
Transparency around lobbying:

Written evidence

Section E- O

The Committee on Standards in Public Life

5th September 2013

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E14: Foundation for Information Policy Research

Introduction

1 This is a response by the Foundation for Information Policy Research to the Government's consultation paper "Introducing a Statutory Register of Lobbyists."

2 The Foundation for Information Policy Research is an independent body that studies the interaction between information technology and society. Its goal is to identify technical developments with significant social impact, commission and undertake research into public policy alternatives, and promote public understanding and dialogue between technologists and policy-makers in the UK and Europe.

3 It is perfectly reasonable for people to try to influence government policy so that it is more favourable for them; and it is positively desirable that people should try to influence government policy so that it better serves the public interest as they see it. And there is nothing wrong with engaging the services of capable advocates for these purposes.

4 But while lobbying should therefore be respected as a useful working part in the machinery of democracy, in practice it attracts suspicion, hostility and controversy. We think that the main reasons for this are that lobbying is not conducted in the open, and that the squeaky wheel is suspected of getting the grease not because it needs it but because it is better funded and so makes most noise.

5 If we are right, then a statutory register will make at best an ineffectual contribution towards improving matters. It will also be very hard to tune the detailed workings of such a mechanism so that it is neither so light of touch as to be easily avoided nor so heavy as to be an unreasonable nuisance to those who wish to comply.

A register

6 The consultation paper makes the following point (in Part 3): The Government already publishes quarterly information about Ministers' meetings. Information about which stakeholders are meeting Ministers to put forward their views on policies is therefore already in the public domain. But under the current system, when Ministers meet lobbying firms it is not transparent on whose behalf they are lobbying. The Government's proposal for a register is based on its utility in providing a remedy for this lack of transparency. But to meet the Government's point, a register is neither necessary nor effective.

7 It is not necessary, because lobbyists who meet ministers can be required to state who they represent, and that information could be included in the quarterly published information. And a register listing lobbyists' clients is ineffective, because unless a lobbyist represents only a single client, the public will not know which client was represented at which meeting.

8 The duty of a lobbyist to make a truthful disclosure about his client could be given statutory underpinning. In the light of the provisions of the Fraud Act 2006 this seems unnecessary, since a false statement could ordinarily be prosecuted as fraud.

9 If the purpose of the register (or any other measure) is to reveal who the lobbyist is lobbying for, then there seems no justification (or sense) in including those who lobby in the public interest (or in

some sectoral interest). To take just two examples, those who lobby in the interests of the homeless, or of dwellers in the countryside, cannot list them as clients in the register.

10 The requirement to list clients could give rise to a number of difficulties. Some precision of definition would be needed, so that it is clear whether the list is of all clients lobbied for in the preceding quarter, or in the preceding five years, for example. In the case of clients who are members of a group of companies, is just the ultimate holding company to be listed (which might be uninformative to most readers), or is every one of many subsidiaries to be listed (which might be as burdensome to those registering as to those looking for gold amongst the dross). Another difficulty faces firms of lawyers and accountants, some of whose services might amount to lobbying, depending on how it is defined. Are they to list all their clients, or just those for whom lobbying services have been provided?

Clients for other services might not wish to be named in public, and might have wholly legitimate reasons for their preference. A wide definition of lobbying services could sweep many irrelevant activities into notification (an appeal to the secretary of state against a refusal of planning permission, for example), while a narrow one could open the door to successful evasion (copyright rights-holders could establish a public-interest body to pursue further extensions of the term of copyright).

Other solutions

11 Even a perfectly balanced solution to such problems would ensure no more than that the register avoided pitfalls; its useful contribution to solving the problems of lobbying would in our view remain minimal, and less effective than simply requiring lobbyists to declare which client was represented at every contact. That is because the problems of lobbying have not been squarely faced. As we stated them above, they are lack of openness, and inequality of access to ministers. We propose two solutions:

- (1) that ministers' meetings with lobbyists be held in public, and
- (2) that ministers be required to maintain, quarter by quarter, a balance between the large and the small interests to whom they provide access.

Openness

12 For better or worse we live in an age when events can be conducted in public with almost no obvious intrusion into the informality of those events. The webcam can replace the public gallery, and its output can be watched live over the internet as well as archived and indexed for later reference. Unlike a register, and unlike a bare record of who met whom, it would provide real transparency. We also suggest that it would provide huge benefits to government in all those cases where there is more than one side to a story, since if all sides know what their opponents are saying, a proper and effective debate can be held where otherwise it may be lacking.

13 There will be a few cases, mostly involving defence, where all or part of a meeting cannot be made public for national security reasons. The circumstances must be carefully defined, and there must be effective parliamentary oversight to ensure that such an exception is not abused. In all other cases, ministers must not let themselves be lobbied privately or unofficially, even by their old friends. (And if such private lobbying were made an offence, the proceeds of crime legislation could be used to deprive lobbyists of the fees they earned from it.)

Balance

14 The need for balance arises from over-representation of large, rich concentrated interests and under-representation of the public interest, of small firms, etc. The effect is not confined to commercial issues. Big Science gets a disproportionate share; the astronomers, cancer doctors and others devote huge efforts to getting billion-pound grants, while small ordinary research teams cannot devote similar efforts to pursuing proportionately smaller-scale funding. So far too much goes on tokamaks and satellites.

15 We suggest that ministers should observe a fairly crude rule requiring equal time to be devoted to major and minor bodies or interests. Whenever the chancellor of the exchequer spends an hour with the chairman of a clearing bank, then he must spend an hour with a bank customers' association before he can meet another banker. Whenever a secretary of state spends an hour with a major cancer charity getting a pitch for a billion-pound cancer project he must spend an hour listening to someone pitching for lots of small responsive-mode grants.

16 In cases where there are opposing interests, the balance requirement could promote the holding by ministers of meetings attended by both sides, so that arguments could be aired and countered. (And ministers could encourage opponents to meet beforehand to thrash out what is in issue and what is common ground.)

17 Balance will inevitably involve subjective judgments, and cannot be exact. But if lobbying is public, and records are kept, parliamentary committees can investigate ministers' compliance and bring pressure to bear.

Wider issues

18 The possibility of recording meetings with lobbyists for publication leads to a consideration of the wider benefits of recording all meetings attended by ministers in their official capacity. Even in cases where immediate publication is inappropriate, such a record would be invaluable if events took a turn which led to a subsequent enquiry; and in the longer run it could provide a historically priceless record.

19 Two compelling examples exist. President Nixon's recordings provided important evidence for subsequent enquiries about his administration's candour over the burglary at the Watergate building, and they remain a rich resource for historians. The BBC2 programme *Putin, Russia & the West* makes use of a number of official video recordings of high level meetings about important affairs of state. They are rivetting in their frankness, and convey an understanding of events which no official minute could hope to do. (They also demonstrate how far recording technologies have improved since the Nixon era.)

20 It is of course the case that a note is taken of proceedings at ministerial meetings attended by officials. Such notes are widely believed to suffer from a number of undesirable tendencies – they are reticent and bland, they tend to exaggerate the intellectual coherence of the proceedings, and they are influenced by the outcomes perceived to be desired by the person chairing the proceedings. The cabinet minutes which have so far entered the public domain do nothing to dispel this impression. The existence of a recording of what actually took place might be expected to mitigate such tendencies in official notes.

Disclosure of interests

21 We think that submissions to government ought to be frank about the interests of those who make them, and we therefore propose to swallow our own medicine.

22 We make the points in this response primarily in the public interest, and have no client on whose behalf we are making them. So far as participation in a register is concerned, and in particular the sharing of its costs, we would find the burden a serious one, and in our own interests we wish to avoid it. A number of the members of our advisory council and board of trustees are engaged in academic work, and might get improved opportunities to benefit from grant funding if the suggestions we have made about better funding for smaller applications were adopted.

23 This submission is based on contributions from Ross Anderson, Alan Cox, William Heath, Douwe Korff, Peter Sommer and Martyn Thomas.

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General Counsel
Foundation for Information Policy Research
26th January 2012

E15: Imperial Tobacco Group PLC

Introduction

Imperial Tobacco Group PLC (“ITG”) is the world’s fourth largest international tobacco company. Imperial Tobacco Group PLC manufactures and sells a comprehensive range of cigarettes, fine-cut (roll-your-own) tobaccos, cigars, rolling papers and tubes. ITG has sales in over 160 countries worldwide and is world leader in the premium cigar, fine-cut (roll-your-own) tobacco and rolling papers sectors. ITG is headquartered in Bristol in the UK and is a FTSE 100 listed company on the London Stock Exchange.

Imperial Tobacco UK (“ITUK”) is the Bristol-based trading operation of ITG which distributes Imperial Tobacco’s products to the UK market, of which it is market leader holding approximately 45% market share. Its leading UK brands include Lambert & Butler, Richmond, Embassy and Regal cigarettes; Golden Virginia and Drum fine-cut (roll-your-own) tobacco; Rizla rolling papers; Classic cigars and St Bruno pipe tobacco. It also distributes tobacco products on behalf of Philip Morris Ltd.

Tobacco is a significant contributor to the UK economy, delivering over £9bn annually to the UK Exchequer through excise duties and making further significant contributions through other taxes and revenues. We seek constructive dialogue with regulatory authorities in order to support reasonable, proportionate and evidence based regulations.

General Remarks

We believe that companies, organisations and individuals have a right to lawfully express their views, and that engagement activities with Government are a fundamental and perfectly legitimate activity that form part of a truly democratic political and legislative system. Engaging with Governments, regulators, industry bodies and public interest groups is an important and necessary element of our business. All such engagement is completed lawfully and transparently.

The Government has acknowledged that *“lobbying serves an important function in politics - by putting forward the views of stakeholders to policy makers, it helps the development of better regulation”*.¹ Therefore, Government should encourage an all-inclusive approach to legislative and regulatory engagement to reduce the risk of policy-makers receiving only one particular stakeholder groups’ viewpoint, or giving them privileged access whilst deliberately seeking to exclude another stakeholder viewpoint or access. It is our view that this has no place in a truly democratic society and goes totally against the principles of openness and transparency that the Government is seeking to achieve.

Separate from lobbying, it is a fundamental right for constituents to meet with their Member of Parliament over personal issues to ask for help and advice. Imperial Tobacco also recognises the rights of it’s employees to participate in political activities as private individuals on issues that may concern them or their families. We believe that these activities should not be included within the scope of any future lobbying register.

¹ <http://www.official-documents.gov.uk/document/cm82/8233/8233.pdf> - page 3

A lobbying register when introduced should cover all lobbyists but should not create unnecessary obstacles for interaction for legitimate engagement, should not be unduly burdensome both administratively or financially and should have a proportionate level of sanctions for any breaches.

We believe the current arrangements whereby external organisations can act as Secretariat for Parliamentary APPG groups is a hidden form of lobbying that needs to be controlled. APPGs often masquerade as issuing official Government reports which is allowing these external groups inappropriate influence.

Questions

Definitions of Lobbying and Lobbyists.

Lobbying: We would propose that this definition includes the act of engaging / interacting in person, written contact or via telephone with UK Government, Members of Parliament, devolved legislatures or administrations, regional or local government or other public bodies on any matter within their competence for the purposes of shaping or influencing Government policy.

Lobbyists: We would propose are defined as those who are employed in a professional capacity or on behalf of an organisation to engage with UK Government, Parliament, devolved legislatures or administrations, regional or local Government or other public bodies.

What should be included?

All organisations that have lobbyists undertaking lobbying activity should be included. We note that in the House of Commons debate on 2 November 2011 several speakers highlighted the issue of lobbying by charities; indeed some charities themselves have made and continue to make strong claims about their lobbying ability and the successes they achieve in influencing public policy (see Annex).

Information to be included in the Register

We note that the House of Commons Public Administration Select Committee made some good recommendations in its 2009 Report on "Lobbying: Access and influence in Whitehall"². We would add to their recommendation about declaring details of public office previously held, the requirement that details of any Government grants, funding or research commissioned directly or indirectly in the past 3 years be declared.

Frequency of returns

It should not be burdensome, however any frequency should take into account the need for transparency and hence it containing all current relevant information.

Additional functions

For transparency the Register should be published and freely accessible online.

