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## Transparency around lobbying:

Written evidence

Section A - D

The Committee on Standards in Public Life

5<sup>th</sup> September 2013

<b>Evidence Number</b>	<b>Name</b>
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**E1: Albert Veksler****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 practiced by a wide variety of organisations and in virtually every issue area imaginable. While lobbying is a common and legitimate part of the democratic process, it raises issues of trust, equality of access and transparency. Several dangers associated with lobbying that could challenge a well-functioning democracy have been pointed out:

a) conflict of interests can occur, when a former politician/civil servant turns the contacts gained at taxpayers' expense into a valuable commodity as a lobbyist;

b) equality of access is not guaranteed - commercial companies viewing policy process as an extension of the market battlefield enter politics to gain/keep a competitive advantage, while many groups don't have the resources to break through the lobbyists' arrangements, as the cost of entering the political fray has continued to rise;

c) citizens distance themselves from the politics as the ethical standards of the decision-making are questioned in the society.

Lobbying regulations in the U.S. and other countries were often legislated in the aftermath of various scandals that involved lobbyists. A new wave of lobbying regulations (the Honest Leadership and Open Government Act) was introduced in the US in 2007 after the Abramoff scandal, which saw the US federal lobbying legislation rise from a medium-regulation to a strongly regulated system, according to Chari *et al.*'s (2009) classification index.

Scandalous events have frequently taken place between lobbyists and policy makers also in other countries, but they have not achieved the same limelight status in the media, as in the U.S.

Zrahiyah and Lis (2012) described the scandal that shook the Israeli lobbying world. A crew from the Israeli Channel 2's investigative show *Uvda* ('Fact') infiltrated the training program of the Gilad Government Relations & Lobbying firm (Dayan, 2012). Using a hidden camera, they showed a lecturer on behalf of Gilad Government Relations & Lobbying in a course on lobbying, who boasted about promoting laws in the Knesset designed for the narrow business interests of companies. One example given by the lecturer was the Fluorescent Vest Law, allegedly promoted by the Gilad Government Relations & Lobbying, stipulating that every Israeli driver carry a fluorescent vest in his car and use it when exiting it on the road's shoulder. The legislation was presented as an instance in which the firm was able to advance the interests of its client, the 3M Company.

The Knesset Member (MK) Erdan, who submitted the bill, denied having received a draft legislative bill from an external party, that he merely signed. The lecturer continued to talk big of about how they succeeded feeding necessary information to the Knesset Research and Information Centre, responsible for writing the policy papers for the MKs, in order to promote a law on the immunisation against cervical cancer on behalf of a pharmaceutical company.

Following the Channel 2 exposé, the Speaker of the Knesset MK Rivlin instructed Knesset employees to immediately forbid the entrance of all lobbyists to areas heavily used by MKs, as well as from the many office areas. These desperate steps were taken almost four years after that the Knesset had passed the Lobbyist Law, categorised as a lowly regulated system (Veksler 2011: 274).

MK Rivlin also sent a missive to all the Knesset staff, forbidding them from having any contact with lobbyists, directly or indirectly. Today, as the new rules are in place, any meeting between a lobbyist and a Knesset employee must receive advance, written approval from a senior Knesset official. Any such meeting must be followed by a written report, and any materials provided by the lobbyist must also be submitted. Employees must also report on any chance meeting with a lobbyist.

These steps, however, were only desperate actions that did not change much on the ground. We need an amended lobbying law in Israel that would create greater transparency and would not just

set restrictions on the lobbyists movement and access to the Knesset cafeteria. The problem is that the lobbying law of 2008 just does not work: while the MKs declared that the goal of the Lobbyist Law was transparency, they did not follow it through by creating a coherent legislation that would have provided regulation of lobbying the government and its institutions through an all inclusive lobbyist definition, in addition to regulating lobbying also outside the Knesset building. Instead of balancing the strength of the rich and the wider public by providing publicly funded lobbying services, as practiced in the EU, the legislation legitimised and strengthened the lobbyists who became a recognised part of the work that goes on in the Knesset. As the research showed, the MKs aimed to maximise their own utility – transparency to improve their own work conditions to identify the lobbyists and interests in play in order to assure the access of the information that reduces their search related costs. The law did create some transparency, but not as it was declared – transparency for the public to know – but the opaque transparency for the benefit of the MKs (Veksler, 2011: 277).

There are claims, as Petersen (2007: 2-3) reported to the United States (US) Congress that money plays a critical role in gaining access to policy makers, and thus also gaining desired policy outcomes, for those who commit such resources. Baumgartner, *et al.*'s (2009: 27) research pointed out that the story of the impact of money in the lobbying process has many complications – rich do not just ally with the rich and the poor with the poor, but rather groups of allies are mixed. Interest groups with low levels of resources are as likely to be allied with interest groups high levels of resources as with other low resource groups. These mixed alliances tend to temper the role of money in the political process. Baumgartner (2009) claimed that a direct and simple relationship between money and policy change is simply nonexistent.

Nownes (2006: 96) argued that resources are a key to a public policy lobbyist's success – lobbyists with a lot of money at their disposal have a higher chance of succeeding than the lobbyists with little money to spend. Money allows lobbyists and the organised interest they represent to buy access to policymakers. Public policy lobbyists buy access by contributing money to the elected official's campaigns, but also by hiring contract lobbyists who are valued by primarily for their connections. The more money organised interest has, the more lobbyists it can hire and the more public officials it can lobby. Therefore an effective lobbyist law must have the mandatory disclosure of both the individual spending of the lobbyists and also their employer's spending, enforced by a law and reviewed frequently on the quarterly basis.

Research in the US has shown that the major value of lobbying regulation laws has been in providing public disclosure that increases the potential for public/press scrutiny - the more public disclosure of lobbying exists in a state and the more stringently regulations are enforced, the more open the process of group attempts to influence public policy is (Thomas, 1998: 512-513). Lobbying regulations promise several advantages to the political system: increased accountability to the voters and transparency of the decision making process, as well as diminishing loopholes in the system, which would otherwise allow for corrupt behaviour (Chary, *et al.*, 2007).

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

The example of the Israeli Lobbyist Law's flaws shows the need for an all inclusive definition of lobbying. The law in section 65 defines lobbyists as following:

A lobbyist is a person whose occupation or for a payment from a customer, takes action to persuade MKs concerning legislative bills or secondary legislation in the Knesset or its committees, regarding decisions of the Knesset and its committees concerning appointment or election of a person to be nominated by the Knesset or the body in which the representative of the Knesset is a member, with the exception of:

1. a person who in the framework of his work takes action for his employer;
2. a person who fulfils a task in accordance to the civil service law, in a local authority or in a corporation established by law, even if he does not work and takes action as above-mentioned in the framework of his function and in connection to his authority and functions of the body for which he works;
3. a person who represents an apparitor or fulfils a function in a judicial proceeding before the Knesset or in a committee of Knesset committees (The Knesset Laws, 2008).

The definition of a 'lobbyist' in the Israeli Lobbyist Law does not include lobbying the executive branch and the law only regulates lobbying that takes place in the Knesset building. The legislation does not cover or regulate lobbying government agencies (for example – the Israel Land Administration). Yet, according to one Israeli lobbyist about 70 percent of lobbying of their company is spent on indirect lobbying of clerks and officials, while only 30 percent is directed toward the MKs.

Section 66 of the Lobbyist Laws speaks about the permits for the lobbyists and shows that lobbying is regulated in the Knesset building only:

- A. A lobbyist will not work in the Knesset without a permit from the Commission (consists of the Knesset Chairman and two deputies – one from the coalition and one from the opposition).
- B. An Applicant who wishes to act in the Knesset as a lobbyist must submit a request to the Commission, including the following documents:
- C. (1) His personal information, and if the applicant is working within the framework of a corporation - the type of corporation, name and number;
- D. (2) The names of the customers the applicant seeks to represent in the Knesset, whether on a regular basis or for a one-time basis, their employment fields, and the name and the employment fields of any bodies which give him payment or benefits in connection with the interests for which the lobbyist wishes to act in the Knesset;
- E. (3) If the applicant is a member of the electing body in a party - the party's name; in this chapter, "electing body" - the body that elects Knesset candidates or for the function of the Prime Minister or Minister of Government, where the number of members with voting rights does not exceed five thousand;
- F. (4) Statement of the applicant that he undertakes to follow the provisions of this chapter.
- G. In case any details of information of section (B) change, the lobbyist or applicant must submit a written notice to the Commission immediately after the change occurs.
- H. Notwithstanding the content of small section (a), if an applicant submitted a request to act as the lobbyist in the Knesset, and has yet not received an answer to his request, the Chairman of the Knesset is entitled to give him a temporary permit to operate as a lobbyist in the Knesset, until the Commission's decision, the provisions of this chapter apply in accordance with all changes (The Knesset Laws, 2008).

Moreover, the law does not define all lobbyists inclusively as lobbyists - some advocates do not need to identify as lobbyists. They enter the Knesset without registration and participate in the Knesset Committee meetings. They enter as 'specialists' but do the work of a lobbyist.

According to the Center for Public Integrity Index (CPI) score, Israeli regulation is classified as a lowly regulated system (Veksler, 2011: 274). Yet, the regulations in Israel are furthermore diluted by several loopholes. The undefined position of the parliamentary assistants (PAs), who are not employed as Knesset workers, allows them to function as self-employed advisors-lobbyists. The Knesset's refusal to grant the PAs the official status created a dangerous potential for the conflict of interests, according

to Avital's (2010) report. Some PAs supplement their incomes by representing private entities by promoting commercial interests - all while they work for their respective MKs in the Knesset. Surprisingly, the phenomenon is thoroughly legal: as long as the PAs are not employed by the lobbying companies in the Knesset building itself, the Knesset turns the blind eye, since the PAs do not have the status of 'the Knesset employees'. The relatively low salary of the PA (those with the BAs stands at \$1,700 gross, while those with MAs receive an additional \$260), forces them to seek for an additional income.

