to in *Standards Matter* found that few MPs had taken up any formal ethics training and the majority took the view that ethical conduct was "common sense", a matter for individual integrity, or something that could not be learned through formal training. Research from Ruth Fox and Matt Korris at the Hansard Society¹¹⁶ indicates that take up generally for induction and training programmes from the 2010 intake of MPs was low and only 49% of the MPs in that study thought that they should undertake some form of continuous professional development (CPD), although interestingly of those (56%) who had prior experience of CPD, 70% thought MPs should have to undertake it.
- 6.12** We note that the recent report of the House of Commons Administration Committee on the induction arrangements for new MPs¹¹⁷ has recommended that training and professional development for Members is an activity that should be undertaken in the course of a Parliament, not just as an element of induction.

113 <http://www.public-standards.gov.uk/28-september-2012/>

114 Ibid. 21 "When accountability is absent, public officials may exercise their power for private ends unchecked by scrutiny, complaint, or the threat of punishment. Clear opportunities exist for unethical officers and members to exploit public trust for private gain. In any sector corruption tends to increase as oversight and enforcement are weakened." p2.

115 Ibid.7 p23

116 Hansard Society *A Year in the Life – From member of public to Member of Parliament*
<http://www.hansardsociety.org.uk/research/strengthening-parliaments/a-year-in-the-life/>

117 House of Commons Administration Committee *First Weeks at Westminster: Induction arrangements for new MPs in 2015*. First Report of Session 2013-14 HC 193 9 September 2013.

Recommendation 13

The relevant codes of conduct and guidance are essential information to be received by Members of both Houses of Parliament on induction. Ethics training should be included in their induction and training programme.

- 6.13** Ethics training is a feature of other professions. The submission from the City of London Law Society suggested *“an educational programme conducted within Government departments or other relevant units in order to raise awareness of conflict issues and to sensitise staff to the potential risks..... solicitors are trained to consider whether their ability to act in the best interests of their client(s) is impaired by, for example, any financial interest, a personal relationship, a commercial relationship or the lawyer’s appointment (or the appointment of a family member) to public office.”*
- 6.14** A recent study of the impact of education and training in ethics in the accountancy profession found that training consisted of two approaches firstly a “rules based” approach focusing on the rules in professional codes of conduct predominantly tested as pre-condition of and continuing requirement of being licensed to practice. Secondly a “principles based” approach to training accountants to recognise ethical situations and dilemmas and exercise appropriate ethical judgement to resolve the problems and challenges faced. The study found that recent ethics training was predictive of more commitment to ethical action and this *“supports the notion that ethics training should be repeated often because people become more ethically sensitive when they have training or work in an environment where being ethical is stressed.”*¹¹⁸
- 6.15** Many submissions we received were supportive of education and training to raise the level of understanding and to enable *“those being lobbied to take a wider perspective and to consider how their actions and relationships might be viewed by a third party.”*¹¹⁹ The Institute for Business Ethics advocates scenario based ethics training as a means of achieving this and their submission to us included an illustrative example.¹²⁰
- 6.16** The Civil Service guidelines on lobbying set out various illustrative scenarios and explain the circumstances in which particular activity could lead to disciplinary procedures for example deliberately helping a lobbyist to attract business by arranging for clients to have privileged access to Ministers. These guidelines are not however widely known about in the Civil Service.
- 6.17** Formal on-line training is available for civil servants on reporting fraud or bribery. For some departments this training is mandatory and is required to be completed annually. We see no reason why broader ethical issues relating to the Civil Service Code and including conduct relating to lobbying should not be incorporated into this training package.
- 6.18** The Association of Professional Political Consultants provides Frequently Asked Questions for its members on its website in order to help put the Code of Conduct into context and offers training on the Code. The Institute of Business Ethics suggested decision trees should be used by organisations as a reminder and guidance of those questions to ask oneself when being lobbied and when lobbying. There are various tools and techniques that can be used to provide support and guidance.