² <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmpublicadm/36/36i.pdf>

Code of Conduct / Practice

Whilst various codes and standards exist for both sides to remove doubt and variations between codes or standards a new code for both sides including best practice from the existing documents should be developed. Details to be included:

1. Details of organisation including all parent and sub organisations
2. List of all current clients or groups represented including any from the previous 3 years.
3. Restriction on previous holders of public office.
4. Requirement for transparency

Additional issues for inclusion

No organisation in receipt of Government grants or funds should be allowed to lobby Government unless Government money is clearly shown in their published annual accounts in a restricted fund, and is shown not to have funded any lobbying activity.

This should extend to any funds received from other organisations who are themselves in receipt of Government grants or funding; it must be possible to trace back to the source to show that the Government money has not funded any lobbying activity

We note that there is a Ministerial code that bans former Ministers from lobbying for 2 years after leaving office. We also note MPs' concern about Civil Servants who transfer across to the private sector and support consideration of limited controls being extended to cover this where appropriate.

Annex

Interest groups / coalitions and charities that have claimed to influence Government policy

*"That this House commends the government on its decision to implement the ban on tobacco displays in shops, which is outlined in the Tobacco Control Plan for England, published on 9 March 2011; welcomes the commitments in the Tobacco Control Plan to investigate other measures to tackle the prevalence of smoking; notes the significance of the announcement on the celebration of No Smoking Day; **offers thanks to health charities and campaign groups for helping the Government to make this decision**; further notes the cross-party support and action in this area; and looks forward to the Government's discussions with the entertainment industry into further measures to de-normalise smoking."*³

Stephen Williams MP, 9 March 2011

Action on Smoking and Health (ASH)

³ <http://edmi.parliament.uk/EDMi/EDMDetails.aspx?EDMID=42603&SESSION=905>

“ASH has also continued to play an important role in the development of further international guidelines for the implementation of the FCTC.”⁴

*“This year ASH celebrated its 40th anniversary. The event was marked by a special reception in parliament, **hosted by the All Party Parliamentary Group on Smoking and Health** and also at this year’s UK National Smoking Cessation conference where ASH staff contributed to a special policy strand on harm reduction. **ASH continues to build relations with parliamentarians in Government and in Opposition parties** to ensure that tobacco control remains a priority in their respective health strategies.”⁵*

British Heart Foundation

“In 2009, we won a major commitment from the Scottish Government to ban cigarette sales from vending machines.”⁶

*“The **intensive lobbying and hard work paid off**. A [vending] ban will now come into place in England in October 2011”⁷*

*“**We’ve been lobbying hard with other health charities for the Government to press ahead with the ban on tobacco displays.**”⁸*

Cancer Research UK⁹

*“**Influencing public policy.** We campaign on key cancer issues including improved access to cancer treatments, early diagnosis and reducing the use of tobacco. This work keeps cancer at the top of the political agenda. On page 9 **we show how we are influencing public policy and campaigning for change.**”*

*“The use of tobacco and sun beds poses a huge risk to young people’s health. **Our campaigning has led to new laws** which will now protect them from the danger of these preventable causes of cancer.”*

*“Following our campaigning, the UK Government confirmed legislation will be introduced to prevent shops from displaying tobacco products.” **“We have played a substantial part** in securing the ban on tobacco advertising, smokefree workplaces and the laws to remove displays of tobacco in shops and cigarette vending machines.”*

⁴ http://ash.org.uk/files/documents/ASH_718.pdf

⁵ http://ash.org.uk/files/documents/ASH_828.pdf

⁶ <http://www.bhf.org.uk/about-us/what-we-do/strategy-archive/campaigning-objective.aspx>

⁷ <http://www.bhf.org.uk/about-us/our-annual-review/the-ending-for-vending-ma---ar.aspx>

⁸ <http://www.bhf.org.uk/about-us/annual-review-2011/small-steps-make-big-journeys.aspx>

⁹ Cancer Research UK Annual Report and Accounts 2010/11

E16: Information Commissioner's Office

Lobbying: Issues and Questions Paper Response of the Information Commissioner August 2013

Introduction

The Information Commissioner has responsibility in the UK for promoting and enforcing the Data Protection Act 1998 (DPA) and the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations (EIR) and the Privacy and Electronic Communications Regulations (PECR). The Information Commissioner's Office (ICO) is the UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner does this by providing guidance to individuals and organisations, solving problems where he can, and taking appropriate action where the law is broken.

The Information Commissioner welcomes the opportunity to respond to this consultation, his response focuses on question 11 and draws on his experience as the regulator of FOIA and the EIR. In general terms, the Commissioner would welcome the additional transparency that a statutory register of lobbyists and legal disclosure requirements would bring. However, the overlap with FOIA and what the regime offers as part of the wider framework should not be overlooked.

This response follows on from an informal meeting the Committee held with Graham Smith, Deputy Commissioner, on 25 July 2013.

In April 2012 Information Commissioner also responded to the Cabinet Office consultation: Introducing a Statutory Register of Lobbyists¹⁰. As well as addressing the freedom of information issues the response also covered the data protection implications, whilst these issues are not the focus of the Committee's work plan it may be useful for them to be aware of the points made.

Consultation Response

11. Would enhanced disclosure by individuals and organisations provide the pertinent information on who is lobbying whom and sufficient incentive for decision makers and legislators to be balanced in the views they seek? Would this taken together with the Freedom of

¹⁰ ICO Response to Cabinet Office consultation 'Introducing a Statutory Register of Lobbyists' 13 April 2012
http://www.ico.org.uk/about_us/consultations/~media/documents/consultation_responses/ICO_response_to_consultation_on_register_of_lobbyists_20120413.ashx

Information regime ensure sufficient transparency and accountability to enable effective public scrutiny of lobbying?

Freedom of Information requests and caselaw

It is difficult to gauge the number of the 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. An annex of the relevant freedom of information cases is set out below. The cases listed are decisions of the Information Commissioner and the Information Tribunal. Some additional cases from European level are also listed. These cases give a good indication of the range of topics and the outcome of the decision – disclosure or non-disclosure. The cases illustrate a significant range of information requested related to lobbying and the outcome is often disclosure.

Although the evidence is slightly anecdotal it is reasonable to conclude that a significant percentage of the requests about lobbying are from journalists and NGOs. Spinwatch have made a number of requests and have published the documents, and media stories have also been developed from this¹¹.

Another useful source of information to gauge the level of FOI requests is whatdotheyknow.com. The website is a mechanism that enables requesters to make a publicly trackable request. The archive is a useful source of intelligence about what people are requesting. It has 30,000 registered users and around 15% to 20% of requests to UK Central Government are made through the site. A search of the site on the term “lobbyists” reveals 55 requests made via the site¹² using that term. A search on the term “lobbying” reveals 969 requests. This is obviously a very rough indication and not all the requests may be specifically about lobbying. Equally not all requests about lobbying may mention the term. But it is a useful broad indication of interest. Examples of requests include:

- Request to BIS about meetings with record industry lobbyists
- Request to MoD about meetings with weapons companies’ lobbyists

¹¹ Spinwatch - NHS reforms plunged into fresh turmoil (2011)
<http://www.spinwatch.org/index.php/issues/lobbying/item/5350-nhs-reforms-plunged-into-fresh-turmoil>

¹² What do they know website – example search on term “lobbyist”
<https://www.whatdotheyknow.com/search/lobbyist/all>

In relation to requests made about lobbyists the most frequently used exemptions in the Freedom of Information Act are:

- Section 35 – exemption covering formulation and development of government policy, ministerial communications
- Section 40 – personal data exemption
- Section 41 – information obtained in confidence
- Section 43 – prejudice to commercial interests

The caselaw 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 certain timeframes.

However, it is clear that lobbyists should not have an expectation of general confidentiality under FOIA. It has to be specifically demonstrated and to establish the section 41 exemption applies some detriment from disclosure must be proved.

As a general rule the names of senior officials or members of staff from a public authority or a company involved with the lobbying should be disclosed and the Data Protection Act should not be a barrier to disclosure. An exception to this might be areas of risk to an individual e.g. lobbying related to animal research, but even then public interest reasons for disclosure will still be strong.

The Commissioner has developed some “lines to take” to guide its case officers on FOIA cases involving lobbyists. The lines are particularly focused on section 35. They are available on the ICO website¹³. The following arguments in favour of non-disclosure and maintaining the section 35 exemption are regularly considered by the Commissioner:

1) The value of lobbyists’ input

¹³ ICO line to take - Public interest arguments presented in favour of maintaining a relevant exemption for withholding information on lobbyists

<http://www.ico.org.uk/foikb/FOIPolicyLobbyists-publicinterestinfavourofmaintaininganexemptionforwithholdinginformat.htm>

ICO line to take- Public interest in disclosing information about lobbyists

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

- It is accepted that there is public interest in policy making being informed by stakeholders.

2) Safe space

- Dialogue with lobbyists does not warrant the same safe space as purely internal policy thinking and there is a public interest in making the contribution of lobbyists public at the time when the policy debate is still on-going, i.e. before policy decisions have been finalised, to allow counterbalancing views to be presented. However this is the very time at which the public interest in preserving the safe space for policy making is at its highest. Therefore the public interest test can be very finely balanced for requests that relate to on-going policy making.
- Information which reveals the government's internal thinking it may still warrants 'safe space' protection, but where the information reveals the influence of lobbyists or the nature of government's relationship with lobbyists this will increase the public interest in favour disclosure.
- Once the decision has been made the need for safe space should fall away unless there are other connected decisions to be made.

3) Chilling effect on free and frank views

- The overriding aim of lobbyists is to exert influence and so they will not easily be deterred from offering free and frank views in pursuit of this aim.
- There is no evidence that lobbyists have altered their behaviour with the implementation of FOIA.

4) Record keeping

- The Commissioner should be sceptical of arguments the risk of disclosing information related to lobbying will lead to poorer record keeping. Though the issues related private emails are discussed below.

5) Effect of the Media

- The fear of how the media may respond to the information should not damage relations with lobbyists or discourage lobbyists engaging with Government.

The following arguments in favour of disclosure are commonly considered - there is a public interest in:

- 1) Understanding the role of lobbyists and their relationship with government, this includes both:
 - (a) understanding the mechanics of lobbying and,
 - (b) understanding the relationship between government and a particular lobbyist and the influence they exert
- 2) Scrutinising the probity of public officials
- 3) Providing the opportunity for others to present opposing view during the policy development process.

Proactive disclosure

Section 19 of FOIA requires every public authority to have a publication scheme. The Commissioner makes a general model scheme available for all public authorities to adopt – it has seven broad classes of information that must be published:

1. Who we are and what we do. Organisational information, locations and contacts, constitutional and legal governance.
2. What we spend and how we spend it. Financial information relating to projected and actual income and expenditure, tendering, procurement and contracts.
3. What our priorities are and how we are doing. Strategy and performance information, plans, assessments, inspections and reviews.
4. How we make decisions. Policy proposals and decisions. Decision making processes, internal criteria and procedures, consultations.
5. Our policies and procedures. Current written protocols for delivering our functions and responsibilities.
6. Lists and registers. Information held in registers required by law and other lists and registers relating to the functions of the authority.
7. The services we offer. Advice and guidance, booklets and leaflets, transactions and media releases. A description of the services offered.

The Commissioner can enforce non-compliance with publication scheme requirements using an enforcement notice under section 54 of FOIA. However, there is not a requirement for the Commissioner to adjudicate on complaints about publication schemes in the same way as requests under section 50 FOIA.

Further detail on how public authorities should comply is provided in a definition document for each sector, including a document for government departments¹⁴. This document was updated in 2012 - the most relevant requirements for lobbying transparency are in the guidance related to class 1. The Commissioner expects the publication of the details of:

- Ministerial meetings with external organisations (including meetings with newspaper and other media proprietors, editors and senior executives)
- Permanent Secretary meetings with external organisations (including meetings with newspaper and other media proprietors, editors and senior executives)
- Special adviser meetings with external organisations (including meetings with newspaper and other media proprietors, editors and senior executives)

These requirements mirror other commitments already made, such as the Ministerial Code.

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 on this aspect.

The Commissioner has limited resources that he can make available for monitoring publication schemes. The majority of his freedom of information funding is focused on the statutory duties related to complaint handling. The Commissioner has conducted monitoring at certain times since FOIA came into force, though. Previous monitoring of publication schemes undertaken by the ICO found patchy compliance – a number of public authorities were asked to make improvements to their schemes.

To date the Commissioner has not received any complaints about a public authority's publication scheme in relation to lobbying information.