Most PAs keep their second job quietly, as Avital (2010) reported, under private agreements between them and members of Knesset. Neither the MK nor the PA have an obligation to inform the Knesset, therefore it is not possible to know the exact number of double assistants. However, because of the possibility of conflict of interests it is critical not just for the MKs, but also for the public to know, to whom the loyalty of the PA belongs during the crucial time when the MK office wants to promote certain legislation. All the while that the Knesset does not determine the status of PAs and leaves them with unclear status - one can not deter them for being engaged in many things. Unlike for the members of the Knesset, the cooling-off period does not apply for the PAs. Thus, many PAs, leaving their work in the Knesset, start directly to lobby the Knesset offices.

Former MKs are granted the Knesset entrance permits and they have virtually unlimited freedom for possible lobbying activities. No rules apply for them after one year has passed since they left their offices.

A new facet of the legislator-lobbyist relationship was revealed as the lobbyists were called in to conduct the coalition talks between the parties in 2008 in Israel. The attempt to influence the coalition at the very moment of its conception might leave the interest group fingerprints right in the very DNA of the government coalition. The result is that the lowly regulated system becomes diluted by these loopholes and turns out to be even weaker.

One major loophole in the US federal lobbying regulation is that only those who spend at least 20 percent of their time lobbying have to register. Auble's (2013:6) research presented evidence that thousands of lobbyists have deregistered during the recent years, often continuing to do exactly the same work but simply describing some of it differently so that they fall under the 20 percent threshold.

Another issue is the legislators' family members who work as lobbyists in the US Senate. Katz (2007) found that one third of the United States senators - 33 senators had family members, who were registered as lobbyists, or who worked for lobbying firms. Schweizer (2012: 165) quoted Senator Coburn: "Many legislators and their staffs have children or spouses who are or have been employed as lobbyists including many of the most powerful members and leaders of the Senate. Yet, no rules or laws currently prevent lawmakers, or their staffs, from being lobbied by relatives. Neither lawmakers nor lobbyists must report if they are related to each other".

Geys and Mause (2011: 1) showed that elected representatives in many countries are legally allowed to carry out (un)paid jobs in addition to their political mandate, which is often referred to as "moonlighting". This is a legal practice for the members of the British House of Commons, the European Parliament, and the German Bundestag as well as members of parliament (MPs) in many other countries around the world. Moonlighting would allow the MPs to function legally as the lobbyists, without revealing the interests involved in the play.

All the above mentioned examples have to do with 'lobbyist' and 'lobbying' definitions. The consultation paper proposes that only third party lobbyists would be required to be on a statutory register. While defining 'lobbyist' and 'lobbying', one has to take into account the above mentioned loopholes in order to avoid the dilution effect that may thwart the very purpose of the lobbying regulations.

It is important to point out that the lobbying regulations would not affect the the citizens' access to their representatives. The rights of the ordinary people to meet with their MPs would not be affected

by well functioning lobbying regulations. In fact, citizens have had a more difficult time being heard in the world capitals as commercial companies have entered politics to gain or keep a competitive advantage. Many individuals and groups simply don't have the resources to break through the thick forest of lobbyists' arrangements where the "policy process is viewed as an extension of the market battlefield" and as the cost of entering the political fray has continued to rise (Reich, 2007:139, 163-164).

**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?**

Political and Constitutional Reform Committee's report of July 2012 proposes some substantial changes as it recommended a medium regulated system. This is a good interim measure on a way to a more effective lobbying regulation system. Wider registration, disclosure of issues and enhanced Ministerial disclosure are important, as the regulation has to include all persons involved in lobbying in order to achieve its proposed goal of transparency. If only third party lobbyists would be required to be on a statutory register and those working in-house would be exempt, it would turn the legislation into a mere window dressing. This loophole would be quickly identified and pointed to by the press and concerned citizens. Its existence would be a constant theme anytime there is controversy over lobbying and the misbehaviour of lobbyists in the UK. It would serve to quickly undermine confidence in the lobbying legislation – possibly leading to accusations of symbolism but the absence of a commitment to really regulate lobbying.

**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?**

Lobbying laws may have seemed as reasonable responses to corrupt behaviour, but according to Levine (2009: ix-x) there's another dimension that has to be taken to the account: each new lobbyist law signals also diminished confidence by any given parliament in its own integrity. Lobbying business must be regulated, but since the public perception of inappropriate relationships between Ministers and lobbyists has been a major concern of the politicians, then the disclosure responsibility should be laid on both lobbyists and MPs as well. The real transparency can be achieved only when both lobbyists and MPs are required to disclose their interests, clients and obligations (Veksler, 2011: 276).

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

A well-enforced lobbying regulations law is preferable to the voluntary or unenforceable system of self-regulation, which would allow the lobbyists to play the situational ethics card and to pick and choose the rules as the needs arise. The critical report by the Public Administration Select Committee on the lobbying industry: Lobbying: Access and Influence in Whitehall (2009), showed clearly that the existing rules are not sufficient. I agree wholly with the Political and Constitutional Reform Committee's report's recommendations that the current rules should be replaced with mandatory medium regulated lobbying system, which I would see as an interim solution, leading to a highly regulated system that will be enforced by an external regulator later in time.

In order to create the necessary level of transparency, one would need to consider requiring a tight individual spending disclosure: a lobbyist must file a spending report, his/her salary must be reported, all spending must be accounted for and itemised, all people on whom money was spent must

be identified, spending on household members of public officials must be reported, and all campaign spending must be accounted for. Employer spending disclosure should also be tight. Independent state agency should conduct mandatory audits, and a statutory penalty for late and incomplete filing of a lobbying registration form should be introduced.

**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?**

A code of conduct would offer good guidelines for conduct, but the truth is that the current Code of Conduct has not yielded the expected results, leaving the reputation for integrity of those involved at risk. Sometimes law and ethics overlap and what is perceived as unethical is also illegal, yet on other occasions what is perceived as unethical is still legal, and, what is illegal is perceived as ethical. A certain lobbying behaviour may be perceived as ethical by one organisation but might not be perceived as ethical by another. A lobbying law would state the government's position and presumably the majority opinion, on the lobbying behaviour. Only legislation can require all UK lobbyists to disclose their behaviour to public and media scrutiny. Therefore, a well-enforced lobbying regulation law is preferable to the unenforceable code of conduct.

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

An external regulator would be preferable, since research indicates a subtle dependency relationship between the regulator and the lobbyists (Hall and Deardorff, 2006, Veksler 2011: 276). As mentioned earlier - the more public disclosure of lobbying exists in a given state and the more stringently regulations are enforced, the more open the process of group attempts to influence public policy is (Thomas, 1998: 512-513). The monitoring of lobbying is crucial, because public agencies, where monitoring is frequent, where procedures are detailed and clear and where careers within the agency are based on merit are less vulnerable to corruption (Campos and Giovanni, 2006: 22). In the light of this, the current UK oversight mechanisms are clearly insufficient. According to Chari *et al.* (2010: 146) the lobbyists were the ones who most strongly agreed that penalties would deter unprofessional behaviour. Currently there are external regulators active in the states of Montana and Washington and in Canada.

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

The experience from democracies with lobbying regulations in place proves that in order to achieve the needed level of transparency, the regulations should take a form of a set of codified formal rules, which are passed as a law by the Parliament and which are enforced by the independent regulator. In case of non-compliance with the rules, penalisation - a fine or a jail sentence - should occur (Chari *et al.*, 2010:4).

According to Chari *et al.* (2010: 145), majority of interviewed politicians were of the opinion that penalising unprofessional lobbying would act to deter it. The imposition of penalties, and the naming and shaming that would inevitably follow, would mean that clients of lobbyists might take their business elsewhere.

In Israel, a lobbyist who fails to comply with the rules will be barred from the House. Section 70 of the Lobbyist Law states:

No lobbyist should do the following:



1. offer the MK benefits as part of his efforts to promote the interests of his clients;
2. lead MK astray in connection with any essential parliamentary work of the MK;
3. take actions to persuade the MK by illegitimate means, including pressure, threat, temptation, or a promise for benefit;
4. bring the MK into obligation before the lobbyist or his clients to vote or act in a certain way;
5. act in ways stated in paragraphs (1) to (4) toward a parliamentary assistant or Knesset worker (The Knesset Laws, 2008).

One can see that the Israeli regulations are very mild towards the lobbyists that do not comply with the rules – there is no penalisation, except of being barred from the Knesset. There are no fines or a jail sentence mentioned, which would generally constitute the enforcement of the lobbying regulations, as Chari *et al.* (2010: 4) mentioned.

After the Israeli lobbying scandal that was mentioned earlier, the Knesset Speaker Rivlin ordered to immediately revoke the permanent Knesset access given to all Gilad Government Relations & Lobbying employees, adding that he was also considering revoking the company's lobbying permit, pending a hearing as required by law. Thirteen Gilad employees have permanent passes allowing entry to the Knesset, and this is a severe blow to the company as much of its work focuses on the Knesset.

**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?**

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

a. Yes, the people who are lobbied must take responsibility for being transparent. Although a politician is not responsible for making sure that the lobbyist is registered, he should cancel the appointment if it becomes clear that the lobbyist is not registered. Israeli MKs clearly admitted their need in lobbyists for providing the political intelligence and quality information (Veksler, 2011: 272), and one should not ignore the dynamics of the subtle MK/lobbyist relationship. Unless the MKs would prove their sincerity concerning promoting real transparency, the outcome will be merely symbolic. It always takes two to tango.

b. There are many ways to achieve more transparency. A former advisor to Bill Clinton, Lanny Davis (2008) suggested that in advance of every meeting with a policy-maker, every lobbyist visiting a member of Congress or the executive branch to influence official action should first be required to sign in on an online, real-time computer (and thus, immediately accessible to all via Internet). All information to be disclosed before the meeting should include the lobbyist's name, the client represented, the amount paid by month or year for lobbying, the specific purpose of the meeting, the position to be taken by the lobbyist, the legislation to be discussed, the action to be requested and the amount of current and prior campaign donations made by the client, the lobbyist and relatives associated with both. This demand would not be too burdensome as many lobbyists are used to billing their clients by the hour, similar to lawyers and consultants and they keep detailed accounts for their own purposes.