118 *“Does education and training on ethics affect the ethical awareness of accountants? An international study.”* Ervin L Black, F Greg Burton, Sam Hardy, Lee H Radeburgh, Kevin D Stocks Brigham Young University , Utah USA January 2013

119 E8 written submission from City of London Law Society

120 Katherine Bradshaw *Good Practice guide: Developing and using business ethics scenarios*, November 2012 and Ev 14 Submission from Institute of Business Ethics

Recommendation 14

Scenario based ethics training is recommended as an approach to raising consciousness of and adherence to high ethical standards in lobbying.

Active governance

- 6.19** Increasingly private sector organisations are incorporating ethical governance into their overall corporate social responsibility practices. It is regarded as making good commercial sense. Ongoing monitoring of standards of behaviour in organisations is important through tools such as self-assessment, staff surveys internal oversight by compliance officers and external audits. Organisations should actively review how well they measure up to best practice in ethical governance as a matter of routine including consideration at Board level either directly or through its risks and audit committees. In doing so, the Board is setting the tone for the organisational culture. High standards should also be exemplified in the personal behaviour of those in leadership positions.
- 6.20** We believe that accountability officers of all organisations delivering public services should take responsibility for ethical standards in their organisations and satisfy themselves as to the organisation's arrangements for ensuring high ethical standards.¹²¹ This should necessarily include consideration of the organisation's arrangements for dealing with and managing lobbying activity.

Recommendation 15

Accounting officers personally should certify annually that they have satisfied themselves about the adequacy of their organisation's arrangements for safeguarding high ethical standards. This annual certification should include ensuring that officials are vigilant about contact by lobbyists, and in the case of Permanent Secretaries, that their Ministers and special advisers are reporting relevant contacts.

¹²¹ Ibid.13 p35-36 para 4.41

Appendix 1:

About the Committee on Standards in Public Life

1. The Committee on Standards in Public Life is an advisory Non-Departmental Public Body (NDPB) sponsored by the Cabinet Office. The Chair and members are appointed by the Prime Minister. The Committee was established in October 1994, by the then Prime Minister, with the following terms of reference:

“To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.”

2. The remit of the Committee excludes investigation of individual allegations of misconduct.
3. On 12 November 1997 the terms of reference were extended by the then Prime Minister:

“To review issues in relation to the funding of political parties, and to make recommendations as to any changes in present arrangements.”

4. A triennial review of the Committee was carried out this year, the report of which was published by the Government in February 2013. As a result, on 5 February 2013, the terms of reference of the Committee were clarified in two respects:

‘...in future the Committee should not inquire into matters relating to the devolved legislatures and governments except with the agreement of those bodies’ and ‘...the Committee’s remit to examine “standards of conduct of all holders of public office” [encompasses] all those involved in the delivery of public services, not solely those appointed or elected to public office.’¹²²

Membership of the Committee

The Lord Bew (Chair)
 The Lord Alderdice
 The Rt Hon Dame Margaret Beckett DBE MP
 Sheila Drew Smith OBE
 Patricia Moberly
 Sir Derek Morris MA DPhil
 Dame Denise Platt DBE
 David Prince CBE
 Richard Thomas CBE
 Dame Angela Watkinson DBE MP

¹²² Hansard (HC) 5 February 2013, col. 7WS.

Secretariat

5. The Committee is assisted by a Secretariat consisting of Ruth Thompson (Secretary), Laurie Mousah (Policy Advisor) and Charlotte Adolpho (Secretariat Coordinator). Press support is provided by Maggie O'Boyle.