What impact does FOI have?

The Commissioner would argue that the FOIA regime plays a significant role in providing transparency about lobbying activities – this comes from the disclosures made in response to

¹⁴ ICO Freedom of Information publication scheme definition document: central government departments (updated 2012)
http://www.ico.org.uk/for_organisations/freedom_of_information/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/definition_document_for_government_departments.pdf

requests, sometimes following Commissioner and Tribunal rulings, and the proactive disclosure requirements of publication schemes. However, FOIA may not do this consistently. There is clear evidence that the transparency brought about by FOIA can modify behaviour and provide incentives for public authorities to operate in a certain manner. The most significant evidence comes from the area of expenses - FOIA has shone a light on how systems operated and what individuals were claiming; systems and amounts claimed have changed.

Research by the Constitution Unit at UCL on the general benefits of FOIA has found that the legislation has significantly strengthened transparency and accountability¹⁵. The research also found that FOIA had not had a negative impact on the workings of Whitehall. It is reasonable to read from this that FOIA disclosures about lobbying have not had a negative impact.

It is often difficult for FOIA to bring about change alone. The UCL research presses the argument that FOIA works as part of a wider framework of accountability mechanisms. A statutory register and disclosure regime for lobbying organisations and Ministers/public officials will work best when underpinned by the right to request more detailed information under FOI and publication scheme requirements.

Future developments

The Commissioner plans to develop new external guidance on handling FOI requests relating to lobbyists in 2013/2014. Findings from the Committee's report will be considered when we develop the guidance and other regulatory developments in relation to lobbying will be considered.

As indicated above, the Commissioner could be more specific about the detail of information to be published related to lobbying (e.g. names, dates, subjects) - in the model publication scheme or definition document. Though it is important that reasonable expectations are set about the level of monitoring and policing the Commissioner is able to do. He will consider this issue once the framework for lobbying regulation is clearer and the nature of statutory requirements outside FOIA.

Amendments to the FOIA come into force on 1 September 2013 – they add new rights for requesters to receive datasets in reusable formats and under a specified licence for re-use. Previously requested datasets must be added to a publication scheme, unless inappropriate to do so. These new open data provisions may improve the consistency in how lobbying data is made available.

¹⁵ Robert Hazell, Ben Worthy and Mark Glover – does FOI work?. UCL Constitution Unit. 2009. <http://www.ucl.ac.uk/constitution-unit/research/research-archive/archive-projects/whitehall-foi>

The Commissioner has given some thought as to whether FOIA could be amended to enhance transparency around lobbying. The question first of all is whether lobbying is important enough to have specific recognition in the legislation. This is a matter for Parliament to consider. A workable definition of lobbying would also need to be found. If amendments to FOIA were considered the Commissioner has the following suggestions:

- Section 19(3) – covering matters public authorities must have regard to when adopting or reviewing a publication scheme. This section could be amended to make reference to lobbying.
- Section 35 – the exemption for government policy. Section 35(4) could be amended to add a further section, placing an obligation to consider the specific public interest in disclosure of information about lobbying.
- A similar amendment could be made for section 36, which would cover other public authorities outside Whitehall.

These would not be major changes but would further reinforce the significant public interest in disclosure and make it more likely that information about lobbying is routinely available, without complaints being made - which is vital to improve trust.

There is a risk that lobbying communications are taking place on private email accounts, or this could become a significant trend. It is a possible tactic to avoid the emails being caught by FOIA requests. The Commissioner has adjudicated on a number of cases related to this issue, involving special advisers, though not specifically on lobbying. The Commissioner issued guidance in 2011 stating that private emails used for government business are still caught by the Act¹⁶. It also set out good practice when the use of private email for government business is necessary, such as copying in government email addresses. A report was also published providing good practice recommendations to the Department for Education¹⁷. The extent of the problem is currently unclear – the Commissioner is continuing to monitor the evidence, investigate the cases that emerge and will take action when necessary.

ANNEX A – relevant Freedom of Information cases

¹⁶ ICO Freedom of Information guidance: Official information held in private email accounts. 2011.
http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/official_information_held_in_private_email_accounts.ashx

¹⁷ ICO. Executive summary of the FOI good practice visit to the DfE.
http://www.ico.org.uk/~media/documents/library/Freedom_of_Information/Notices/foi_good_practice_visit_dfe_executive_summary.pdf

UNCLASSIFIED

Reference	Date	Public authority	Request	Notes
Decision Notices:				
FS50422088	9/7/2012	Cabinet Office	Information on the development of the statutory register of lobbyists	IC upheld use of s35 exemption.
FS50445422	25/3/2013	Cabinet Office	Correspondence between a named special adviser (or his office) and outside interests concerning the proposed register of lobbyists.	IC ordered disclosure (sections 41 and 43 not engaged). Decision under appeal to tribunal.
FS50379301	16/11/2011	Cabinet Office	Information on meetings and external correspondence involving Mark Harper (Minister for political and constitutional reform) on subject of proposed statutory register of lobbyists	PA relied on sections 40 and 41. IC required disclosure of some of the information (subject to certain redactions).
FS50207235	24/11/2009	House of Commons	Names of individuals and organisations holding parliamentary passes	One aspect of this related to former MPs contacts with lobbying firms and think tanks, e.g. the Industry and Parliament Trust members of which acted on behalf of industry and commerce to facilitate access to Parliament and Government. IC ordered disclosure.

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FS50446594	10/12/2012	DCLG	Information provided to the DCLG by companies and organisations involved in property development and the construction industry (including lobbyists) in relation to the draft National Planning Policy Framework.	IC accepted that PA had correctly applied the s35(1)(a) exemption but recognised the pro-disclosure argument for transparency re. influence of unaccountable interests in the PIT.
FS50429932	11/6/2012	MoJ	Copies of emails between officials and representatives of insurance organisations relating to the government's proposed reforms to civil litigation funding and costs in England and Wales.	IC upheld use of s35(1)(a) but required disclosure of names and roles of individuals acting on behalf of lobbying groups.
FS50153967	23/6/2008	Cabinet Office	Records of exchanges between Tony Blair and Rupert Murdoch.	IC ordered disclosure. Section 35 and section 40 arguments rejected, although sensitivity reduced due to elapse of time. Transparency and accountability for decisions were two of the factors favouring disclosure.
FS50457668	9/1/2013	Cabinet Office	Information relating to meetings of the Business Advisory Group, comprising Senior Ministers and business leaders who meet to discuss and debate matters of economic policy.	IC upheld use of section 35(1)(a).

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FS50464968	26/3/2013	DBIS	Information connected to a Select Committee report on Pub Companies.	Not concerning lobbying per se but the requested did want information regarding organisations and individuals outside BIS who directly or indirectly contributed to the drafting of the Government's response on the problems facing the pub sector. Apart from one document the IC upheld use of sections 35, 42 and 43(3).
FS50346222	12/4/2011	DfE	Copies of communications between the Catholic Education Service and the Department for Children, Schools and Families (now the Department for Education) on the subject of sex education and Personal, Social and Health Education in schools.	Although section 35 was upheld, IC recognised the strong public interest in increasing the public understanding of the roles that stakeholders representing specific interest groups – such as the CES – influence the shaping of educational policy.
FS50312407	26/4/2011	DoH	Information held in relation to the plain packaging of tobacco products.	IC gave significant weight in favour of greater transparency in how and by whom government policy is influenced. (Roundtable discussion with the stakeholder in question can be seen as a lobbying exercise rather than a discussion with neutral third parties.) Section 35 engaged but public interest favoured disclosure.

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FS50203092	13/10/2009	Cabinet Office	Information in relation to the periodic meetings held between the Prime Minister and the Multinational Chairmen's Group.	IC decided that the views expressed by the participants were indeed aimed at informing and arguably influencing the government's policies regarding the subject matters under consideration but accepted that section 35 had been applied correctly.
FER0469994	13/6/2013	DEFRA	Information relating to the badger and bovine tuberculosis proposals shared between Defra and the National Farmers Union (NFU), and Defra and Natural England.	Request made by the Badger Conservation Trust, who have lobbied the government extensively on proposals for a badger cull. IC ordered disclosure and is now under appeal to the tribunal. This case may not be relevant as it is the lobbying group making the request.
Information Tribunal decisions:				
EA/2006/0064	23/6/2008	MoD	Information about a meeting on 23rd June 2005 between Lord Grayson, the then Minister for Defence procurement, and representatives from Whitehall Advisers Ltd, a lobbying company.	The Tribunal accepted a general interest in furthering the understanding of public debate of the issues of the day, and promoting accountability and transparency by public authorities. They found a particular public interest in understanding the role and influence of

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				<p>lobbyists. All of this favoured disclosure. It was not persuaded that lobbyists or others giving advice to a Minister would be inhibited by a risk of disclosure from giving free and frank advice. (But as the information was in the form of raw notes, the tribunal decided disclosure could detract from public understanding.)</p>
EA/2007/0072	29/4/2008	DBERR	<p>Request by FoE for information related to meetings and correspondence between Ministers and senior civil servants in certain divisions of the DTI (now DBERR) with the CBI since 5 May 2005, including dates, names, the minutes and correspondence.</p>	<p>The Tribunal accepted that the need to protect a private or safe space for internal deliberations during policy formulation and development could be extended to outside consultants who were advising on policy and paid for their services. However the Tribunal did not accept that the same safe space should be extended to lobbyists particularly privileged ones like the CBI.</p> <p>As regards section 40, officials of both the government department and lobbyist attending meetings and communicating with each other can have no expectation of Privacy.</p>

<p>ECJ</p> <p>First Instance (2007)</p> <p>Grand Chamber (2010)</p>	<p>29/6/2010</p>	<p>Request to European Commission</p>	<p>Request made by The Bavarian Lager Co. Ltd to the Commission of the European Communities for access to the unredacted minutes of a meeting held on 11th October 1996. It had previously received the Minutes with the names of 5 attendees removed.</p>	<p>The meeting was attended by representatives of the DTI, EC and Confederation of Common Market Brewers and was held to discuss the failure of the UK to fulfil EC obligations concerning restriction on imports.</p> <p>The EC provided certain documents but redacted the names of 5 attendees.</p> <p>The Court of First Instance annulled the Commission decision, considering in particular that the mere entry of the names of the persons in question on the list of persons attending a meeting on behalf of the body they represented did not constitute an undermining of private life and did not place the private lives of those persons in any danger.</p>
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				<p>The Commission, supported by the UK government and the Council, brought an action before the Court of Justice against that judgment of the Court of First Instance.</p> <p>The Court of Justice then decided that the names could be withheld but on the basis of the technical interaction between the Regulations on access to documents and Data Protection and no significant precedent can be drawn from the case.</p>
European Ombudsman	7/6/2011	Request to EC	Request for minutes of a meeting between Peter Mandelson (then EC Trade Commissioner) and representatives of the business organisation BusinessEurope.	Commission granted partial access but the complainant was concerned that the public should have the same access to information that was provided to the business organisation in the meeting. This aspect of the case was being dealt with under a separate complaint by the General Court.
European	7/7/2010	Request to EC	Information and documents relating to	The Ombudsman required the EC to

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Ombudsman			meetings between the EC and representatives of car manufacturers.	provide full access, or consider partially disclosing the information that had been withheld (3 letters sent by Porsche). Convincing arguments regarding the effect on Porsche's commercial interests had not been provided.
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E17: Institute of Business Ethics

Lobbying: Issues and Questions Paper

I write on behalf of the Institute of Business Ethics (IBE) in response to your above mentioned paper. I have also attached a pdf copy of *The Ethics of Influence: political donations and lobbying* published by the IBE in June 2005 and draw your attention to pages 34-39 and 42.

Following your question format:

1. Is there any reason to think that lobbying per se is a problem; and is there any evidence that abuse of lobbying is widespread or systemic, as opposed to exceptional behaviour by a few?

Lobbying per se is not a problem. It is needed to help tease out better policies, and is an important element of free speech. As to whether there is evidence of it being a widespread problem, one is reliant on that which has been highlighted by the media, albeit in some instances perhaps through entrapment.

2. How wide should the definition of lobbying be? What activities should be excluded from the definition?

Defining lobbying in this context is difficult as no definition is likely to be broad or accurate enough. Lobbying is about presenting alternate views for consideration in the decision-making process. It is the way that it is done which leads to problems, particularly if the influence that is brought to bear is done so in an unfair manner.