Another option to consider would be to prevent lobbyists from presenting MPs directly with position papers or other documents. Instead, such documents would have to be submitted first to the external agency staff and would be published on the Parliament's website.

With today's new technology available, one might consider making the registration badges of the lobbyists 'smart' adding a machine readable chip and enabling the geo-tagging of the badges.

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

Any individual in the public service should abdicate from his private position and not participate in exercising his/her authority when issues on the agenda touch matters that carry even the slightest possibility that his/her private interests would blend in and influence the decision making process. A mandatory declaration of interests which is publicly accessible would help create more awareness and to help avoid the possible conflict of interests.

**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?**

As mentioned earlier, any legislative act regulating lobbying should take into account the above mentioned loopholes in order to avoid the dilution effect that may thwart the very purpose of the lobbying regulations. Enhanced disclosure by individuals and organisations, in addition to well enforced Freedom of Information regime, would provide the pertinent information on who is lobbying whom and would definitely create a sufficient incentive for decision makers and legislators to be balanced in the views they seek, if properly enforced.

Regulators often wish to respond to a mischief before public concern dies down, while the memory of the disaster is still fresh. If the aim of the regulator is to maximise support via the manipulation of public opinion in the aftermath of legislative scandals, then the loopholes would be the natural outcome of such legislative initiatives.

Understanding the dilution effect of the loopholes and the subtle interaction of symbolic politics with the social regulations would help to ensure sufficient transparency to enable effective public scrutiny of lobbying.

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**E2: APPC (Association of Professional Political Consultants)**

This response by the APPC, which represents 80 public affairs consultancies, has been drafted in the short period between the Government's publication of a bill to establish a statutory register of consultant lobbyists and the deadline set by the Committee for responses to its paper.

By way of background, the APPC has been publishing a voluntary register of its members' clients for nearly 20 years. It oversees a code of conduct for its members, which is enforced by an independent disciplinary procedure outsourced to the Centre for Effective Dispute Resolution (CEDR). Together with the Chartered Institute of Public Relations (CIPR), the APPC supports the UK Public Affairs Council (UKPAC), which oversees a joint register.

We welcome this opportunity to respond to the Committee in writing and would be pleased to follow up this written submission with the provision of oral evidence. Our responses to the specific questions posed by the Committee are as follows.

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

Lobbying in itself is not a problem. To the contrary, the freedom for individuals and organisations to lobby Government and Parliament is a key feature distinguishing democracies from totalitarian societies. The right to lobby, or "petition for redress of grievance", in this country was established by Magna Carta. There is little evidence that abuse of lobbying is widespread or systemic. Transparency International, for example, reports that the UK is one of the world's countries where corruption is not commonplace. The civil service reforms of the 1970's have helped to ensure that it is rare for officials to become "captured" by external interests. There have been instances of inappropriate behaviour by politicians, but it is noteworthy that these have rarely involved real lobbyists as opposed to undercover journalists.

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

For its statutory register of lobbying the Government has proposed a strikingly narrow definition, covering only consultant lobbyists, whose business is predominantly lobbying and who themselves lobby Permanent Secretaries or senior Ministers. It seems to us to be a rather "Alice in Wonderland" proposal, where lobbying is what the Government says it is.

The Government justifies this narrow definition by asserting that it deals with the perceived problem of it not being clear on whose behalf consultant lobbyists are acting. We struggle to understand how politicians or officials with any ethical standards should be so incurious as to fail to ask on whose behalf the consultant lobbyist is lobbying.

It also suggests a failure by Government to understand what most third party lobbyists actually do, which is, almost invariably, to advise their clients on how to lobby, rather than to lobby themselves. We recently conducted a survey of all meetings with external stakeholders conducted by the Department for Business over a six-month period and found that only two out of 988 involved public affairs consultants. This suggests that the Government's proposed register would capture about 1% of those who lobby professionally (by which we mean anyone who undertakes non-constituency lobbying activity during the course of their paid employment, regardless of their primary duties). In our view, if there is to be a statutory register of lobbyists, it should cover all those who lobby professionally and offer professional advice on how to lobby.

Together with the Chartered Institute of Public Relations (CIPR) and the Public Relations Consultants Association (PRCA), we have recently offered the Cabinet Office a professionally drafted definition which would achieve this objective, while excluding constituency lobbying of MPs. This definition is attached in Annex 1.

Early indications from a survey of our 80 members suggest that most would not be obliged to register, if the wording of the Government's Bill remains unaltered. Ministers say that they expect some 700 consultants to register, but, in the light of our members' responses and other surveys, we think that this estimate is too high and lacks credibility.

Other concerns about the Bill expressed by members include the potential cost per member of registering (which is directly linked to the point above about how many consultants will register), the potential administrative burden involved in recording every communication with Ministers and Permanent Secretaries and the very wide discretion for the registrar to interpret what Ministers intend by using the word "insubstantial".

**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 long term?**

If the problem is defined as a lack of transparency about who is lobbying whom, we do not think that the proposed statutory register is likely to be sufficient. We have long advocated and continue to support a register that covers all those who lobby or advise on lobbying professionally. We are broadly supportive of the Political and Constitutional Reform Committee's proposals, save only that we think that the disclosure of issues would most efficiently and effectively be achieved by Ministerial disclosure of meetings with external stakeholders.

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

In our view, the focus should be on those that are likely to be lobbied. It is they who have the duty to act in the public interest and to deal with any conflicts of interest. While we have pioneered a publicly available register of clients and an independently enforced code of conduct for at least some of those who do the lobbying, politicians have not always taken their own responsibilities sufficiently seriously, as illustrated by some recent journalistic sting operations. We think that the rules of the House of Lords should be tightened to bring them into line with the rules of the House of Commons. We also think that the adviser to the Prime Minister on these issues should be free to initiate inquiries, rather than having to rely on an official request to investigate. We further think that Ministerial disclosure of meetings with external stakeholders should be more consistent and timely.

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

Our suggestions for changing the existing rules are outlined above.

**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?**

We think that Ministers, officials and Parliamentarians should all be guided by codes of conduct, based on the foundations of the principles for the conduct of public life established by your Committee. All of these codes should be supported by independent enforcement mechanisms.

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

We are not persuaded that the case for establishing an external regulator for lobbying has been made. We think that existing mechanisms are sufficient, providing that they are properly and consistently enforced. We would urge the Government to consider a suggestion made by the Political and Constitutional Reform Committee that the statutory register should include an indication of whether the individual or organisation registered is covered by an existing code of conduct, which would make it easier for a concerned stakeholder to make a complaint to the appropriate body.

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

The most powerful form of sanction is the power of publicity and both journalists and whistle blowers have key roles to play here. Beyond that we think that Ministers, officials and MPs should all be subject to independently enforced codes of conduct. Similarly, we think that all those who lobby professionally should be subject to independently enforced codes of conduct, such as our own (attached in Annex 2).

**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? If not, what are the impediments stopping such a process? How could it be monitored properly without leading to an increase in bureaucracy?**

Of course such an outcome is desirable. It should also be feasible, providing that all those who are involved understand their responsibilities and are alive to the likely negative consequences of failure. There may be scope for more training on the standards expected of the lobbied. It may be that your Committee and the Standards Committees of both Houses of Parliament could agree together on how they might best contribute to light touch monitoring.

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

Such awareness is largely a matter of common sense and should be part of the fabric of day-to-day activity. In grey areas there may be a need for some source of independent advice.

**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?**

A statutory register that covered all those who lobby professionally would provide the pertinent information. Decision makers and legislators should not require incentives to be balanced in the views they seek. We think that a statutory register of the kind that we have proposed, consistent and timely Ministerial disclosure of meetings with external stakeholders and the Freedom of Information regime would ensure sufficient transparency and accountability to enable effective public scrutiny of lobbying.

**ANNEX 1**

Definition of lobbying drafted on behalf of APPC, CIPR and PRCA and submitted to the Cabinet Office, April 2013

**ANNEX 2**

APPC Code of Conduct, July 2013

**Annex 1:****Definition of Lobbying**

- (1) A person who provides lobbying services must be registered.
- (2) In subsection (1) "lobbying services" means activities which are carried out in the course of a business for the purpose of—
  - (a) influencing government, or
  - (b) advising others how to influence government.
- (3) Activities are to be taken as having the purpose specified in subsection (2) if a reasonable person would assume, having regard to all the circumstances, that the activities were intended to have the effect described in subsection (2)(a) or (b).
- (4) In this section "government" includes, within the United Kingdom—
  - (a) central government, devolved government, local government,
  - (b) members and staff of either House of Parliament or of a devolved legislature,
  - (c) Ministers and officials, and
  - (d) public authorities (within the meaning of section 6 of the Human Rights Act 1998).
- (5) Subsection (1) does not apply to—
  - (a) anything done in response to or compliance with a court order,
  - (b) anything done for the purpose of complying with a requirement under an enactment,
  - (c) a public response to an invitation to submit information or evidence,
  - (d) a public response to a government consultation exercise,
  - (e) a formal response to a public invitation to tender,
  - (f) anything done by a person acting in an official capacity on behalf of a government organisation, or
  - (g) an individual who makes representations solely on his or her own behalf.
- (6) In subsection (2) "influencing" includes informing; but making information or opinions public (for example, by way of advertisements or attributed articles in a newspaper) is not the provision of lobbying services.
- (7) In this section—
  - (a) "business" includes any undertaking, including charitable and not-for-profit undertakings; and
  - (b) services provided by or on behalf of an undertaking are provided "in the course of a business", even if the persons providing the services are acting on a pro bono, volunteer or not-for-profit basis.



(8) Subsection (1) applies whether a person is acting—

- (a) on behalf of a client,
- (b) on behalf of an employer,
- (c) as a volunteer on behalf of a charitable or other organisation, or
- (d) on the person's own behalf (subject to subsection (5)(g));

but the Secretary of State may by regulations made by statutory instrument permit persons who provide lobbying services on behalf of an organisation (in any capacity) to rely on the organisation's registration.