The Committee's previous reports

6. The Committee has previously published the following reports.
- Standards Matter: A review of best practice in promoting good behaviour in public life (Fourteenth Report (Cm 8519)) (January 2013)
 - Political party finance: Ending the big donor culture (Thirteenth Report (Cm8208)) (November 2011)
 - MPs' Expenses and Allowances: Supporting Parliament, Safeguarding the Taxpayer (Twelfth Report (Cm 7724)) (November 2009)
 - Review of the Electoral Commission (Eleventh Report (Cm 7006)) (January 2007)
 - Getting the Balance Right: Implementing Standards of Conduct in Public Life (Tenth Report (Cm 6407)) (January 2005)
 - Defining the Boundaries with the Executive: Ministers, Special Advisers and the Permanent Civil Service (Ninth Report (Cm 5775)) (April 2003)
 - Standards of Conduct in the House of Commons (Eight Report (Cm 5663)) (November 2002)
 - Standards of Conduct in the House of Lords (Seventh Report (Cm 4903)) (November 2000)
 - Reinforcing Standards: Review of the First Report of the Committee on Standards in Public Life (Sixth Report (Cm 4557)) (January 2000)
 - The Funding of Political Parties in the United Kingdom (Fifth Report (Cm 4057)) (October 1998)
 - Review of Standards of Conduct in Executive NDPBs, NHS Trusts and Local Public Spending Bodies (Fourth Report) (November 1997)
 - Local Government in England, Scotland and Wales (Third Report (Cm 3702)) (July 1997)
 - Local Public Spending Bodies (Second Report (Cm 3207)) (June 1996)
 - Members of Parliament, Ministers, Civil servants and Quangos (First Report (Cm 2850)) (May 1995)
7. The Committee is a standing Committee. It can not only conduct inquiries into areas of concern about standards in public life, but can also revisit that area and monitor whether and how well its recommendations have been put into effect.

Appendix 2:

Background

1. The 2009 Public Administration Select Committee report “*Lobbying: Access and influence across Whitehall*” was the first parliamentary inquiry on lobbying since 1999.¹²³ The report noted that focusing on multi-client firms for regulation may make it harder for smaller businesses to get their voices heard as it was smaller businesses who tended to hire consultants on a freelance basis.
2. The main recommendations were to:
 - a. Establish an umbrella organisation to cover all those involved in lobbying as a substantial part of their work.
 - b. Create a mandatory register of lobbying activity, covering all those outside the public sector involved in accessing or influencing public sector decision makers, managed and enforced by a body independent of Government and lobbyists.
 - c. Have an independent body to manage the register and any complaints of non-compliance. The Office of the Information Commissioner was suggested as the body to take on this role, provided it is given the necessary resources and powers.
3. The details recommended to be included in a register were as follows:
 - a. The names of the individuals carrying out lobbying activity and of any organisation employing or hiring them, whether a consultancy, law firm, corporation or campaigning organisation.
 - b. In the case of multi-client companies, the names of their clients.
 - c. Information about any public office previously held by an individual lobbyist – essentially, excerpts from their career history.
 - d. A list of the relevant interests of decision makers within the public service (Ministers, senior civil servants and senior public servants) and summaries of their career histories outside the public service.
 - e. Information about contacts between lobbyists and decision makers – essentially, diary records and minutes of meetings. The aim would be to cover all meetings and conversations between decision makers and outside interests.”
4. The Government response entitled *Lobbying: Access and influence in Whitehall: Government Response to the Committee’s First Report of Session 2008–09*¹²⁴ stated that effective voluntary self regulation was the preferred approach as it was believed that would be more effective at promoting transparency and standards. The Government also agreed that a register of lobbyists was required, administered by either self or statutory regulation. They agreed with the details of the register, apart from the inclusion of details regarding Ministers and civil servants, as these details were included in Registers of Members’ and Peers’ Interests.