3. Is the proposed legislation for a Statutory Register of lobbyists likely to be sufficient to address the problem; and are the Political and Constitutional Reform Committee's proposals² (wider registration, disclosure of issues and enhanced Ministerial disclosure) necessary, either as an interim measure or longer term?

Possibly and probably. Both are needed as lines in the sand as there is so little trust held by the public in 'lobbying' as an activity. The state of understanding by the public is such just now, that all lobbying is seen as corrupt and bad – though of course this is not actually so. Media stings exacerbate the issue.

4. To what extent should the focus of finding a solution to the problems around lobbying be on those that are likely to be lobbied rather than those who do the lobbying?

Both sides need to be aware, as collectively they are 'the problem', so any solution needs to work for all sides.

5. Do you consider that the existing rules are sufficient? If not how should they be changed?

Principles are more effective than rules, with appropriate training being given to make people aware through scenario training – an example of one is attached.

6. Do you think it is a good idea to have a code of conduct or guidance directly applicable to any individual or organisation that is lobbied? If so, what are the main elements that should be included in any code of conduct or guidance and how could it be enforced?

Yes, based on principles so perhaps call it something other than a code of conduct, perhaps 'code of ethical lobbying practice' would concentrate the minds better! It should also be applicable to those lobbying as well as those being lobbied.

The main elements of the code would include having a policy regarding positions taken (being up-front), openness, consistency of approach, relevancy of topics, non-partisan, proportionate, disclosure, direct/non-direct lobbying (e.g. via NGOs or trade associations).

Most importantly a decision tree should be included as a reminder/guidance of those questions to ask oneself when being lobbied and when lobbying. This should help prevent behavioural mistakes being made.

Enforcement will continue to be by those keeping an eye on behaviours otherwise a cumbersome bureaucracy may entail which is likely to be circumnavigated – trust can only be built up by trust being shown in the majority of those who lobby in an uncontroversial way.

7. Is there a case for establishing an external regulator for lobbying or are existing oversight mechanisms sufficient?

Existing mechanisms should be sufficient together with the responsible media

8. Do you agree that some form of sanctioning is a necessity? What form could it take?

Sanctioning happens already to the extent that government and officials often decline to see companies etc. However in this context further sanctioning might be overkill as the bureaucracy needed to police it is not warranted.

9. Do you think an outcome which relies on individuals who are lobbied taking proactive personal responsibility for being transparent in dealings with lobbyists is desirable and feasible?

Yes, individuals must take responsibility for their actions. Here a decision tree, if there is any doubt, might assist those individuals. If they had a ready set of questions to ask as a reminder again this might help.

a. If not, what are the impediments stopping such a process?

b. How could it be monitored properly without leading to an increase in bureaucracy?

This process will rely on individuals acting responsibly rather than adding bureaucratic burden.

10. What should an individual do to ensure that he/she is aware of the dangers of potential conflicts of interest?

They should ask themselves a set of testing questions and use a decision tree (which can be formulated very easily) to put their minds at rest. At the end of the day it is down to individual judgement and common sense in assessing whether they should or should not start/continue a conversation when being lobbied.

11. Would enhanced disclosure by individuals and organisations provide the pertinent information on who is lobbying whom and sufficient incentive for decision makers and legislators to be balanced in the views they seek? Would this taken together with the Freedom of Information regime ensure sufficient transparency and accountability to enable effective public scrutiny of lobbying?

When policy is formulated, there would be some benefit in explaining or recording who has been consulted, what positions have been presented and so forth, so any subsequent FOI request would see this clearly laid out. A set process to be followed would provide transparency and accountability as it would be clear(er) as to how policy decisions have been taken.

The IBE would be pleased to answer any questions arising from this letter and to assist further.

Yours sincerely,

Philippa Foster Back OBE, Director

Annex 1:

An uncomfortable story

You are now in the government having just won a mid term local election. You are enjoying your work, especially as you have recently split with your long term partner in a difficult and bitter way.

Prior to standing for election, you were a lobbyist. One of your former clients, BuildMore have benefited significantly from government contracts since your party came to power.

The Chief Executive of BuildMore is a major party donor. This is partly as result of the rapport that built up between the Chief Executive and the President after you introduced them. The Chief Executive was honoured recently for services to industry.

One day, you wake to a phone call from your secretary:

“Have you read the paper yet? I think you better had.”

You go downstairs to find your face on the front page of a national paper with the headline “Cronyism”. They have an ‘exclusive’ interview with a confidential source which details how you had set up meetings with the President for BuildMore which led to government contracts for your ex-client and the national honour for the Chief Executive.

You can tell from the quotes being given that the ‘source’ is your ex-partner. You also know that when you first met your partner you had slightly exaggerated the role you played in match-making the President with BuildMore. You had over emphasised the influence you had wielded at that time in the corridors of power in order to impress.

As you leave for the office you can see the media waiting outside.... What do you say?

Annex 2: IBE Report – The ethics of influence: Political donations and lobbying

p. 34 – 39

2. Lobbying

The corporate world tends to make a clear distinction between political donations and lobbying: the first being intended to support parties and politicians or to finance the democratic process, the second to influence debate about legislation and regulations, which involves contact mainly with officials and regulators. But while some companies are willing to forgo the practice of making political donations because it may be controversial, even dangerous, they hold fast to the right to lobby. Lobbying is viewed as the voice through which a company or interest group's point of view is heard as well as a means of managing political risk. Business also feels impelled to counter-balance the huge amount of anti-business lobbying that now takes place from activist groups and trade unions. This applies on both sides of the Atlantic, though, in Europe, more in the UK than on the continent. (See Box 14)

Much of what goes under the label of "lobbying" is also routine and very much part of the regular traffic between government and business. Indeed, it is encouraged by governments who need to hear business' point of view on proposed laws and regulations. Nor is lobbying just about dealing with national governments. Lobbying at a regional or local level is very much part of day-to-day business management over issues such as planning and grants.

Box 14

Why companies lobby

BT: *"We engage with political parties, politicians and civil servants on a non-partisan basis to make them aware of key arguments, and trends in technology and industry. We put forward our views on matters that affect our business interests and we make sure that those in government are fully briefed on issues affecting BT's activities. We interact regularly with the European Commission and national and international regulators...We believe these activities are a legitimate part of normal relationships between business and politics."*

ChevronTexaco: *"Public policy decisions, implemented through laws and regulations at all levels of government, are increasingly affecting ChevronTexaco's current operations and future direction. In response, ChevronTexaco exercises its fundamental right and responsibility to influence these decisions by participating in public policy debates; by directly and indirectly lobbying public bodies and officials; and by supporting candidates, parties and campaigns that further ChevronTexaco's viewpoints. Specific activities within this three pronged government relations program must meet high ethical standards and comply fully with all applicable government rules."*

Unilever: *"Unilever companies are encouraged to promote and defend their legitimate business interests. Unilever will co-operate with governments and other organisations, both directly and through bodies such as trade associations, in the development of proposed legislation and other regulations which may affect legitimate business interests."*

Source: Company documents

Lobbying, however, has risks of its own, and these are growing. Many of the concerns that surround political donations apply increasingly to lobbying: the influence of big business, the power of non-voting institutions, lack of accountability and transparency, the potential for deceit and corruption. This is creating pressure for clearer controls and policies in this area.

Regulation. Lobbying is less tightly regulated than political giving. Of the three countries under review, only the US has introduced formal controls¹⁵. The US requires all lobbyists to be registered and all companies to file half yearly reports showing the issues on which they lobbied, the names of their lobbyists and an estimate of the amount spent. For example, Federal Express, one of the US's most active lobbyists, reported spending \$1.6m on lobbying in the first half of 2004 through six named lobbyists on 32 measures in the House of Representatives and 22 in the Senate. It also listed two dozen other areas where it was active¹⁶. These controls do not seem to discourage lobbying, but they provide a measure of transparency.

There have been moves to regulate lobbying in the UK, but so far these have come to nothing. UK lobbyists have their own code of conduct under the Public Relations Consultants Association which requires them, among other things, to be truthful and accurate and not to engage in bribery. There are no formal controls in France, other than a requirement that lobbyists hold passes to enter the Assembly building.

Public concern about the nature of corporate lobbying is prompting greater activism. Ethical groups have begun to press for tighter controls because of what they see as attempts by business to put out deliberately misleading messages on controversial issues such as climate change and product safety. Among their demands are that companies rein in their lobbying activities, or engage only in "positive" or "progressive" lobbying, by which they mean causes which have the ethical groups' approval¹⁷. A drive for "responsible lobbying" is gaining ground, and in early 2005 the UN's Global Compact launched a programme to define and promote it¹⁸. This pressure is causing companies to be more open about their objectives and activities, but has had little effect on the amount of lobbying that takes place.

A policy on lobbying. Unlike political donations, few companies we spoke to had clear policies on lobbying, though aspects of their lobbying activity would be covered by existing rules against bribery, dishonesty and unlawful activity. Many companies, however, told us that this was an area where they felt clearer policies would be appropriate. Lobbying is increasingly seen as an activity which needs to have its own set of policies and standards, rather than a patchwork assembled from general principles.

There are a number of elements to a lobbying policy.

A framework which lays out the rationale for and objectives of lobbying. These are often taken for granted, but with pressure growing on companies to justify their lobbying activities, we found more of them laying out their position in public.

¹⁵ Other countries which have controls include Canada, Australia and Norway. EU lobbyists in Brussels have to have accreditation, which is not hard to obtain.

¹⁶ Company filing with the Senate Office of Public Records. Explaining its high political profile, Federal Express says it is "one of the most heavily governed companies in America... We are governed by local, state and federal, and international regulations depending on what the issue is... It is important for us to be part of the political process because we are so heavily regulated." Spokesperson Jess Burn quoted in *Capital Eye* Vol 7 No 2. Summer 2000.

¹⁷ See, for example, 'The need for responsible lobbying' by Stephanie Draper, *Ethical Corporation Magazine*, December 2003

¹⁸ <http://www.accountability.org.uk/news/default.asp?id=146>

Conduct. Lobbying entails much personal contact so the risk of corruption exists. However it also requires good personal relations, which means that an amount of gift-giving, entertainment and favours has to be tolerated. Many companies have well-developed policies in this area, usually permitting small two-way exchanges of gifts and entertainment backed by requirements that they be reported or refused if excessive or too frequent.

Consistency. One of the criticisms made of companies is that they take one position in public and another – sometimes more controversial, even opposite – in private or under the cover of the trade associations. For example, large US oil companies have been accused of proclaiming their green credentials while lobbying behind the scenes against the Kyoto Protocol on climate change. (See also the controversy about **Ford** in Box 15). However, many of the companies we spoke to said that, with recent improvements in government transparency, they would be quickly “found out” if they spoke with forked tongues.

The issues of consistency and conduct also cover trade associations and pressure groups which play a large – and increasingly controversial – part in corporate lobbying. These sometimes face the same accusations as their members and supporters: of lobbying too hard or putting out misleading statements.

Box 15

Ford fuels controversy

Ford, the large US automaker, has earned plaudits for its policy of not making direct political donations – one of the few large US companies who don't.

But the company has drawn criticism for a different reason: the money it spends lobbying against US government efforts to raise fuel economy in cars, in apparent contradiction of its claim to be environmentally responsible. In its policy statement on the environment Ford says it is “*working to continuously reduce the environmental impacts of our business in line with our commitment to sustainable development.*” But it opposes current fuel economy proposals because “*our position is that market-based initiatives, not mandated increases, are the best way to improve fuel economy.*”

In April 2005, Ford and other US carmakers signed a voluntary agreement with the Canadian government to reduce car emissions to standards set by the state of California, even though they are seeking to have the Californian regulations overturned.

Source: Company documents. Detroit News April 6th 2005.

Few trade associations have formal codes of conduct as such, though they subscribe to recognised codes of behaviour. The UK's **Chemical Industries Association**, for example, says it aims “*...to pursue our public policy goals, that is ‘to lobby’, in as transparent and pragmatic a manner possible, commensurate with the scale and significance of the issues at stake, and the letter and spirit of our commitment to sustainable development.*” Some companies have also been accused of hiding behind their trade associations when involved in controversial issues, or of ganging up to prevent unwanted measures. A current issue is the EU Commission's REACH proposal to regulate chemicals (see Box 16). **Cefic**, the European chemical industry federation which is leading the campaign against REACH, acknowledges that it needs to “*earn public trust*” and that “*...we must demonstrate that we are a responsible partner through our initiatives.*”

Box 16

The campaign over REACH

One striking current example of heavyweight corporate lobbying is the European chemical industry's opposition to EU proposals to regulate chemicals, the so-called REACH programme (Registration, Evaluation and Authorisation of CHEMicals). The campaign has fuelled much debate about the rights and wrongs of corporate influence.