(9) The Secretary of State may by regulations made by statutory instrument provide that a person does not contravene subsection (1) by providing lobbying services without being registered, provided that the person becomes registered within a specified period beginning with the first date on which those services were provided.

## **Annex 2:**

association of professional

### **political consultants**

## **CODE OF CONDUCT**

### **PREAMBLE**

This Code of Conduct covers the activities of regulated political practitioners (defined as APPC members and their political practitioners) in relation to all UK institutions of Government. This Code applies equally to all clients, whether or not fee-paying.

It is a condition of membership of APPC that the member and its political practitioners will accept and agree to abide by this Code and that members will be jointly and severally liable for the actions of their political practitioners in relation to the Code. Regulated political practitioners are required to endorse the Code and to adopt and observe the principles and duties set out in it in relation to their business dealings with clients and with institutions of government.

Other conditions of membership of APPC include:

- Undertaking an annual compliance procedure in respect of the Code
- Being bound by the terms of the APPC Complaints & Disciplinary Rules and Procedures
- Providing four times a year to APPC the names of all clients and political practitioners during the previous three months for publication in the APPC Register

The Code of Conduct applies the principles that political practitioners should be open and transparent in their dealings with parliamentarians or representatives of institutions of government; and that there should be no financial relationship between them. APPC members are determined to act at all times with the highest standards of integrity and in a professional and ethical manner reflecting the principles applied by this Code. In the view of APPC, it is inappropriate for a person to be both a legislator and a political practitioner.

### **DEFINITIONS**

"Political practitioner" means a person offering public affairs services to a client on behalf of a member, or to an employer, whether that person is employed, full or part-time, or freelance or an intern, or to an employer.

“Institutions of Government” mean all United Kingdom, English, Welsh, Scottish and Northern Ireland central, regional and local government bodies and agencies, public bodies and political parties.

“Public affairs services” means offering any advice, representation, research, monitoring or administrative assistance) predominantly related to UK institutions of government or undertaking work of an advisory nature related to institutions of UK government.

### **THE CODE OF CONDUCT**

In pursuance of the principles in this Code, political practitioners are required to adhere to this Code in its entirety in order to ensure that the reputation of the Association or the profession of political consultancy is not brought into disrepute.

1. Political practitioners must act with honesty towards clients and the institutions of government.
2. Political practitioners must use reasonable endeavours to satisfy themselves of the truth and accuracy of all statements made or information provided to clients or by or on behalf of clients to institutions of government.
3. In making representations to the institutions of government, political practitioners must be open in disclosing the identity of their clients and must not misrepresent their interests.
4. Political practitioners must advise clients where their activities to deliberately and intentionally interact with the institutions of government may be illegal, unethical or contrary to professional practice, and to refuse to act for a client in pursuance of any such activity.
5. Political practitioners must not make misleading, exaggerated or extravagant claims to clients about, or otherwise misrepresent, the nature or extent of their access to institutions of government or to political parties or to persons in those institutions.
6. Save for entertainment and token business mementoes, political practitioners must not offer or give, or cause a client to offer or give, any financial or other incentive to any member of representative of an institution of government, whether elected, appointed or co-opted, that could be construed in any way as a bribe or solicitation of favour. Political practitioners must not accept any financial or other incentive, from whatever source, that could be construed in any way as a bribe or solicitation of favour.
7. Political practitioners must not:
  - Employ any MP, MEP, sitting Peer or any member of the Scottish Parliament or the National Assembly of Wales or the Northern Ireland Assembly or the Greater London Authority;
  - Make any award or payment in money or in kind (including equity in a member firm) to any MP, MEP, sitting Peer or to any member of the Scottish Parliament or the National Assembly of Wales or the Northern Ireland Assembly or the Greater London Authority, or to connected persons or persons acting on their account directly or through third parties.

8. Political practitioners must ensure that they do not benefit unreasonably by actions of any third party that, if undertaken by the consultant, would be considered a breach of the Code.

9. Political practitioners must comply with any statute, any resolution of an institution of government and with the adopted recommendations of the Committee on Standards in Public Life in relation to payments to a political party in any part of the United Kingdom.

10. Political practitioners who are also local authority councillors are prohibited from working on a client assignment of which the objective is to influence a decision of the local authority on which they serve. This restriction also applies to political practitioners who are members of Regional Assemblies, Regional Development Agencies or other public bodies.

11. Political practitioners must keep strictly separate from their duties and activities as political practitioners any personal activity or involvement on behalf of a political party, including as an office holder or candidate for office.

12. Political practitioners must abide by the rules and conventions for the obtaining, distribution and release of documents published by institutions of government

13. Political practitioners must not hold any pass conferring entitlement to access to the Palace of Westminster, to the premises of the Scottish Parliament or the National Assembly of Wales or the Northern Ireland Assembly or the Greater London Authority or any department or agency of government. The only exceptions are:

- Where the relevant institution is a client of the political practitioner and requires the political practitioner to hold a pass to enter their premises.
- Where the political practitioner holds a pass as a spouse or civil partner of a member or as a former member of the relevant institution, in which case the pass must never be used whilst the practitioner is acting in a professional capacity.

14. Political practitioners must conduct themselves in accordance with the rules of any institution of government while within their precincts, and otherwise.

15. Political practitioners must always abide by the internal rules on declaration and handling of interests laid down by any public body on which they serve.

16. Political practitioners must not exploit public servants or abuse the facilities of institutions of central, regional or local government within the UK.

17. Members must disclose the names of all their clients and practitioners in the APPC Register. A member providing secretariat or other services for an All-Party Parliamentary Group must list that APPG as a client, together with the name(s) of the APPG's funder(s) and any associated organisation(s).

18. In all their activities and dealings, political practitioners must be at all times aware of the importance of their observance of the principles and duties set out in this Code for the protection and maintenance of their own reputation, the good name and success of their business, and the standing of the profession as a whole.

**E3: Bar Standards Board****Committee on Standards in Public Life – call for evidence on transparency around lobbying**

Thank you for offering the Bar Standards Board the opportunity to respond to your questions regarding lobbying as a “significant and continuing risk to ethical standards”.

As a relatively small regulator of 15,000+ barristers, we do not have a significant evidence base on which to answer the specific questions you have posed. I do not propose therefore to answer the questions as such but I would offer the following observations.

We consider it important to focus the finding of solutions to the issues raised on those who are likely to be lobbied. That is the basis of our own risk-mitigation strategies in this regard. We have a comprehensive set of policies around Board and committee member and senior staff behaviour. These cover the typical ground of interest and hospitality declarations, and other transparency and accountability requirements you would expect to see in an organisation publicly committed to “Nolan” principles. We have mechanisms in place to ensure that these are observed and updated, but we do of course also rely on the personal integrity of those we appoint. Increasingly, we are aware that the public’s perception of our independence and transparency is as important as simply having the systems in place to ensure and assure those attributes.

I hope these comments are helpful. We will watch the progress of this debate with interest.

Yours sincerely

**Dr Vanessa Davies**  
**Director, Bar Standards Board**

**E4: British Medical Association****Transparency and Lobbying**

The British Medical Association (BMA) is an independent trade union and voluntary professional association which represents doctors from all branches of medicine all over the UK. It has a total membership of over 150,000. The BMA is an apolitical trade union and adheres to a number of regulations and standards under The Trade Union and Labour Relations (Consolidation) Act 1992 as amended by the Employment relations Act 1999.

We have considered the questions in the Committee's call for evidence and feel that we are unable to provide a detailed response to the inquiry. Most of the Committee's questions cover areas which are beyond our expertise to give an informed view.

However, we would like to draw the Committee's attention to our view that trade union activity should not be considered lobbying. As a trade union, the BMA often meets, either by telephone or at face-to-face meetings with Ministers and Government officials for the purposes of negotiating contractual issues. These meetings are attended by elected members and secretariat staff. Negotiating activities with Ministers and Government officials should not be defined as lobbying as they are completely separate and different activities, which are part of the routine work of a trade union.

Yours sincerely

**Michelle Dixon**  
**Director of Communications, BMA**

## **E5: British Retail Consortium**

### **Transparency and Lobbying – BRC Response**

The British Retail Consortium (BRC) is the leading voice of the retail sector, representing small and independent stores through to the large multiples, selling food and non-food products and services, and operating on the High Street, out of town, in community and rural shops and online.

We welcome the opportunity to feed into this important debate on the future of lobbying and the proposed statutory register of lobbyists.

### **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?**

The BRC is supportive of the aim of achieving greater transparency in government decision making, both to ensure all views are given a proper weight and to secure full public confidence in the decision making process.

We believe that organisations such as trade associations and other representative bodies make important and valuable contributions to the quality of government decision making, providing supplementary evidence, expert advice and information on how proposals will impact on business and the economy. This evidence is essential in ensuring proportionate, well targeted and outcome focused legislation, minimising financial burdens whilst maximising social, environmental and other benefits to society.

While we acknowledge that there have been cases of abuse of lobbying privileges, this has been shown to be the exception and not the rule.

### **How wide should the definition of lobbying be? What activities should be excluded from the definition?**

We believe that it is essential to keep in mind the main objective i.e. the desire to increase transparency when deciding which organisations and individuals to whom the legislation should apply. We agree with the approach in the current proposed legislation that any individual or organisation clearly representing themselves or the interests of a defined class or membership should be excluded from the register. This would include businesses' in-house teams, civic groups, trade associations and other levels of government.

The BRC agrees that the proposed register should be restricted to individuals and organisations acting on behalf of third parties on a commercial or 'client' basis, where the identity of the beneficiary of the lobbying activity would not otherwise be transparent.

### **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?**

We believe that the current proposed legislation is sufficient and would have concerns should the scope widen to include trade associations or in-house public affairs officers. It is clear that associations such as the BRC represent their sectors. We operate with complete transparency, publishing our membership on our website. We consider there is nothing to be gained from imposing additional requirements on small, low cost and single purpose operations such as ourselves.