¹²³ <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmpubadm/36/36i.pdf>

¹²⁴ <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmpubadm/1058/1058.pdf>

5. In the 2010 Coalition workplan, the Coalition made a commitment to “*regulate lobbying through a statutory register of lobbyists and ensuring greater transparency.*”¹²⁵ The Labour party had made a commitment to increase lobbying transparency in their manifesto and said that: “*We will create a Statutory Register of Lobbyists to ensure complete transparency in their activities. We will ban MPs from working for generic lobbying companies and require those who want to take up paid outside appointments to seek approval from an independent body to avoid jobs that conflict with their responsibilities to the public.*”¹²⁶ The Liberal Democrat manifesto stated that they would: “*Curb the improper influence of lobbyists by introducing a statutory register of lobbyists, changing the Ministerial Code so that ministers and officials are forbidden from meeting MPs on issues where the MP is paid to lobby, requiring companies to declare how much they spend on lobbying in their annual reports, and introducing a statutory register of interests for parliamentary candidates based on the current Register of Members’ Interests.*”¹²⁷ The Conservative Party’s manifesto stated that: “*The lobbying industry must regulate itself to ensure its practices are transparent – if it does not, then we will legislate to do so.*”¹²⁸
6. The Government consulted¹²⁹ in January 2012 on introducing a Statutory Register and proposed a statutory register of lobbyists run by an independent body, which collected information on lobbyists and their clients and was self funded by the industry. With the aim “*to increase the information available about lobbyists without unduly restricting lobbyists’ freedom and ability to represent the views of the businesses, groups, charities and other individuals and organisations they represent or to deter members of the public from getting involved in policy making.*”
7. The Government reiterated its commitment to introducing a statutory register, while not “*unduly restricting lobbyists’ freedom and ability to represent the views*” of the groups they represent, nor deterring the public from getting involved in policy making. There was consensus in the responses to the consultation that the information to be provided should include financial information as well as basic details. There was a majority of opinion behind quarterly returns, although some preferred an annual return. Opinions were roughly evenly split on the option of a code of conduct and on whether the system should be publicly funded or funded by the industry. The majority of responses to the consultation favoured an independent body to run the register, while there was strong support for sanctions for non-compliance.¹³⁰
8. The Political and Constitutional Reform Committee pre-legislative scrutiny report¹³¹ considered the Government’s proposals and looked at a number of options for lobbying regulation including high, medium and low regulation. The report recommended a system of medium regulation and was against a third party only register. The medium regulation suggested included a statutory or hybrid model for code of conduct, and recommendations for increased transparency concerning ministerial meetings to include the following information:
 - a. The clients for whom the lobbyist was working.
 - b. Data on meetings between Ministers and lobbyists in consistent machine-readable file formats to enable easier analysis.
 - c. Specific dates and topics for meetings between Ministers and lobbyists. The specific topic of the meeting should be given where possible and vague terms should be avoided.
 - d. The company or charity number of any organisation that a Minister meets. This means that, even if the charity or company is listed under an acronym, its identity can be verified.

125 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78977/coalition_programme_for_government.pdf

126 Labour Party, *A Future Fair for All*, 2010, p9:2.

127 Liberal Democrats, *Manifesto 2010*, 2010, p89.

128 Conservative Party, *Invitation to Join the Government of Britain*, 2010, p66.

129 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78896/Introducing_statutory_register_of_lobbyists.pdf

130 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/79174/Summary-of-Responses-to-Consultation-Intro-Statutory-Register-of-Lobbyists-FINAL-130712.pdf

131 <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpolcon/153/153.pdf>

9. In respect of the industry establishing a system of self regulation UK Public Affairs Council was created in July 2010 and aimed to *“offer a system of voluntary regulation to ensure that all those involved in lobbying institutions of government can be governed by a clear set of principles, underpinned by enforceable Codes of Conduct.”*¹³²
10. The creation of UKPAC came after the publication of the Public Administration Select Committee’s report in December 2008, which recommended that a public register of lobbyists be created. Under the stewardship of Sir Philip Mawer, former Parliamentary Commissioner for Standards and independent advisor to Prime Minister Gordon Brown, the body comprising the APPC, CIPR and PRCA was formed to begin implementing the Committee’s recommendation for a public register. The first meeting of the UK Public Affairs Council took place in July 2010, with the three industry bodies being joined by three independent members, including the Chairman Elizabeth France CBE.
11. The UKPAC voluntary register was first published in March 2011 and re-launched in February 2012 following the withdrawal of the PRCA from UKPAC. The Register shows all organisations and individuals engaged in offering lobbying services that are members of one of the member bodies participating in the UKPAC. The Register records the names of the organisations, the individuals working within them and, where relevant, any clients for whom lobbying services are provided. The Register is completed quarterly and published as soon as possible thereafter. Failure to complete the register accurately is a disciplinary offence.¹³³
12. UKPAC defines lobbying as meaning, in a professional capacity, attempting to influence, or advising those who wish to influence, the UK Government, Parliament, the devolved legislatures or administrations, regional or local government or other public bodies on any matter within their competence.¹³⁴