The proposals, made in 2001, will require anyone handling more than 1 tonne of a particular chemical each year to register it with a central database. The purpose is *"to improve the protection of human health and the environment while maintaining the competitiveness and enhancing the innovative capability of the EU chemicals industry."*

However, the industry has reacted strongly against the proposals, arguing that they would seriously damage its competitiveness without achieving their objectives.

In an impressive display of unity, nearly 50,000 companies representing not just chemicals but also building materials, pharmaceuticals and related industries joined forces to lobby their governments, the European Parliament and the Commission. The pressure they applied publicly and behind the scenes was considerable: they emphasised the threats to the 1.7m people employed in the industry, to the EU's balance of payments, and to the appeal of the EU as a place to do business. Part of their case rested on cost (30,000 chemicals would have to be registered), partly on the fact that it would be up to the industry to prove that a chemical was safe rather than government to prove that it was not. An EU Internet consultation on the proposals received 6,400 responses, mostly against.

The lobbying campaign paid off dramatically. Prime Minister Tony Blair, President Jacques Chirac and Chancellor Gerhard Schröder signed a joint letter seeking *"substantial changes"* to REACH, as a result of which the Commission made some concessions, and the new industry commissioner Gunter Verheugen promised to have a fresh look.

Is this an example of industry throwing its political weight about, or of business simply trying to stop some well-intentioned but badly drafted regulation?

Environmental and consumer lobbies (who have also mounted a concerted campaign) see it as a clear attempt by large and dangerous companies to quash much-needed safety controls, contrary to the green credentials which many of them proclaim. They also point out that some businesses, like retailers, are in favour of the proposals. But the industry claims it has a right to oppose regulation which it believes will damage the EU economically. Moreover, it points out that very few of the 50,000 companies in the campaign are giants: more than 90 per cent of them are small local concerns, many of them family-owned.

Companies try to ensure that their trade associations operate to acceptable standards. **British American Tobacco**, which is a member of the **Tobacco Manufacturers Association** (TMA) aims to *"promote transparency in the policy making process when working through business organisations or lobbying."* The TMA does not have a code of its own but says: *"We conduct our business in accordance with accepted ethical standards as do our various consultants and retained agencies. We represent our case to government as well as to interested members of political parties. We do not make donations to political parties and maintain an essentially apolitical stance in our activities."*

One of the difficulties with trade associations is that they are often obliged to operate to the lowest common denominator among their members, forcing those with higher standards to accept lower ones for the sake of a common position. However we also found companies quite selective about their use of trade associations. Many companies, particularly the large ones, preferred to manage their own lobbying, specially on difficult issues, and leave TAs to handle more routine work. *"We let them take the lead when there's no value in duplicating their work,"* said one company.

Although companies are not secretive about their membership of trade associations, few of them have yet got round to publicising this information for the public record. In the US, fees paid to TAs count as lobbying expenses and have to be reported.

Pressure groups. Some companies support pressure groups which have a political purpose. One of the best known is the US-based **Global Climate Coalition** which opposed the Kyoto Protocol, though its position became so controversial that many of its members dropped out, forcing it into quiescence. Pressure groups are to be found on all sides of the environmental debate, with business-backed groups generally pressing for market-based solutions and a lighter regulatory touch.

In the UK, the debate about EU membership has also polarised sections of business, and produced pressure groups for and against the cause which are heavily business-financed. Since the requirement to disclose these activities is vague, but the potential for controversy high, companies have to decide how open they should be about their involvements. In the UK they tend to be disclosed because of the broad definition given by law to political donations.

Transparency. Consistency is easier to achieve if a company is open about its views and objectives. To counter accusations of double talk, some companies like **Time Warner** have started posting public positions on their websites (see Box 17). Some take the view that all documents should be prepared on the assumption that they will become public, though this may not always be easy when they contain commercially sensitive information or comments about competitors. Another route is to lay out the risk factors facing the business so as to provide a context for the company's lobbying effort. **AstraZeneca**, for example, describes in its annual report the pressures it faces from governments to control the price of medical products. Many companies told us that transparency also aided the internal process: it promoted *"joined up thinking"* and avoided duplication and contradiction.

Box 17

Time Warner's lobby list

Time Warner, the media and entertainment company, is one of a growing number of companies which have a corporate policy on lobbying, and use the internet to publicise their position on major public issues. The TimeWarner website gives its views on privacy, security and consumer protection, consumer choice of ISPs, free expression, responsible guidance on entertainment, intellectual property, international telecommunications issues, trade and e-commerce, taxation and e-commerce, and postal rates (TimeWarner is the largest user of the US postal service).

Source: www.timewarner.com/corp/citizenship/public_policy/index.html

How much to spend. All the companies we spoke to considered their lobbying budgets to be money well spent, though as with political donations, the means used to calculate this were rather subjective. Some companies told us this was an activity they were "*stepping up*" because of the weight of new regulation. Competitive pressures also play a role. An analysis of print and TV advertisements in the US over the 2001-2002 period by the Annenberg Public Policy Center at the University of Pennsylvania showed that the heaviest spenders on an issue tended to prevail when it came to legislative decisions¹⁹, so perhaps it is a good investment.

Keeping it in proportion. Much of the public concern over corporate lobbying has to do with scale: companies deploying large battalions or forming powerful alliances to promote a cause. It is hard to say what an "*appropriate*" lobbying effort for a particular issue might be: it is part of the skill of lobbying. But given the strength of public feeling on many issues, lobbying campaigns increasingly need to be tailored to fit it.

Lobbying

Have a policy. This is an increasingly controversial area where companies need to have a clear statement of their objectives and standards of conduct. Very few companies contacted have specific policies on lobbying.

Evaluate it. Have a clear view on the value you get out of lobbying. This helps keep the activity in proportion, which provides reassurance both to shareholders and the wider community.

Code of ethics. Although much lobbying activity involves standards which are covered by other areas, for example entertainment and anti-bribery, it is now central to corporate affairs and needs its own code. The elements of the code should include:

- **Transparency.** Be open about your positions and aims. Publicise these widely, for example by posting position papers on the company website.
- **Consistency.** Do what you say. Avoid accusations that you say one thing in public and do another in private.
- **Keep it relevant.** Ensure that your lobbying focuses on issues that are directly relevant to the company.
- **Keep it non-partisan.** Avoid party politics.
- **Keep it in proportion.** Be sensitive to the scale of the issue in the public and political mind. It is easy for large companies to seem to be acting too strongly.
- **Disclosure.** Disclose the scale of your lobbying. It is only a requirement in the US, but the demand for more information could spread. It has been mooted in the UK, for example.
- **Be up front.** Identify yourself clearly with your positions. Don't take refuge behind consultants or trade associations. You will be rumbled.
- **Trade associations.** Ensure that your trade associations operate to the same high standards as you. Many of them do not yet have codes of their own, and they take their cue from their members. Also, publish details of the trade associations you belong to.
- **Pressure groups.** Disclose membership of political pressure groups and amounts donated to them, and be prepared to justify your position. Pressure groups, particularly on sensitive issues like the environment, are frequently embroiled in controversy.

E18: Institute of Economic Affairs

Consultation Submission – Transparency issues around lobbying

By Christopher Snowden, on behalf of the Institute of Economic Affairs, Summer 2013

About the author

Christopher Snowden is the Director of Lifestyle Economics at the IEA. He is the author of *The Art of Suppression* (2011), *The Spirit Level Delusion* (2010) and *Velvet Glove, Iron Fist* (2009). His work focuses on pleasure, prohibition and dodgy statistics. He has authored a number of IEA publications including *Sock Puppets*, *Euro Puppets*, *The Proof of the Pudding*, *The Crack Cocaine of Gambling* and *Free Market Solutions in Health*.

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We agree with the PCRC that there should be no statutory register of lobbyists (Q3, Q5). Such a register would be an expensive bureaucratic folly and would serve no useful purpose. There may well be a *perception* that lobbying in Britain is of scandalous proportions, but that does not necessarily make it so

(Q1). We note that many of the high profile lobbying “scandals” reported in the media involve behaviour that is already banned (eg. the House of Lords’ cash-for-questions affair), or is judged to have not biased any decision (eg. Jeremy Hunt and BSKyB) or is based entirely on speculation (eg. Lynton Crosby’s alleged influence on government policy). It should be noted that there are several interest groups, including opposition MPs and disgruntled activists, who have an interest in fostering the belief that policy is dictated by hidden forces that lie beyond democratic control.

As others have noted, it is difficult to define what a lobbyist is. UKPAC says that the term only applies to advocates working “in a professional capacity”. Whilst in opposition, the Prime Minister spoke of “secret corporate lobbying”. It seems likely that this sort of professional, private advocacy comes most readily to the public’s mind when ‘lobbying’ is discussed. The secrecy element has already been tackled by the present government, which has instructed MPs to publish, on a quarterly basis, details of meetings with outside interest groups, as well as any hospitality received. We view this as the limit of what is permissible before confidences are betrayed and privacy is intruded upon. It is neither practical nor desirable for every conversation between a politician and a citizen to take place in public, nor can we expect every conversation be transcribed and minuted. Although the concept of ‘transparency’ is appealing, there are clearly limits to how far it can be taken in human interactions. MPs must be trusted to register meetings appropriately. The state cannot monitor such interactions without intrusive surveillance and excessive bureaucracy (Q9b).

That is the ‘secrecy’ issue. As for the ‘corporate’ issue, there is no doubt that businesses have a motive to lobby for legislation that will profit them. There is an extensive literature within public choice economics studying the way in which how politicians and interest groups undermine the free market with rent-seeking policies (Tullock, G. (1976) 'The Vote Motive', Institute of Economic Affairs, London). (It could therefore be argued that the most effective way of reducing the intensity of lobbying would be to reduce the amount of regulation and legislation.) Interest groups are not all driven by profit, however, and it is not obvious that “corporate lobbying” should be singled out for special treatment. Nor is it obvious that “third party lobbyists” should be regarded as special—and, implicitly, undesirable—cases.

The rationale for targeting corporate and third party lobbying appears to be that those who lobby for profit (whether their own profit or that of their client) are particularly pernicious. We see no reason why this should necessarily be so. If the committee is concerned about politicians being misled by lobbyists, we see no reason to think that a commercial lobbyist should be any more honest, or dishonest, than a lobbyist who is driven by ideology, political belief, religion or any other passion. We cannot assume that groups which oppose genetically modified crops, or a new bypass, or a new off-licence, are more scrupulous about the information they give to politicians than the GMO company, or the road-builder, or the licensee. Every interest group has an incentive to mislead the politician and gain ‘undue influence’. The citizen who opposes the building of a wind turbine near his house is no less self-interested than the spokesman for the wind turbine company.

Nor should it be assumed that the ‘civil society’ group has less access to the politician than the commercial interests. If the committee is concerned that lobbyists hold undue influence over politicians, we see no reason to think that commercial lobbyists hold any more influence than lobbyists from charities, citizens’ groups, faith groups or political organisations who use similar tactics and strategies. Indeed, the evidence points in quite the opposite direction. A 2007 survey found that 62 per cent of MPs were “more persuaded by arguments put forward by charities than businesses’ (31 per cent disagreed). It also found that 91 per cent of MPs believed that charities were “fairly effective” or “very effective” at communicating with them. 88 per cent said the same about “interest groups”, but only 57 per cent said the same about businesses. Only 20 per cent of MPs thought that “companies are generally more adept at lobbying than charities/pressure groups”. Moreover, MPs tend to receive more approaches from non-commercial lobbyists. The survey found that 59 per cent of MPs received more than 20 approaches from “interest groups” each week, but only 39 per cent received more than 20 approaches from “businesses”. 51 per cent of MPs received more than 20 approaches from charities each week, compared to just 22 per cent who received more than 20 approaches from trade associations. (See Parvin, P. (2007), ‘Friend or Foe?: Lobbying in British Democracy’, Hansard Society - available online.)