## **E6: Chartered Institute of Journalists**

The Chartered Institute of Journalists (CIJ) is the world's oldest professional association of journalists and operates under a Charter granted in 1890 by HM Queen Victoria. We represent staff and freelance journalists across all sectors of the media including local and national newspapers, periodicals, broadcasting and electronic publishing.

The Institute prides itself in being non-party political and normally expresses opinions only on matters that relate directly to our profession and industry or to our members. However, in recent months we have become increasingly concerned that one secretive lobbying group has been allowed unprecedented access to very senior politicians with a view to influencing regulation of the Press.

We therefore respectfully submit our views to the Committee in the hope that we can highlight the obvious hypocrisy of leading politicians whose pronouncements on lobbying are at odds with the way they behave.

In a democracy, it is vital that both individuals and organisations – such as pressure groups, companies and professional lobbyists acting on their behalf – should have access to law and policymakers to try to influence their decisions.

Lobbying of MPs, whether ministers or backbenchers, or government departments is not, in itself, a problem.

It does become a problem when:

- 1) It is not done openly: as a result, the public does not know who is trying to exert influence on law and policymakers;
- 2) Some lobbying organisations are given privileged access to the corridors of power, thus gaining a massively unfair advantage over rivals.

A prime example of both of these problems is the lobby-group Hacked Off.

Although Hacked Off has a well-known public face in people such as Hugh Grant, Francis Wheen, Lord Fowler, and the parents of Milly Dowler, many of those who give it its intellectual weight and, more importantly, funding, remain in the shadows.

Bizarrely for an organisation which claims to campaign for openness and transparency, Hacked Off is very secretive, to the extent of refusing to name its financial backers to the Commons Select Committee on Culture, Media and Sport.

So the public is largely in the dark about who is really behind an organisation that very quickly came from nowhere to become one of the most successful lobbying groups of recent years.

Even more worrying, is that despite this obsessive secrecy, Hacked Off was given privileged access to senior politicians, allowed to few, if any, other lobbyists, when it was invited to send four representatives to the secret, late-night meeting which drew up plans for a new regulatory regime for the press.

This meeting, also attended by representatives of both Coalition parties and Labour leader Ed Miliband, rubber stamped plans for a Royal Charter, which many believe will have serious consequences for both press freedom and democracy in the UK.

Organisations representing journalists, such as the CloJ, or the newspaper industry, were not allowed take part.

Exactly why so many members of a private organisation were allowed to attend this meeting – which Conservative MP Conor Burns condemned as a “grubby” deal – has never been satisfactorily explained. The close, and we would argue unhealthy, relationship between senior parliamentarians and Hacked Off has come to light thanks to the work of national newspaper journalists.

For the record, the CloJ wrote to Messrs Cameron, Clegg and Miliband six weeks ago expressing concern that their parties had allowed a secretive private interest group to take part in such an important policymaking meeting and requesting that such ties with Hacked Off be severed. We have yet to receive a substantive reply from any of the parties. We infer from this refusal to address our concerns that the party leaders realise that such contact is detrimental to the public interest and are embarrassed by it, and that such unduly privileged contact continues.

It is unlikely that this is the only example of secretive deals being hatched between lawmakers and private organisations seeking to further their private, usually commercial, interests, which will often run counter to what is in the public interest.

This fear is fueled by recent speculation over whether the Conservative Party’s “political strategist” Lynton Crosby and/or his lobbying firm, which has Philip Morris International as a client, played a part in the Government abandoning of plans to impose plain packaging on the tobacco industry.

The CloJ believes that:

- 1) All organisations involved in lobbying ministers, backbench MPs, government departments, ministerial advisors, and civil servants on lawmaking and/or issues of public policy should be named on a public register. This should include, although not be restricted to, pressure groups, charities, trades unions, professional associations, trade bodies, and companies. Where a company lobbies on behalf of clients, rather than in its own interests, its register entry should include a full list of its clients and the fields in which they are active.
- 2) All contact between registered lobbyists and ministers, backbench MPs, government departments, ministerial advisors, and civil servants should be immediately logged, the log to be made available to the public, and minutes of such meetings be published at the earliest opportunity.
- 3) No parliamentarian should have any paid role within a lobbying organisation while active in Parliament or for five years after leaving Parliament. The same should apply to government advisors, other civil servants, and those employed by official regulators such as Ofcom, the IPCC etc.

In early 2010, David Cameron declared: “[Lobbying] is the next big scandal waiting to happen. It’s an issue that crosses party lines and has tainted our politics for too long, an issue that exposes the far-too-cosy relationship between politics, government, business and money.”



More than three years on, moves to regulate the lobbying industry are only just beginning, and the CloJ would argue that the scandal of which Mr Cameron warned has already occurred, not least in the case of Hacked Off.

Lobbying is still essentially an unregulated free-for-all in the UK.

The CloJ contrasts this situation with that in the USA where, according to Ken Vogel of the Politico newspaper in Washington: "For the most part, lobbyists and lobbying are heavily regulated.

"They have to report exactly how much money they have spent on various types of lobbying: on ads, and on campaign contributions.

"And, this is something that is very closely watched -- both by us here in the media, and by self-appointed ethics watchdog groups out there in Washington, who, if they see anything that sort of smells funny, or gives any kind of a look of impropriety of the sale of legislation or the sale of influence, they will pounce.

"And, it will become a potentially detrimental issue for any of the public officials who are involved."

**E7: Chartered Institute of Public Relations**Chartered Institute of Public Relations Response to Committee on Standards in Public LifeLobbying: Issues and Questions PaperAbout the Chartered Institute of Public Relations

The Chartered Institute of Public Relations (CIPR) is the professional body for public relations practitioners in the UK. With over 10,000 members involved in all aspects of public relations, it is the largest body of its kind in Europe. The CIPR advances the public relations profession in the UK by making its members accountable through a [code of conduct](#), developing best practice, representing its members and raising standards through professional development. The CIPR, through the PR Academy, provides the [CIPR Public Affairs Diploma](#), a professional qualification specific to lobbying.

The CIPR has several sectoral groups, the largest of which is the CIPR Public Affairs Group. It has more than 890 members and is made up of communications professionals who have regular dealings with Government, or the institutions of Government, in its very widest sense. The Group meets regularly to discuss key issues relating to UK politics – including any potential statutory register of lobbyists.

The CIPR, along with the Association of Professional Political Consultants (APPC) and the Public Relations Consultants Association (PRCA), founded the [UK Public Affairs Council](#) (UKPAC) after a recommendation from the House of Commons Public Administration Select Committee for a public register of lobbyists. (The PRCA resigned as a member of UKPAC in December 2011). Each member body in UKPAC (currently APPC and CIPR) has a code of conduct to which its members must adhere and a disciplinary process to be used in the event of any breach of its code. Members of the APPC and CIPR that meet the UKPAC definition of lobbying are required to register.

**Annex 1:****Definition of Lobbying**

- (1) A person who provides lobbying services must be registered.
- (2) In subsection (1) “lobbying services” means activities which are carried out in the course of a business for the purpose of—
  - (a) influencing government, or
  - (b) advising others how to influence government.
- (3) Activities are to be taken as having the purpose specified in subsection (2) if a reasonable person would assume, having regard to all the circumstances, that the activities were intended to have the effect described in subsection (2) (a) or (b).
- (4) In this section “government” includes, within the United Kingdom—
  - (a) central government, devolved government, local government,
  - (b) members and staff of either House of Parliament or of a devolved legislature,
  - (c) Ministers and officials, and
  - (d) public authorities (within the meaning of section 6 of the Human Rights Act 1998).
- (5) Subsection (1) does not apply to—
  - (a) anything done in response to or compliance with a court order,
  - (b) anything done for the purpose of complying with a requirement under an enactment,
  - (c) a public response to an invitation to submit information or evidence,
  - (d) a public response to a government consultation exercise,
  - (e) a formal response to a public invitation to tender,
  - (f) anything done by a person acting in an official capacity on behalf of a government organisation, or
  - (g) an individual who makes representations solely on his or her own behalf.
- (6) In subsection (2) “influencing” includes informing; but making information or opinions public (for example, by way of advertisements or attributed articles in a newspaper) is not the provision of lobbying services.
- (7) In this section—
  - (a) “business” includes any undertaking, including charitable and not-for-profit undertakings; and

(b) services provided by or on behalf of an undertaking are provided “in the course of a business”, even if the persons providing the services are acting on a pro bono, volunteer or not-for-profit basis.

- (8) Subsection (1) applies whether a person is acting—
- (a) on behalf of a client,
  - (b) on behalf of an employer,
  - (c) as a volunteer on behalf of a charitable or other organisation, or
  - (d) on the person’s own behalf (subject to subsection (5)(g));

but the Secretary of State may by regulations made by statutory instrument permit persons who provide lobbying services on behalf of an organisation (in any capacity) to rely on the organisation’s registration.

- (9) The Secretary of State may by regulations made by statutory instrument provide that a person does not contravene subsection (1) by providing lobbying services without being registered, provided that the person becomes registered within a specified period beginning with the first date on which those services were provided.

## **E8: City of London Law Society**

### **Professional Rules & Regulation Committee response to Committee on Standards in Public Life consultation “LOBBYING: Issues and Questions Paper”**

The City of London Law Society (“CLLS”) represents approximately 15,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi jurisdictional legal issues. The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees. This response in respect of the Committee on Standards in Public Life Consultation on lobbying has been prepared by the CLLS Professional Rules and Regulation Committee.

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#### **Executive summary**

- Adopting a blanket statutory register of lobbyists will aggregate those that are already highly regulated in relation to lobbying activities and those that are not.
- For those that are regulated, such as solicitors, their law firms and their employees (who are bound by Solicitors Regulation Authority (“SRA”) regulation), the initiative may create overlapping, and potentially contradictory, regulatory regimes. It may also have the effect of stifling productive, even essential, dialogue between legislators and those who consider the implications and practicalities of relevant legislation on a day-to-day basis.
- Regulatory overlap is important not just in terms of causing confusion but also because of the risk that it may undermine a regulatory objective of the Legal Services Act 2007 (“the Act”), namely the encouragement of an independent, strong, diverse and effective legal profession.
- In considering regulation in this area, we would caution against adopting a definition of lobbyists that is so wide as to capture lawyers providing legal advice to clients.
- If a Statutory Register of lobbyists were to be set up, there should be a *de minimis* rule so that only those who are meaningfully engaged in lobbying i.e. those devoting more than 20% of their time to the activity should be required to register. This is currently how the system operates in the United States and similar rules apply in Canada.
- Requirements for solicitors to disclose details of their clients and matters would raise substantial concerns. Clients have a right to seek confidential help from a lawyer and, again, it is a professional principle set out in the Act and enshrined in SRA regulation that the affairs of clients should be kept confidential.