132 <http://www.publicaffairsCouncil.org.uk/en/about-ukpac/history.cfm>

133 <http://www.publicaffairsCouncil.org.uk/en/about-ukpac/terms-of-reference-2010.cfm>

134 <http://www.publicaffairsCouncil.org.uk/en/about-ukpac/terms-of-reference-2010.cfm>

Appendix 3:

Call for evidence

Below is a list of those who submitted a written response to the Committee's call for evidence. The responses and a summary of those responses can be found on the Committee's website.

Academics

PHD student – Albert Veksler

Oxford University – Dr David Hine and Miss Gillian Peele

Dublin Institute of Technology – Dr John Hogan; Dublin City University – Professor Gary Murphy; Trinity College

Dublin – Professor Raj Chari

University of West Scotland – William Dinan; Bath University – David Miller

Civil Society

Unlock Democracy

TaxPayers' Alliance

Democracy Matters

National Trust – Simon Jenkins

National Council for Voluntary Organisations

Transparency International UK

Foundation for Information Policy Research

Institute for Economic Affairs

Institute of Business Ethics

Company

Imperial Tobacco Ltd

Pagoda Public Relations

Communicate Research LTD

Rowan Public Affairs LTD

MHP Communications

Ranelagh International

Political Intelligence

Political Lobbying and Media Relations

Parliament

Paul Flynn MP

Political and Constitutional Reform Select Committee

Regulator

Bar Standards Board

Information Commissioner's Office

Representative Body/Trade Association

Chartered Institute of Journalists
Association of Professional Political Consultants
CIPR
City of London Law Society
UK Public Affairs Council
British Retail Consortium
Public Relations Consultants Association
Council of Bars and Law Societies Europe
British Medical Association
Society of Parliamentary Agents

Trade Union

National Farmers Union – Matt Ware

Appendix 4:

Seminar participants

The Committee held an evidence gathering seminar in the course of this review. A note of the seminar can be found on the Committee's website.

Speakers were Peter Wilby and Lord Clement-Jones.

The participants were as follows:

PHD student – Albert Veksler
 Oxford University – Ms Elizabeth David-Barrett
 Oxford University – Dr David Hine and Miss Gillian Peele
 Dublin Institute of Technology – Dr John Hogan
 TaxPayers' Alliance – Jonathan Isaby
 Spin Watch/ Alliance for Lobbying Transparency – Tamasin Cave
 National Council for Voluntary Organisations – Elizabeth Chamberlain
 Campaign to Protect Rural England – Erica Popplewell
 Action on Smoking and Health (ASH) – Phil Rimmer
 Institute of Business Ethics – Philippa Foster Back
 LZ Consulting – Lionel Zetter
 Imperial Tobacco Ltd – Richard Ross
 Communicate Research LTD – Andrew Hawkins
 Rowan Public Affairs LTD – Craig Carey-Clinch
 MHP Communications – Jennifer Hall
 Ranelagh International – Fiona Graham
 G4S – Tijis Broeke
 Political Intelligence – Philip Reid
 Political Lobbying and Media Relations – Elin Twigge
 ACoBA secretariat – Ekpe Attah
 Green Party – David Murray
 Electoral Commission – Kate Engles
 Information Commissioner's office – Steve Woods
 Bar Standards Board – Dr Vanessa Davies
 Association of Professional Political Consultants – Michael Burrell
 UK Public Affairs Council – Sir Roger Sands
 Chartered Institute of Journalists – Dominic Cooper
 Public Relations Consultants Association – Tom Hawkins
 Transparency International UK – Rachel Davies
 Institute of Economic Affairs – Christopher Snowden
 Tom Brake MP

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