Forcing commercial and/or “third party” lobbyists to sign a register will only serve to create unnecessary expense and bureaucracy. The only likely effect will be to stigmatise these spokespeople as “lobbyists” (bad) while spokespeople who do not have explicit commercial motives will be viewed as “campaigners”, “activists” and “advocates” (good). This will cement the popular misconception that professional lobbyists are untrustworthy and undesirable—hence their need to be registered—whereas amateur or NGO-based lobbyists are acting in the “public interest”.

The narrow view of lobbying as an activity carried out by commercial interests for financial gain is unsatisfactory for the reasons given above. Unfortunately, the broader view is no better. We believe that no distinction should be made between lobbying by “a charity, a company, and NGO or a trade union” (background Q15, Q2). If a lobbyist is someone who attempts to persuade a politician of their point of view, almost anybody who ever speaks to a politician should be put on the register. The definition could reasonably be extended to any newspaper that prints an opinion piece and, by extension, to the businesses which advertise in the newspaper (and thereby have some influence, however marginal, on the newspaper’s editorial stance).

The recent speculation about whether Lynton Crosby influenced government policy hinged on the distinction between Crosby *lobbying* the Prime Minister and Crosby having a *conversation* with the Prime Minister about a specific policy. Crosby eventually denied having done either, but the furore revealed how difficult it is to make such a distinction. In terms of influencing a politician, an informal drink in a constituency pub might involve no less lobbying than a formal meeting with a representative from the public affairs industry. There is, in reality, no “lobbying process” and there are inevitably “many grey areas” (background Q17). We do not believe that it is possible to formalise, monitor and regulate private conversations without the application of laws which would require an unacceptable and impractical policing of MPs’ day-to-day lives. The unintended consequence of such regulation would be more informal drinks in the pub and fewer official meetings, leading to less transparency and more scope for ‘scandal’.

The absence of a perfect solution should not preclude smaller attempts to improve the situation, of course, but regardless of whether the statutory register applies to commercial lobbyists or to anyone with an agenda, it is difficult to see how it will address the problems it identifies. The committee’s concerns about lobbying appear to fall into four categories:

(a) As already noted, it is by no means clear that commercial or third party lobbyists typically enjoy more trust, access or influence than other interest groups. They may spend more money, but they are less effective pound-for-pound. To this it should be added that MPs are seldom, if ever, forced to meet with anyone and they are generally exposed to both sides of any important argument, whether through media coverage, lobbying or parliamentary discussion. If there is an asymmetry of information, an MP can easily seek balance from any number of people who will be only too happy to put their side of the story across. We cannot, of course, compel MPs to give each side a fair hearing, nor can we force them to have an open mind, but it is their responsibility to hear both sides and weigh the arguments (Q4).

(b) “Some lobbying may be taking place in secret”.

Most conversations are held in private and there is no way this could or should be avoided in a free society. MPs are already obliged to inform the public about the time, date and nature of their official meetings. This should allow their opponents sufficient ammunition to launch ad hominem attacks upon them when policy decisions go against them. It may also deter some politicians from having frequent meetings with commercial interests. We are not convinced that these unintended consequences are worth the trouble of setting up such a system, but it is the very limit of what politicians should be compelled to disclose about their private discussions.

(c) Private discussions of this sort mean that “those who take a different view do not have the opportunity to rebut arguments and present alternative views”.

It is difficult to see a solution to this perceived problem which is not either utopian or Orwellian. It would seem to require a version of the USA’s archaic Fairness Doctrine to be imposed upon private conversations. Politicians would either have to be isolated from the public entirely or would have to report every word to a potential adversary for rebuttal. Since neither option is realistic we must again place our trust in the elected representative to seek out alternative opinions.

(d) Donors to political parties enjoy privileged access to lawmakers.

This is a thorny issue which has been long discussed. The logical solution, espoused by some, is state funding of political parties. The arguments for and against this idea are well worn. There are many reasons to oppose statutory funding for political parties, but we give two related objections here. Firstly, a prohibition on donations to political parties (or a cap on the size of the donation) is a restriction of what people can do with their own money. Any person, firm or organisation that supports the vision of a political party should be free to support it in any way they see fit. Secondly, and conversely, state funding of political parties forces individuals to give their money to political parties with whom they may vociferously disagree. Any system which forbids people from giving to parties that they approve of but forces them to give to parties they despise is morally dubious.

We accept that the committee may have differing views about the above four issues, but we hope it would agree that none of them will be addressed by a statutory register of lobbyists. A register will not reduce access or ‘undue influence’ (who is to decide how much influence is due?). It will not prevent private meetings and it will not guarantee a hearing for opposing viewpoints.

The committee does not propose restricting the access of any organisation to politicians, nor should it. The committee does not propose legislating to ensure that politicians are only exposed to sound arguments, nor can it. What, then, is the committee hoping to achieve? Unless the longterm goal is to limit the access registered groups have to politicians, a register serves no useful purpose. We trust that this is not the committee’s intention. Since MPs are already obliged to list their meetings, the only conceivable use for such a register is to force third party lobbyists to disclose the names of their clients. In terms of transparency, this could be justified (Q3). Beyond that, the burden surely sits with elected representatives and public officials to properly report the nature and the content of the meetings they conduct as part of their ongoing business (Q4).

We disagree with the committee’s opinion that lobbying “has become a much maligned term”. It has *always* been a much maligned term and lobbyists have always been maligned, often with good reason. Lobbying can be viewed a necessary evil. It is the transmission of opinion, promises and claims from interested parties to lawmakers and the committee acknowledges its benefits to democracy. Lobbying takes many forms but since there is no “lobbying process” as such, it cannot be “open to abuse”. We accept that the committee is hoping to create and formalise a “process” to some extent, but we see no proposal that will solve the problems the committee has identified, namely that third parties can plant notions in the heads of politicians without giving their adversaries a guaranteed right of reply. Insofar as this is a problem, it is insurmountable.

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It would be ideal if politicians only heard from people who were scrupulously honest, totally disinterested and infallibly correct, but it is vain to expect any such thing. When faced with an imperfect system it is tempting to believe that anything that might be done would improve it. This, perhaps, is the appeal of statutory registration and state funding of political parties. We believe that the former would be an expensive and ineffective folly while the latter is morally unsound and would give rise to undesirable unintended consequences. Current rules compelling politicians to register interests and list official meetings are sufficient (Q5, background Q18).

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E19: MHP Communications

Introduction

1. MHP Communications is one of the UK's largest corporate communications, public relations and public affairs consultancies, employing 175 people in offices in London, Brussels, Edinburgh, the Middle East and Washington DC. Our clients are drawn from the private, public and third sectors; and our employees have backgrounds in industry, finance, the media and public bodies, including Westminster and Whitehall.
2. With around 55 people working in the discipline MHP incorporates the biggest public affairs practice in the United Kingdom. We are long-standing members of the Association of Professional Political Consultants (APPC) as well as the PRCA and other bodies, and I served for many years on the management committee of the APPC, including as its Deputy Chair. I was also a senior official in the House of Commons for the first 12 years of my career. As such I hope I have some useful insights for the Committee.
3. Those of us involved in public affairs and lobbying are often frustrated by the quality of debate on this subject. It is therefore helpful that the Committee is now engaging with this issue. So I am delighted to respond to the Committee's Issues and Questions Paper. I have focused my attention on the first five questions; it seems to me that there are many experts better qualified than me to answer the more technical questions posed by the Committee.
4. Finally, although I am responding as an individual, I also speak for my colleagues in MHP Communications. I am particularly grateful for the help of my colleagues Nick Laitner and Jenny Hall for their help in drafting this response to the Committee.

Questions

Q1: Is there any reason to think that lobbying per se is a problem; and is there any evidence that abuse of lobbying is widespread or systemic, as opposed to exceptional behaviour by a few?

5. This question goes to the heart of the matter. All too often commentators talk about the 'problem of lobbying' (as indeed the Questions and Issues paper does at points), when they should instead ask themselves two key questions:
 - a. Is 'lobbying', in the sense of better informing political debate and policy-making a good or a bad thing?
 - b. What is the evidence of 'lobbying' having led to inappropriate or corrupt decisions in the UK political context?
6. It seems trite to say it, but surely no-one disputes that better informed decision-making leads to better decisions? Surely input from think tanks, charities, campaigning groups, corporations and individuals can only help politicians, officials and advisers? By contrast it is abundantly clear that bad policy decisions tend to be made when insufficient information is available, and when attention has not been paid to the likely consequences of a particular decision: the 'fridge mountain' of a few years ago is a famous example, as is the Government's recent U-turn on the

privatisation of Forestry Commission woodland. In my view, debates about lobbying should always start from the position that lobbying is a good, rather than a bad, thing.

7. In the same spirit, debates about lobbying should also begin by considering whether there are really cases where lobbying has led to inappropriate decisions. By inappropriate I mean manifestly wrong or corrupt, as opposed to decisions a vocal campaign group disagrees with. I would be interested in any evidence of such cases, because I am not aware of them.
8. The so-called 'lobbying scandals' of recent years have tended to focus on the behaviour of certain politicians, rather than the decisions that have resulted: in other words they have been concerned with *process* rather than *outcomes*. In fact, the UK should be proud of the fact that its politics is generally honest and open, and that malign influences have little or no opportunity to affect policy-making.
9. There is a wider point here. While perception of course plays an important role, sound policy should be based on comprehensive evidence. If the issue is one of perception, rather than reality, then it is possible to question the necessity of significant regulatory change around lobbying.
10. However, I of course accept that a commitment to transparency lies at the heart of honest political decision-making. Although concerns about lobbying are often overblown, it is never enough simply to do the right thing; all sides have to be *seen* to be doing the right thing. Thus, like all reputable lobbyists, I strongly support any efforts which aim to improve transparency. In that regard there are some specific steps forward, which I discuss below, which could and should be taken, and which would be very welcome.

Q2: How wide should the definition of lobbying be? What activities should be excluded from the definition?

11. This is a particularly difficult question to answer, which explains why efforts to regulate lobbying thus far have proved very difficult. In my view 'lobbying' encapsulates any effort to engage with and inform a debate or decision by public officials. Direct engagement by a company or campaigning group is lobbying; but so is writing a letter to your MP, and so is an orchestrated campaign to ask a group of people to write to their individual elected representatives. In other words, lobbying takes many forms – and that means it is hard to define.
12. Clearly any definition of lobbying should exclude the right to contact a constituency MP to express an opinion or to ask for help: politicians are there to act as representatives for their electors. But it has to be broad enough to cover all other lobbying tactics and activities. In that context it is worth remembering that sometimes lobbying is indirect: campaigns led by or simply reported in newspapers and other media can bring pressure to bear, and these days social media has a powerful influence. All of this must be borne in mind when seeking to define 'lobbying', which may of course make it difficult to come up with a watertight definition.

Q3: Is the proposed legislation for a Statutory Register of lobbyists likely to be sufficient to address the problem; and are the Political and Constitutional Reform Committee's proposals (wider registration, disclosure of issues and enhanced Ministerial disclosure) necessary, either as an interim measure or longer term?

13. As already mentioned, it is important to be clear what the 'problem' is. If the question refers to the need to encourage greater transparency, then there must be serious concerns that the Lobbying Bill as drafted will actually make the situation worse: there appear to be numerous loopholes for those who wish to conceal the nature of their business.
14. The definition of 'consultant lobbyists' in the Bill suggests that only those who engage in direct lobbying of Ministers and Permanent Secretaries are covered. There is then a further loophole in that firms will apparently be regarded as 'non-lobbying' if their employees do not spend most of their time actually lobbying Government. This suggests that the Cabinet Office has little understanding of what companies like MHP do: that our role is primarily about advising clients rather than directly lobbying on their behalf.
15. Put simply, Ministers quite reasonably do not want to hear from lobbyists when they can hear directly from the leaders of the companies, campaigning groups, trade associations and others that we advise. Our role is to help them to construct their argument and make their case, but only they can speak with authority, with passion and from experience.
16. All of this means that in our view few if any so-called 'lobbyists' will be covered by the Bill:
 - a. The Bill says that a person does not carry on the business of consultant lobbying if their business is "mainly a non-lobbying business". In our case, MHP Communications is a full service communications consultancy, not simply a public affairs firm. We operate a single bottom line, and so do not break out the work of our public affairs division. There is no 'MHP Public Affairs Ltd' which employs a certain group of people.
 - b. Even if we were to limit ourselves to our public affairs team, the definition talks about actively lobbying, in the sense of seeking to persuade members of the Government as well as officials – and the reality is that this is not 'mainly' what we do all day. The same will surely be the case for most of our competitors.
 - c. The Bill states that a person or company is not covered if consultant lobbying is an "insubstantial proportion of that business" (see Clause 2(3)). As mentioned, the Bill defines this very narrowly as communications made personally to a Minister of the Crown or permanent secretary relating specifically to decision-making and policy-making. As explained earlier, I can say for certain that this very specific activity is not a substantial part of our business, and I doubt it is for many consulting firms.
17. So the consequences of all this are that the Bill could actually mean that fewer consultancies actually register their clients: for example, as it stands I doubt that anyone from MHP Communications, the UK's largest and best-known public affairs firm, will have to register. This flawed Bill could end up being very damaging for transparency.
18. What is also particularly regrettable is that the Bill has been drafted in a way that suggests officials were trying to capture only a very narrow group of 'consultant lobbyists', and not others involved in lobbying Government. Law firms, management consultancies, think tanks, trade bodies and others can and will argue that they are 'non-lobbying businesses', no matter whether they provide lobbying services. This is wrong.