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#### **Introductory comments**

The CLLS welcomes the opportunity to comment on the consultation on lobbying by the Committee on Standards in Public Life.

Before responding to the questions set out in the consultation, it is useful to bear in mind the role played in society by lawyers and their law firms, the framework within which lawyers operate and the rules to which they adhere.

All solicitors and their law firms are regulated by the SRA and bound by the SRA Code of Conduct (“SCC”). The primary duty of solicitors and law firms is to represent their clients’ interests faithfully but in compliance with applicable professional and ethical rules and obligations. Again reflecting the requirements of the Act, there is ample regulation which applies to solicitors and their law firms and which ensures they would not mislead public officials. For example, two of the fundamental principles in the SCC are that each solicitor must:

- act with integrity, and
- behave in a way that maintains the trust the public places in the solicitor and the provision of legal services.

In addition, it is a requirement that a solicitor must "not take unfair advantage of third parties in either [his/her] professional or personal capacity".

These rules are enforced through far reaching disciplinary measures and sanctions, which include withdrawal of a solicitor's right to practise and fines.

In April 2012, we responded to the Government's consultation on the introduction of a statutory register of lobbyists. We attach a copy of that response. We would like to draw particular attention to comments we made in that response to particular ways solicitors practise and which, in our view, should *not* be caught by any statutory register. These are to be found in particular in paragraphs 1.7 and 2.7 to 2.11.

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### **Responses to specific questions**

***Question 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?***

We are not aware of compelling evidence to suggest that lobbying abuse is widespread generally, but particularly not in the case of solicitors or their law firms. For example, we have not been able to identify a single case involving lobbying activities before the Solicitors Disciplinary Tribunal in the last ten years. Given the onerous and negative implications of regulation for those who are acting appropriately in their lobbying work, we think that such evidence should be clearly demonstrated as a condition of moving forward with new regulation.

***Question 2: How wide should the definition of lobbying be? What activities should be excluded from the definition?***

The definition of lobbying should not include activities of law firms, in particular when providing clients with legal advice. In Australia, there is an exemption from the register of lobbyists for members of professions who make occasional representations to Government on behalf of others in a way that is incidental to the provision of their professional or other services. We would strongly argue that the UK should follow that approach. It follows that we would accept that a law firm which has lobbying as a substantial portion of its business should not be exempt.

Adopting a wide definition of lobbying may have negative repercussions more generally. As the Committee says in paragraph 3 of its paper, lawyers and others provide a vital role in testing the practicality of legislation through informed argument. If lawyers were inhibited in engaging with policy makers to clarify the meaning of the law or of proposed legislation (or policy) we feel, given the points made above about the stringent regulation that applies to the conduct of lawyers in this area, this would result in a net disadvantage to the country.

***Question 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?***

As noted above, we have not been presented with compelling evidence as to the width or precise nature of the problem, in particular in relation to the activities of solicitors.

However, were it to be demonstrated that solicitors were involved in inappropriate lobbying behaviour, we would advocate addressing the issue by means of the SRA rather than by creating overlapping and potentially contradictory regulation. We are concerned that broad brush regulatory initiatives, which, at

least in relation to the legal profession, do not seem to be justified by reference to identified problems, have the potential to create confusion and uncertainty as well as costly red tape.

**Question 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?*

Were further regulation to be justified, there may be a benefit in looking at the actions of those who are being lobbied. A person may receive lobbying from a variety of different sources. We would argue that, to the extent that lawyers are a source, there is no need for further regulation but we acknowledge that the degree of regulation of those carrying out lobbying is likely to vary. There may therefore be a value in considering the conduct of the recipient as a common denominator.

However any rules must protect the ability of lawyers to engage with ministers and others on behalf of anonymous clients.

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

With reference to City solicitors, who we represent, our existing professional conduct rules in conjunction with the general law are sufficient and little purpose would be served in additional overlapping regulatory regimes.

As set out in our introductory comments, all solicitors and their law firms are regulated by the SRA and bound by the SCC. The primary duty of solicitors and law firms is to represent their clients' interests faithfully, but in compliance with applicable professional and ethical rules and obligations. Reflecting the requirements of the Act, there is ample regulation which applies to solicitors and their law firms which ensures they would not mislead public officials. For example, two of the fundamental principles in the SCC are that each solicitor must:

- act with integrity, and
- behave in a way that maintains the trust the public places in the solicitor and the provision of legal services.

In addition, it is a requirement that a solicitor must "not take unfair advantage of third parties in either [his/her] professional or personal capacity".

These rules are enforced through far reaching disciplinary measures and sanctions, which include withdrawal of a solicitor's right to practise and fines.

**Question 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?*

We have no comment on this.

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

We would point out, as we have above, that any solicitors who engage in lobbying on behalf of clients are already subject to very stringent regulation. This may well also be the case for other professionals. The Law Society and the SRA are responsible for the regulation of solicitors and their law firms and there is real risk of regulatory overlap if a regulator responsible for the operation of a Statutory Register were to become involved in regulating the activities of the legal profession. As well as being unnecessarily expensive, we would argue that duplicating regulation has the possibility to undermine some of the regulatory objectives regarding lawyer independence and client protection enshrined in the Act.

A variation of this point was made by the CCBE in its General Response to the European Commission Consultation on the Transparency Register:

*"It would be inconceivable for a public authority to have the power to impose sanctions on a lawyer as that would be inconsistent with the principle of professional self-regulation, and of independence of the members of the legal profession towards public authorities. This principle is based on the consideration that lawyers may oppose such authorities to defend clients who are in a dispute with them, and that one could not conceive, in a democratic society, that lawyers may suffer any pressure from public authorities against which they may have to act or even that there could be the slightest suspicion that any such pressure could be exerted."*

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

Further clarity is required on the particular activities that might be sanctioned. There is already a body of criminal law (for example, anti-bribery and fraud offences) that might be deployed in egregious cases. Further, in the event of inappropriate behaviour by a solicitor (or his or her employee), the SRA would already be able to invoke far reaching disciplinary measures and sanctions, which include withdrawal of a solicitor's right to practise as well as fines.

Any sanctions against lawyers should be applied by the SRA. It would not be appropriate for another organisation specific to a Statutory Register to become involved in the regulation of the legal profession.

**Question 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?*

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

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

We have no comment on this.

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

There may be some technical or procedural steps that could be taken to better track potential conflicts of interest. Solicitors have a regulatory obligation not only to avoid acting for a client if there is an actual or potential conflict of interest with regard to another client, but also to maintain adequate systems and processes to avoid conflicts.

However equally effective might be an educational programme conducted within Government departments or other relevant units in order to raise awareness of conflict issues and to sensitise staff to the potential risks. Training might be particularly helpful in enabling those being lobbied to take a wider perspective and to consider how their actions and relationships might be viewed by a third party. Again, as well as looking at client relationships, solicitors are trained to consider whether their ability to act in the best interests of their client(s) is impaired by, for example, any financial interest, a personal relationship, a commercial relationship or the lawyer's appointment (or the appointment of a family member) to public office.

**Question 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?*

As we have argued above, a requirement for disclosure may have consequences in terms of limiting the extent of potentially valuable communication that may take place between a lawyer acting on behalf of clients and those formulating law or policy. If they cannot safeguard the identity of clients who do not wish to be identified, lawyers will simply not be able to engage with policy makers without being in breach of stringent professional regulation regarding the confidentiality of client affairs.



Public disclosure, as opposed to direct disclosure to an interlocutor, presents specific issues. In practice, when a lawyer contacts a Government representative or elected official on a matter that involves more than simply receiving general information, the client's identity may well be given. When such contacts are made in relation to sensitive matters, the relevant degree of disclosure is likely to be approved by the client on the understanding of confidentiality. If that commitment cannot be made by the party being lobbied, helpful communications may be stifled.

#### **Annex 1:**

##### **CLLS RESPONSE TO HMG CONSULTATION ON INTRODUCING A STATUTORY REGISTER OF LOBBYISTS**

The City of London Law Society ("CLLS") represents approximately 15,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi jurisdictional legal issues. The CLLS responds to a variety of consultations on issues of importance to its members through its 18 specialist committees. This response in respect of the HMG Consultation on Introducing a Statutory Register of Lobbyists has been prepared by the CLLS Professional Rules and Regulation Committee.

##### **EXECUTIVE SUMMARY**

- A UK Statutory Register of Lobbyists must not in any way interfere with the relationship between a lawyer and his or her client, or the right to legal representation.
- The legal profession is highly regulated. The regulatory structure was established by the Legal Services Act 2007. That is based on 8 "regulatory objectives", one of which is to "promote and maintain adherence to the professional principles". One of the 5 professional principles is that "the affairs of clients should be kept confidential".
- The front line regulator for solicitors is the Solicitors Regulation Authority ("the SRA") and all employees in UK law firms (not just solicitors) are bound by the SRA Code of Conduct (SCC). The SCC also requires solicitors to keep the affairs of their clients confidential.
- For solicitors, the fact that you act for a specific client is, of itself, confidential. If the proposed Statutory Register is to apply to solicitors, its effect is inconsistent with one of the fundamental tenets of the regulatory regime for solicitors established by parliament.
- There is ample existing regulation of solicitors which ensures that they will not mislead government officials, act in an underhand manner or take advantage of third parties. A further layer of regulation for what is already a heavily regulated profession is unnecessary.
- We caution against adopting a definition of categories of lobbyists similar to the EU Transparency Register. Only one or two City law firms in London have registered with the EU system because of the difficulty of complying.
- The business of law firms is providing clients with legal advice. Occasional policy work and lobbying are incidental to the other professional services of lawyers. A UK Statutory Register of Lobbyists should therefore exempt firms regulated by the SRA. This is currently the case in the Australian system.

- If a UK Statutory Register of Lobbyists does apply to the legal profession, there should be a *de minimis* rule, i.e. only those lawyers who devote more than, say 20%, of their time lobbying should be required to register. This is currently how the system operates in the United States. Similarly, Canada refers to 'a significant part' of a person's duties as a means of identifying who should be captured by the register.
- In any event, lobbying activities carried out by law firms as employers and businesses in their own right (in-house lobbying) should not be captured. Similarly, responding to HMG / public consultation papers or to HMG etc requests for information (or helping clients to do so) should not be caught by the definition of lobbying.
- If SRA regulated lawyers are included in the register, it should be the SRA that is responsible for setting up and managing the register as it applies to lawyers. It would not be appropriate for another organisation specific to the new register to become involved in the regulation of the legal profession.
- There should be no financial disclosure about confidential commercial information such as fees.
- There should be no criminal sanctions for failure to register.
- Any UK Statutory Register of Lobbyists must comply with the relevant provisions of the EU Services Directive.

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## 1. SPECIFICITY OF THE LEGAL PROFESSION

1.1 The City of London Law Society welcomes the opportunity to comment on the Government's proposals for a register of lobbyists.

1.2 We welcome the statement that the register is not intended to capture or deter a range of activity that is essential to a vibrant democracy. In addition, the register must not in any way interfere with the relationship between a lawyer and his or her client, or the right to legal representation.

1.3 Solicitors are fiduciaries, as a result of which they have legal duties, one of which is the duty of confidentiality. In contrast, others involved in lobbying are unlikely to be fiduciaries. The importance of confidentiality is reflected in the exhaustive regulatory structure which governs the conduct of solicitors. Client confidentiality is one of the five fundamental "professional principles" which the Legal Services Act 2007 set as a "regulatory objective". (See clause 1 of Part 1 of the Act).

1.4 In addition, all solicitors are regulated by the SRA and bound by the SRA Code of Conduct (SCC). The primary duty of solicitors and law firms is to comply with the professional and ethical rules and obligations that govern their activities. The SCC includes, among other things, mandatory principles on upholding the rule of law and proper administration of justice; acting with integrity and independence; and not behaving in a way that is likely to diminish the trust the public places in him / her and the provision of legal services. These rules are enforced through disciplinary measures and sanctions, such as withdrawing a solicitor's right to practise or imposing fines.

1.5 The proposals on public disclosure present specific difficulties for law firms. Clients who are represented by a solicitor have a right to confidentiality. Solicitors and law firms are bound not only by fiduciary duties at common law but also by Chapter 4 of SCC to protect the confidentiality of the affairs of clients: 'you must... keep the affairs of clients confidential'. This rule of confidentiality is fundamental to the rights of clients and the duties of lawyers in a democratic society. It is underpinned by the Legal

Services Act and the regulatory regime which parliament has superimposed on solicitors. Obligations under the SCC extend to the law firm as a whole and all its employees (in the UK), which will include non-lawyers.

1.6 We question the appropriateness of a system that would in effect either oblige lawyers' clients to accept disclosure or oblige lawyers to refuse to represent clients who did not.

1.7 Public disclosure, as opposed to direct disclosure to an interlocutor, presents specific issues. In practice, whether in the context of interest representation or other client work, when a lawyer contacts a Government representative or elected official on a matter that involves more than simply receiving general information, the client's identity may well be given. When such contacts are made in relation to sensitive matters, the relevant degree of disclosure can be made on the understanding of confidentiality. Clients will almost always consent to such disclosure, and when they do not, lawyers should be able to explain to their interlocutor why not. Lawyers should also advise their clients on the necessity or appropriateness of such disclosure.

1.8 There is ample regulation which applies to solicitors and which ensures they would not mislead any governmental official. For example, two of the fundamental principles in the SCC are that each solicitor must:

☐ act with integrity, and

☐ behave in a way that maintains the trust the public places in [the solicitor] and the provision of legal services.

In addition, Outcome 11.1 provides that a solicitor must "not take unfair advantage of third parties in either [his/her] professional or personal capacity".

## 2. DEFINITIONS

2.1 The Consultation Paper does not put forward a specific definition of lobbying. However, unless such a definition is very tightly worded, it will inevitably include some activities which may be conducted by a solicitor, even though the primary business of law firms is providing clients with legal advice.

2.2 Occasional policy work and lobbying are incidental to the other professional services of lawyers. There is already an extensive statutory regulatory regime for legal practitioners (and non-qualified staff working with them) engaging in legal practice in the United Kingdom and little purpose would be served in providing further overlapping regulatory regimes.

2.3 There should therefore be an exemption from the register for the legal profession. This is currently the case under the system in place in Australia.

2.4 If the Government decides that a UK Statutory Register of Lobbyists *should* include the legal profession, applying a *de minimis* rule might offer a pragmatic way forward. According to a *de minimis* rule, only those lawyers who devote more than, say, 20% of their time would be required to register. This is currently how the system operates in the United States. Similarly, Canada refers to 'a significant part' of a person's duties as a means of identifying who should be captured by the register.

2.5 Such a solution would help to ensure that those law firms whose lobbying activities are of a relatively insignificant nature, would not be covered. We believe this will assist in meeting requirements of proportionality and remove an unnecessary administrative and regulatory burden that would otherwise be imposed on businesses whose activities are not primarily targeted by the Government's proposals.

### Activities to exempt

2.6 Regardless of whether a *de minimis* rule is applied, certain preparatory activities must still be exempt from the register if there is a reasonable prospect that such activity may lead to proceedings before any of the following:

2.6.1 a court;

2.6.2 another judicial or quasi-judicial forum; or

2.6.3 alternative dispute resolution.

2.7 The representation of a client in the context of, for instance, a planning committee or inquiry should *not* be captured by the proposal.

2.8 Activities carried out by a law firm to clarify the meaning of the law or of proposed legislation (or policy) should *not* be captured. This will usually be carried out with a view to advising a client on his or her legal position and would not normally involve an attempt to influence the policy objectives of decision-makers. There is added value to law firms engaging with the Government on technical legal matters. This is best explained by reference to examples in the area of tax law. It is a stated aim of HMRC to encourage dialogue with taxpayers, especially the large corporates whom CLLS member firms act for, to ensure that tax law is fit for purpose. HMRC understand that there are circumstances where taxpayers do not wish to be identified individually but legitimately wish to explore the meaning and intent of the existing or draft legislation and the interpretation that HMRC put on it. As a result of approaches HMRC may well want to alter legislation or draft legislation or produce guidance to remove anomalies and uncertainties and ensure legislation is fit for purpose. Forcing taxpayers to disclose their identity in such approaches would inhibit this dialogue.

**Example 1:** A client asks for legal advice on their potential UK tax liability under legislation that has been published in draft but not enacted. The law firm speaks to HM Revenue & Customs to understand the meaning and intent of the draft legislation and the interpretation that HMRC put on it. As a result of the approach, HMRC alter the draft legislation or produce guidance to remove anomalies and uncertainties. The client does not wish to be named in the approach to HMRC because that might prejudice their ability to take positions in relation to the legislation if enacted and fundamentally infringes their ability to receive privileged and confidential advice on their legal rights and obligations.

**Example 2:** As example 1 but the legislation is already in force and the client is concerned about its application to their affairs. The client asks for legal advice on their potential UK tax liability under existing tax law. The law firm speaks to HM Revenue & Customs to understand the meaning and intent of the legislation and the interpretation that HMRC put on it. As a result of the approach, HMRC alter the legislation or produce guidance to remove anomalies and uncertainties. The client does not wish to be named in the approach to HMRC because that might prejudice their ability to take positions in relation to the legislation and fundamentally infringes their ability to receive privileged and confidential advice on their legal rights and obligations.

2.9 Contacts with members of the civil service or other persons in governmental departments who are not in the top policy-making echelons of government should *not* be included in the definition of lobbying. For example, a meeting with persons at BIS on what ought to be included in a decommissioning plan required by a petroleum licence in the North Sea or with planning or environmental personal on any consents application should not be considered as lobbying, although those contacts could relate to matters of policy and to governmental decisions. These are just examples of the myriad of contacts that solicitors may have with governmental officials on a day-to-day basis in connection with transactions, financings, real property and other matters.

#### **Law firms (and others) acting on their own behalf**

2.10 Member firms of CLLS regularly participate in business and advisory groups at the request of the Government and as part of the Government's Growth Agenda, for example the Professional and Business Services Group (PBSG) run by the Department for Business, Innovation and Skills (BIS). When a law firm is engaged in these types of discussions as a business and employer in its own right it should be

exempt in the same way that individuals engaged on their own behalf rather than for a client are exempt.

2.11 In addition to the points made above, we think the definition of lobbying would need to make it clear that it did not catch any of the following activities (regardless of whether these activities are carried out by lawyers or others):

2.11.1 responding to, or helping another person to respond to, any HMG consultation;

2.11.2 responding to, or helping another person to respond to, any HMG request for information; and

2.11.3 lobbying on behalf of another associated company, partnership or other entity (effectively, this should be deemed to be lobbying on your own behalf).

Given that this consultation paper is fairly high level, we think it should be followed by a second consultation paper setting out the detail (and wording) of HMG's proposals.

### 3. SCOPE

3.1 There should be no distinction between commercial and *pro bono* work in relation to the register. Solicitors are subject to fiduciary duties and to SRA regulation irrespective of the type of client they are working for. A system that exempted *pro bono* activities would provide an unhelpful loophole. It would create an incentive to circumvent the register by claiming that advice is being offered *pro bono* when in fact it is simply being charged back to the client in some other way.