19. Companies like MHP do not see any difficulty in registering our clients. We have been members of the APPC and PRCA for years, and we are very happy to declare our public affairs clients openly according to their rules. Our only demand is that others who offer competing services to ours are subject to the same regime. It is commercially unfair and morally wrong to differentiate between different classes of 'consultant lobbyist'. It harms democracy to allow some companies to hide behind rather limp claims of client confidentiality, and so not reveal for whom they are working. This is the place to start in amending this flawed Bill.
20. In addition to widening the definition of lobbying and consultant lobbyists, I would also suggest that the Government needs to look seriously at some form of minimum standards for those on the register. There is a real danger that a register by itself may make the situation worse, since it is likely those on the register will describe themselves as a 'registered' or 'approved' lobbyists, without having to meet at least some minimum standards. In short, there is a risk that the register will give a kitemark or endorsement to some who do not deserve it.
21. There are several minimum requirements worthy of consideration: I would like to focus on two. The first is for registered lobbyists to have no financial relationship whatsoever with a politician: clearly, this would encompass actually employing the politician, as well as payments for specific services, the giving of gifts, and so on. Whether or not a politician is paid to lobby is beside the point – any sort of financial relationship brings risks, and should be prohibited.
22. The second requirement concerns parliamentary passes. Given the need for relationships between lobbyists and the lobbied to be open and transparent I am strongly opposed to any sort of preferential access to 'the corridors of power', no matter the reason. In my view no registered lobbyist should be entitled to a pass under any circumstances.
23. In fact, our strong view is that no-one not currently employed by or a member of a public institution should hold a pass to access that body. At the moment Parliament, for example, allows former members and the spouses of members to hold passes: at the last count 348 former parliamentarians held passes to the Palace of Westminster. This holds out the risk of abuse, or at the very least the perception of abuse, particularly when the passholder claims to be a lobbyist or works for a lobbying firm. All such passes should be withdrawn.
24. In addition, there has to be some incentive to sign up for the register – otherwise some less reputable practitioners will not bother. In my view this can be achieved quite simply by changes to the Ministerial code, to guidance offered to officials, and to decisions made by Parliament and other legislatures, under which those affected commit not to deal with unregistered lobbyists. Adherence with these strictures and with the requirements of the register can easily be policed by the media and by the institutions themselves.

Q4: To what extent should the focus of finding a solution to the problems around lobbying be on those that are likely to be lobbied rather than those who do the lobbying?

25. In the absence of a watertight definition of a lobbyist there are significant attractions to regulating the lobbied rather than lobbyists. After all, whilst it may often be difficult to determine what constitutes lobbying, let alone when it is inappropriate, it is much easier to

demonstrate when an MP or official has been on the receiving end of lobbying, or what they perceive as lobbying, and particularly when they have changed their behaviour as a result.

26. It is important to note that there are already rules and processes in place that try to address the issue of the 'lobbied'. For example, there is a register of Ministerial meetings, although this could and should be updated more regularly. There are also a number of rules governing the behaviour particularly of parliamentarians, a point which is discussed in Q5.

Q5: Do you consider that the existing rules are sufficient? If not how should they be changed?

27. The reality of recent so-called lobbying scandals is that they have all involved actual or alleged breaches of current parliamentary rules, or of the law. There are already rules and indeed laws about bribing officials. Parliament has significant rules and procedures affecting the outside interests that are and are not acceptable for a Member to hold; disclosure of interests in the relevant manner; and general accordance with the principles of public life. The powers available to the House through the Committee on Standards and other mechanisms appear to be sufficient, in principle at least.
28. Therefore there is no immediate need for new rules – although this should of course be kept under constant review. But there are serious concerns about enforcement, and about whether or not proper punishments are being meted out when transgressions occur. Brief suspensions from the House of Commons, for example, may not have a significant deterrent effect; longer periods, unpaid, may be more effective. It may also be appropriate for the Committee on Standards to be able to impose other punishments, such as a prohibition on membership of Select Committees or even expulsion from the House in extreme cases. These are matters that the Committee will want to weigh up.

In summary

29. The Committee's focus on lobbying is welcome. It is to be hoped, though, that its approach to its investigation will be measured and proportionate. Whilst there is a clear need always to strive for greater transparency about the political process in general, and lobbying in particular, there is no particular evidence that lobbying is causing significant issues today. In fact it is widely agreed that lobbying is a good thing, and as such it should be applauded and welcomed: cutting decision-makers off from the world will not lead to good decisions.
30. It is also worth saying that there are plenty of rules and processes already governing both lobbyists and the lobbied. The main issue is one of enforcement, not regulation. However, there are areas where transparency can be improved. Yet the Government's Lobbying Bill may make matters worse, due to its very narrow definitions of lobbying, and its attempt to exclude lawyers, management consultants, think tanks and others from registration. These severe flaws need to be addressed and resolved as a matter of urgency.
31. Furthermore, membership of the register should be dependent on meeting certain minimum standards; and non-registered lobbyists should not be dealt with in the same way as those who register. And there are particular issues around who can and cannot hold a parliamentary pass.

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32. On behalf of MHP Communications, I wish the Committee well in its deliberations. If I can provide any additional information at any time please do not hesitate to let me know.

Gavin Devine, Chief Executive, MHP Communications

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E20: National Farmers Union

The National Farmers Union of England and Wales (NFU), is the leading professional farming organisation representing the interests of 55,000 full time farmers and growers. We are currently celebrating the centenary of the appointment of our first lobbyist, Charles Weller Kent, widely recognised as the first professional lobbyist in the UK. This makes us well placed to comment on the issues surrounding lobbying activity.

The NFU undertakes responsible lobbying on behalf of farmers and growers as a whole, since typically their own small businesses do not have the resource to undertake such activity. We proactively use members to inform public policy making, thereby ensuring Ministers, civil servants and regulators understand the practical impact of policy and legislative proposals and that no single interest dominates policy making.

Executive Summary

The NFU favours option 1, a Statutory Register of Professional Lobbyists, from the imminent ***Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill***. This would set us in line with other Westminster-style Parliamentary democracies such as Australia and Canada. Creating such a statutory register of professional, third-party consultant lobbyists would enhance the transparency of decision makers and those that seek to influence them, whilst reassuring the general public that politicians and public bodies are held to account.

The draft legislation therefore strikes a balance between reassuring the public and also acknowledging that actual cases of malpractice are rare, albeit widely reported when discovered, and so the proposed measures are proportionate to the risk. What we do not wish to see is an over-burdonsome regime that causes more issues than it resolves.

To include in-house lobbyists would be excessive costly and an unnecessary duplication as their information is already readily available and they publically declare their backers at all times, e.g. the NFU does what it says on the tin – we represent the views and interests of British farmers and growers. This system also allows for better informed decisions to be made as it readily allows those best placed (i.e. actually involved in sectors, such as specialist farmers) to come forward and to inform debate. NFU Submission

Although every effort has been made to ensure accuracy, neither the NFU nor the author can accept liability for errors and or omissions. © NFU The voice of British farming

Background

In January 2012 the Government published its proposals for ***Introducing a Statutory Register of Lobbyists***, for consultation. The consultation paper proposes that only third party lobbyists would be required to be on a statutory register; those working in-house would be exempt. Third party lobbyists would be required to sign up to and update a statutory register on a quarterly basis, giving details of the:

- Registered address of the company and company number;
- Names of employees engaged in lobbying;

- Whether those employees are former Ministers or civil servants; and Client lists.

The consultation paper defines lobbyists as ***“those who undertake lobbying activities on behalf of a third party client or whose employees conduct lobbying activities on behalf of a third party client.”*** The Government is proposing that the register should be managed and enforced by a body which is independent of the lobbying industry, and of Government, and be self-funded by the lobbying industry. At the heart of this approach is the view that any new scheme should not be disproportionate in terms of burdens imposed on lobbyists, whilst bringing greater transparency to the lobbying process. The Government has confirmed its intention to bring forward a Bill introducing a Statutory Register of lobbyists in this Parliamentary session.

Specific questions asked by the Standards in Public Life Committee

1. Is there any reason to think that lobbying per se is a problem; and is there any evidence that abuse of lobbying is widespread or systemic, as opposed to exceptional behaviour by a few?

Lobbying is a legitimate and potentially beneficial activity when exercised responsibly. Opportunities for individuals and organisations to talk to policymakers and legislators are an important part of the process by which public policy is formulated and implemented. In a democracy those affected by decisions need to have the opportunity to present their case. Decision makers can benefit from having to test proposals against informed argument, which can enhance the practicality of legislation and avoid unintended consequences. Policy and confidence ought to be improved as a result.

However, it is the exceptional behaviour that captures the public imagination, with any issues of malpractice heavily publicised, as opposed to the vast majority of good and publically declared work. The UK is fortunate in having good codes of practice and high standards already in place, but unfortunately all lobbying is tarnished by the same brush, with notable cases of corruption and malpractice seen elsewhere in the world.

2. How wide should the definition of lobbying be? What activities should be excluded from the definition?

The **UK Public Affairs Council (UKPAC)** defines lobbying in the broadest terms as:

“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.”

This definition of lobbying highlights the crucial differential pertinent to this legislation, namely ***‘attempting to influence in a professional capacity’***. However we support the definition in the proposed legislation that further qualifies this professional lobbying as that which is ***‘on behalf of a third party client’***, as it is this activity that causes most concern to the public in regard to transparency. NFU Submission

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An all-encompassing broad definition of lobbyists would draw in all forms of lobbying it is hard to know how far the definition would end (e.g. anyone lobbying their MP on an issue), or how much

cost? A broader definition could potentially undermine industry practitioners from wishing to go through the red tape and cost of registering – thus potentially undermining the quality of debate and decision making. This problem has to an extent been seen in the European Commission, where the lobbying definition was widened and widened again to such an extent it has become unwieldy.

At the heart of our approach is the view that any new scheme should not be disproportionate in terms of burdens imposed on lobbyists, whilst bringing greater transparency to the lobbying process.

The NFU therefore supports the Coalition government definition of lobbyists for the sake of legislation as ***“those who undertake lobbying activities on behalf of a third party client or whose employees conduct lobbying activities on behalf of a third party client.”***

3. Is the proposed legislation for a Statutory Register of lobbyists likely to be sufficient to address the problem; and are the Political and Constitutional Reform Committee’s proposals (wider registration, disclosure of issues and enhanced Ministerial disclosure) necessary, either as an interim measure or longer term?

The NFU believes by looking at similar legislation introduced elsewhere in Westminster-style Parliamentary democracies, that yes indeed, the proposed legislation is sufficient. We would like to qualify our response given that we disagree slightly with the wording of the question which implies there is an actual problem currently, rather than a perceived problem that needs to be addressed. We are all in favour of reassuring the general public and having transparency, but we are against a witch hunt or over-regulatory and unwieldy excessive legislation.

It is far easier for government to introduce this legislation demonstrating its concern and commitment to transparency with the implied threat of further legislation in the future if required, than jumping straight in with overly complex and costly processes from the outset that could perversely impede the democratic process and be hard to row back from.

It must also be noted that this proposed legislation will be building upon a well-developed process of publication of Ministerial meetings, declaration of interests by MPs and Peers and the Freedom of Information Act.

4. To what extent should the focus of finding a solution to the problems around lobbying be on those that are likely to be lobbied rather than those who do the lobbying?

Awareness and responsibility lies on all sides. Recent increased transparency by government, in part demanded by the general public and seen through measures such as Freedom of Information requests and declaration of interests can be seen to be matched in this proposed legislation by increased openness required of professional lobbyists.

5. Do you consider that the existing rules are sufficient? If not how should they be changed?

Existing declaration of interests, listing of Ministerial meetings and usage of legislation such as the Freedom of Information Act along with industry self-regulation (e.g. UKPAC), could potentially be considered as sufficient. What the new legislation does however offer is clarity and clear guidance, which is to be welcomed. Above all, if the new process helps in reassuring the public, and increasing trust and confidence in the legislative process, then that is a good thing. However, everyone needs

to play their role in this common aim, including the media, who should stop exaggerating or perpetuating myths of malpractice by legislators. NFU Submission

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6. Do you think it is a good idea to have a code of conduct or guidance directly applicable to any individual or organisation that is lobbied? If so, what are the main elements that should be included in any code of conduct or guidance and how could it be enforced?

Clear and simple guidance is key. It would be counterproductive to be overly cumbersome or complex as seen in some of the new MP expenses processes overseen by the Independent Parliamentary Standards Authority (IPSA),

7. Is there a case for establishing an external regulator for lobbying or are existing oversight mechanisms sufficient?

Having worked extensively with the on-going Macdonald review on reducing red-tape, and the review of Natural England and the Environment Agency, we would be reluctant to promote unnecessary burdens or red tape. We have also first-hand experience of seeing ‘empire building’ resulting from similar new bodies being created. What we have seen successfully work in many areas are measures established to promote ethical behaviour and codes of practice (in this case by lobbyists) with the prospect of sanctions if rules are broken.

Whilst we have seen great success in self-regulation in certain areas, where these alone are not enough, we are then happy to endorse further legislation at a later date to counter any malpractice – such as our support for the Grocery code adjudicator. In basic terms, what we are not in favour of is a hammer to crack a nut at the outset.

8. Do you agree that some form of sanctioning is a necessity? What form could it take?

Existing declarations of interests, listing of Ministerial meetings and usage of legislation such as the Freedom of Information Act along with industry self-regulation (e.g. UKPAC), could be considered to sufficient. What the new legislation does however offer is clarity and clear guidance, which is to be welcomed. Above all, if the new process helps in reassuring public perception, trust and confidence in the legislative process, then that is a good thing.

We are all in favour of reassuring the general public and having transparency, but we are against a witch hunt or over regulatory and unwieldy excessive legislation. Given the current public perception, we therefore see the merit in clarification, reassurance and transparency and we believe that the current government proposals for professional third-party lobbyists will achieve these aims. Therefore, we do not believe that sanctioning is a necessity.

9. Do you think an outcome which relies on individuals who are lobbied taking proactive personal responsibility for being transparent in dealings with lobbyists is desirable and feasible?

a. If not, what are the impediments stopping such a process?

Potentially it is desirable, but practically it is less realistic and more complicated to achieve. Over-complex systems are difficult to work with (as seen in IPSA), Our real concern is that overzealous legislative processes will result in reduced MP / government interaction with practicing professionals who can assist in more knowledgeable and informed debate, better solutions and more appropriate legislation.

b. How could it be monitored properly without leading to an increase in bureaucracy?

It is vital to build upon the experiences of other Westminster style Parliamentary democracies to implement the simplest and clearest guidelines. Lessons should be learnt from more complex and less successful legislation as seen in the European Commission. NFU Submission

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10. What should an individual do to ensure that he/she is aware of the dangers of potential conflicts of interest?

Individuals should take their responsibilities seriously. However to improve awareness the guidelines should be as simple and clear as possible. Guidelines and frequently asked questions could be made available to newly elected representatives.

11. Would enhanced disclosure by individuals and organisations provide the pertinent information on who is lobbying whom and sufficient incentive for decision makers and legislators to be balanced in the views they seek? Would this taken together with the Freedom of Information regime ensure sufficient transparency and accountability to enable effective public scrutiny of lobbying?

Current rules such as the Ministerial Code of May 2010 contain a requirement to publish, at least quarterly, details of Ministers' external meetings. It can be argued as a consequence that it would be unnecessary duplication to include details of meetings in any statutory register of lobbyists.

The Freedom of Information Act gives individuals the right to request disclosure of recorded information held by a public authority, subject to various exemptions, such as if its release would prejudice national security, damage commercial interests or is related to the formulation and development of government policy or Ministerial communications.

Existing declaration of interests, listing of Ministerial meetings and usage of legislation such as the Freedom of Information Act, along with industry self-regulation (e.g. UKPAC), could be considered to sufficient.

E21: National Trust

The weakening of Treasury control and the rising prominence of select committees suggests more scrutiny is needed of the latter. The growth of political lobbyists at Westminster is proof that this form of political activity delivers results, that it is cost effective. Parliamentary lobbying offers a form of discreet, undisclosed access to politicians and ministers beyond the normal bounds of transparency.

1. It must be wrong to allow paid lobbyists - in the form of MPs with financial interests at stake in a debate or legislation - to speak and serve as members of the relevant committees. For example the chairman of the energy committee has long been known to work for particular energy companies and speak and lobby on their behalf. The committee's findings have long been worthless as a result.
2. Whether or not it is considered valuable to have MPs with outside interests serving in parliament, in the event of their intervening in debate and legislation there should surely be a requirement of full disclosure before such intervention. (Incidentally, I take the same view of press commentators, letters to the press and appearances on the BBC: the public must know where people are "coming from".)
3. All-party subject groups are now rampant with MPs and peers with diverse interests serving on them, and boasting as such. Nobody knows what interests finance their reports, trips, hearings, advisers. They have the run of parliament. That lobbyists should be given passes and roam free round Westminster severely compromises impartial debate, as well as being grossly unfair to interests that cannot afford them.
4. I must add that lobbying is now so rampant, and so plugged into the party funding regime, that I seriously doubt any regulation will curb them. They should clearly be banned from the precincts of parliament. The failure of David Cameron to grasp this nettle, against which he once warned, indicates its potency. As long as Westminster is polluted in this way, no amount of transparency will suffice. It is no different from the in-house lobbyists that plague Congress in America.

Simon Jenkins

E22: NCVO

NCVO is the largest general membership body for voluntary and community organisations in England. Established in 1919, NCVO represents over 10,000 organisations, from large 'household name' charities to small groups involved in all areas of voluntary and community action at a local level.

NCVO believes that charities have a fundamental right to campaign and to lobby both government and Parliament in order to help them achieve their charitable purposes. NCVO fully supports and encourages charities to fulfil this role as best they can.

Many NCVO members and other charities already attain high levels of transparency and openness in terms of their lobbying activity. However we recognise that there is a need to regulate the lobbying process in order to prevent further ambiguity and address the public's growing mistrust in the policy making system.

The purpose of any proposal must be to ensure that the process of lobbying takes place in a way that is as clear, open and transparent as possible. The aim should be to inform the public about how decisions are made and how policy is influenced, by showing who is lobbying whom and on what issues.

It is on this basis that NCVO has consistently argued for a universal register for all individuals that undertake professional lobbying activity. In-house lobbyists, including those working for charities, should be subject to the same rules and regulations as those working for multi-client agencies.

The current provisions for a Statutory Register of Lobbyists are too narrow, and in our view Government has missed an opportunity to address the full issue. Merely listing multi-client agencies does not contribute to increasing transparency, or to ensuring a level playing field between different lobbying sectors. The absence of a supporting code of conduct, against which behaviour can be measured, means that it is unlikely standards will rise.

Consultation questions

- 1. Is there any reason to think that lobbying per se is a problem; and is there any evidence that abuse of lobbying is widespread or systemic, as opposed to exceptional behaviour by a few?**

Lobbying is a legitimate and potentially beneficial activity when carried out responsibly. Providing an opportunity for individuals and organisations to talk to policy makers and legislators, and engage in public policy making, is an essential part of the democratic process.

However, there have been increasing concerns that the lobbying process is open to abuse, mainly because of its ambiguity and the mistrust that this generates. We therefore recognise that there is a need to regulate lobbying activity, in order to address the problem of the public's cynicism, and in turn the lack of trust and confidence in the system.

- 2. How wide should the definition of lobbying be? What activities should be excluded from the definition?**

We believe that the aim of regulating lobbying activity should be to ensure that the process of lobbying takes place in a way that is as clear, open and transparent as possible. This can be achieved by informing the public about how decisions are made and how policy is influenced, by showing who is lobbying whom and on what issues.

The definition of lobbying should reflect this, by being widely drawn so that an individual is included in the definition of 'lobbyist' when the purpose of his or her role within their organisation is to campaign or 'lobby'.

This approach would ensure that the regulations apply to all lobbyists, regardless of the sector in which they work. Crucially this should include in-house lobbyists. NCVO strongly believes there should be parity between in-house lobbyists in private organisations and those working within charities.

However it is important to remember that charities lobbying government are very different to businesses advancing private interests. The key factor is the public benefit requirement: charitable status is granted only to organisations that are established for a charitable purpose and for the public benefit. This has implications on a charity's lobbying activities: charities may undertake campaigning and political activity only as a positive way of furthering or supporting their purposes. Furthermore, a charity cannot exist for a political purpose, so no organisation in the charity sector is primarily a lobbying organisation.

3. Is the proposed legislation for a Statutory Register of lobbyists likely to be sufficient to address the problem; and are the Political and Constitutional Reform Committee's proposals (wider registration, disclosure of issues and enhanced Ministerial disclosure) necessary, either as an interim measure or longer term?

The purpose of the Government's register seems to be merely to ensure transparency for multi-client agencies, since the proposals are only aimed at addressing the issue of third party lobbying.

But in our view the Government has missed an opportunity to address the broader issues of public perception, unequal access to decision makers and inadequate transparency. The current proposals fail to increase transparency, level the playing field between multi-client consultancies, in-house lobbyists and charities, and to drive-up standards across the board.

Merely listing multi-client agencies and their clients does not amount to properly regulating lobbying activity in a way that is comprehensive and likely to prevent further lobbying scandals.

4. To what extent should the focus of finding a solution to the problems around lobbying be on those that are likely to be lobbied rather than those who do the lobbying?

High standards of behaviour need to be understood and adhered to by both those who do the lobbying and those that are likely to be lobbied. The recent scandals linked to lobbying have shown that problems about inappropriate conduct emerge on both sides.

The public has a right to expect that holders of public office act responsibly and transparently when making decisions that have an impact on people's lives. In particular, there should be assurance that

decisions are taken with impartiality and on the basis of a clear engagement process, where there is a balance in the views that have been sought.

5. Do you consider that the existing rules are sufficient? If not how should they be changed?

Our view is that Government can do much more in terms of transparency. A first step should be to ensure that the rules already in place are implemented properly. For example, too often the publication of details about Ministerial meetings is neither timely nor clear. Improvements could already be made by regularly publishing in one location and in a common format the formal meetings that Ministers and MPs have with outside interests, and what issues were discussed. This would enable the public to understand how policy has evolved through engagement with external parties.

6. Do you think it is a good idea to have a code of conduct or guidance directly applicable to any individual or organisation that is lobbied? If so, what are the main elements that should be included in any code of conduct or guidance and how could it be enforced?

Simply introducing an element of transparency is unlikely to impact on behaviour. A code of conduct, setting out acceptable professional conduct, alongside the register is essential to the proper working of the new system. It would set out clear expectations outlining how outside interests should interact with Government. This would act as a powerful nudge, driving standards up across the board.

7. Is there a case for establishing an external regulator for lobbying or are existing oversight mechanisms sufficient?

The statutory register should be maintained by an independent body that is separate from those it regulates. We have seen from the experience of lobbying bodies involved in self-regulation that an external regulator is essential for an effective regulatory framework: if oversight and monitoring compliance is carried out by relevant membership bodies, organisations can simply resign when non-compliance issues arise.

8. Do you agree that some form of sanctioning is a necessity? What form could it take?

The system needs to have 'teeth' in order to be effective: past experience has shown that regulation without some form of sanctioning is not workable.

We would therefore be in favour of penalties for non-compliance being available to the regulator. It is important however that sanctions are proportionate, and particularly financial sanctions should only be the last resort.

Furthermore, there should be clear guidance to help lobbyists understand if they should sign up to the register, and what other requirements they are expected to comply with.