3.2 The international ambit of the proposed register is unclear. Is it envisaged that it will only be necessary to register if an organisation has a place of business in UK? If that was the case, US or continental European law firms that represent clients doing business in the UK could for example lobby on behalf of those clients without necessarily having any UK footprint. If they were not required to register it would put firms that have operations in the UK at a disadvantage in relation to any matter where client confidentiality could be a particular sensitivity. If organisations with no UK presence are caught by the proposals, how will the sanctions be applied outside the UK?

### 4. INFORMATION TO BE INCLUDED IN THE REGISTER

4.1 Financial information should not be included in the register. We agree that it is more important to know who is lobbying than to know the cost.

4.2 For law firms, the duties of confidentiality are a professional obligation, enshrined not only in the common law but also in the SCC. Overriding these rules would be a major shift for clients and for society as a whole. If, in addition, the fees being charged to clients had to be disclosed, that would risk undermining the fundamental tenet of confidentiality.

4.3 In relation to the fees issue, there is also a practicality issue. Suppose that a law firm is acting for a client on a complicated transaction, as a result of which it is necessary to liaise on and off with a government department. It is impractical to expect the firm be able to account for the fees that were earned through 'lobbying' as compared to the transaction as a whole. Being accurate would require the firm to go down to the level of detailed time recording records and that is clearly disproportionate. Disclosing financial information presupposes that lobbying is a stand alone, delineated, activity which is inapplicable for law firms.

### 5. FREQUENCY OF RETURNS

5.1 In view of our response above, we have no comments.

### 6. FUNDING

6.1 Lawyers are subjected to a strict regulatory regime and contribute to the funding of the Solicitors Regulation Authority (SRA). Little purpose would be served in providing further overlapping regulatory

regimes. Therefore, if lawyers are included in the Statutory Register of Lobbyists the SRA should be responsible for managing the registration of lawyers.

## **7. SANCTIONS**

7.1 In view of our answer above, any sanctions against lawyers should be applied by the SRA. It would not be appropriate for another organisation specific to the new register to become involved in the regulation of the legal profession.

7.2 For legal professionals registered with the Law Society, there are already a number of sanctions and penalties in place for unethical or illegal behaviour. As such, any complaint against lawyers should be referred to the appropriate complaints-handling organisation, such as the SRA or Legal Ombudsman.

7.3 Any system of penalties or sanctions must follow due process and include a robust appeals procedure.

7.4 In addition, we do not think that there should be criminal sanctions (with all the reporting and other issues this might pose under the Proceeds of Crime Act 2007) for a mischief which essentially relates to not making it clear who you are lobbying for but which does not prohibit the underlying activity itself. We think that this would be disproportionate.

## **8. THE REGISTER'S OPERATOR**

8.1 For law firms undertaking activities that fall within the register, it should be the SRA that is responsible for the register. As noted above, it would not be appropriate for another organisation specific to the new register to become involved in the regulation of the legal profession. In addition, the SRA would have a better understanding of how law firms operate.

## **9. FINAL COMMENTS**

9.1 City law firms employ lawyers from around the European Union and not just those who are UK qualified.

9.2 In the event that non-UK lawyers or organisations wish to register, the register must comply with the relevant provisions of the EU Services Directive.

12 April 2012

### **THE CITY OF LONDON LAW SOCIETY PROFESSIONAL RULES & REGULATION COMMITTEE**

Individuals and firms represented on this Committee are as follows:

Chris Perrin (Clifford Chance LLP) (Chair)

Roger Butterworth (Bird & Bird LLP)

R. Cohen (Linklaters LLP)

Ms S. deGay (Slaughter and May)

Ms A. Jucker (Pinsent Masons LLP)

J. Kemberly (Freshfields Bruckhaus Deringer LLP)

Ms H. McCallum (Allen and Overy LLP)

D. Nordlinger (Skadden, Arps, Slate, Meagher & Flom LLP)

Mike Pretty (DLA Piper UK LLP)

Ms C. Wilson (Herbert Smith LLP)

**E9: ComRes Ltd**

We are grateful for this opportunity to comment on the examination by the Committee on Standards in Public Life into transparency issues around lobbying. As a market and opinion research agency ComRes conducts more research among legislative audiences than any other company in Britain. We are therefore uniquely well placed to comment on some of the issues related to this important matter.

ComRes has worked very closely with both the lobbying industry and policy makers for the past decade. We have worked with all the major lobbying companies and many of the smaller ones, as well as the public affairs functions of numerous corporations, charities, trade associations and public sector organisations. We have run numerous market research projects among Members of both the House of Commons and House of Lords, and we have for the past decade run the largest panel of MPs and the only panel of Peers. We can therefore claim with some justification to know the industry inside-out.

While we may have a view on other issues outside the specific questions we seek to answer, we would wish to restrict our comments to the subject areas where we have some specific expertise to offer.

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?

No. And in our experience most corporations and not-for-profit organisations would be horrified if any lobbyist either in their direct employ, or advising them externally, was found to be behaving unethically. We have come across no evidence of this whatsoever.

Our sanguine observations of the current state of the lobbying industry are in contrast with the practices observed during the early 1990s, before the Nolan Committee was established.

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

We note the definition offered by UKPAC as follows: " 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."

While this is a sensible attempt at defining lobbying, there is clearly some ambiguity around some of the wording – and especially the phrase 'or advising those who wish to influence....'. Our concern is that this could take in a very wide group of professional services indeed, including lawyers, public relations and media consultants and indeed market researchers. We would therefore be most keen to urge the Committee to be explicit in outlining who is expected to be included within any definition and who would not.

ComRes operates according to the Code of Conduct of the Market Research Society. We conduct regular surveys of legislators including MPs, Peers, MEPs, and members of devolved legislatures. We are one of several such companies.

It is standard practice in the market research community to make available a small fee to MPs in return for completing survey questionnaires. Such fees are also paid in respect of surveys among other

opinion-former audiences such as journalists and think-tanks. Most such payments are directed to a charity or to other third party such as a local party association. This is such a good way to fundraise that ComRes offers respondents a different charity each month as a means of encouraging awareness of good causes to support during the economic downturn. Through this channel we have raised a significant amount of money for charity; we calculate more than £500,000 over the past ten years.

The surveys also provide an important conduit for MPs' views and therefore make a meaningful contribution to enhanced relationships between Parliament and the outside world.

I ought to emphasise that we never, ever, seek to influence respondents. Were we to do so it would merely detract from the research validity of our survey research. Furthermore, MPs (and other legislative audiences) would quickly see through any attempt to do so.

Our concern is that unless we define Lobbying accurately and in such a way as to exclude market research activities, the result will be both disproportionate and likely to lead to a substantial reduction in the number of MPs who are willing to participate in what is widely accepted as a legitimate research activity.

One of the Committee's "Seven Principles of Public Life" is openness. The Committee states that "Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands."

I suggest that a regime which discouraged MPs from taking part in market research would be detrimental to openness as it would deny the hundreds of organisations that wish to understand the decisions and actions of MPs having the opportunity to do so. It would make MPs' views much harder to obtain or to understand, thus placing a financial premium on old-fashioned lobbyists who used to trade on their personal contacts.

Such an outcome would be costly for the charities who benefit from the fundraising impact of market research activities, frustrating for those organisations with a legitimate desire to understand the thinking of MPs, and to no obvious benefit in terms of your Committee's aims.

We would therefore wish to bring this to your attention in the hope that it will be of assistance to you.

Yours sincerely,

Andrew Hawkins  
Chairman, ComRes



**E10: Council of Bars and Law Societies**

Our organisation is Europe-wide and deals principally with EU issues. As a result, we do not usually reply to national consultations, and will not therefore submit evidence to your consultation. We are nevertheless extremely grateful that you considered us.

I have personally recently written in the Law Society Gazette on the topic of the impact of the EU lobbying register on lawyers (which may be why you have contacted me). If you have not read the article, you can find it at this link: <http://www.lawgazette.co.uk/blogs/blogs/euro-blog/tips-future-lobbyists-register>.

Best wishes,  
Jonathan GOLDSMITH  
Secrétaire-Général / Secretary-General

CCBE  
Conseil des barreaux européens – Les avocats européens pour le droit et la justice  
Council of Bars and Law Societies of Europe – European lawyers promoting law and justice

## E11: Democracy Matters

### About Us

Democracy Matters is an informal alliance of over 30 national organisations and umbrella bodies which campaigns for practical political education to improve democratic governance. We promote learning for democracy, citizenship, participation and practical politics so that anyone can learn how the system works, who to influence and how to campaign effectively.

Several members of Democracy Matters are making their own representations on the government's proposals for a statutory register of lobbyists. This response represents a considered analysis based on our aims and submissions from member organisations and does not necessarily the views of each member.

### Consultation response

1. We welcome the government's commitment to a statutory register of lobbyist as a small but essential step to increase transparency and strengthen democratic governance. However, the current proposals are too limited to provide effective transparency and regulation of lobbying activity, and do not address the fundamental issues about equal access to influence.

2. This consultation raises fundamental questions about the public's ability to influence government. Professional lobbyists are employed by companies, pressure groups, charities and wealthy individuals because lobbying takes skill, knowledge and contacts developed over time. Good lobbyists can identify opportunities and threats well before an issue reaches Parliament. They ensure that the interests they represent are taken into account by officials and ministers at an early stage. Effective lobbyists set the agenda on issues that concern their clients. This is vital for good governance, because it ensures that government is aware of issues and options that affect different interests in society. However, when some sections of society gain undue influence, others almost always lose out and the rest of society often carries the cost. For example, in the 1980s the cod fishing industry in Newfoundland successfully lobbied against regulations to protect fish stocks, until over-fishing almost wiped out the cod in the early 1990s, the industry collapsed and the economy was devastated.<sup>1</sup> Many other examples could be given from Britain. It is possible that our current economic crisis was the result of undue influence by the financial sector, causing the government to spend over £850 to bail out the banks, the loss of over 10% in national output, a steep rise in national debt and fall in tax revenues and cuts in public services. The wider public therefore need to be able to be able to influence policy in the way that lobbyists can and know who is lobbying for what, so that decisions take account of all interests in society, not just those with the resources to lobby.

3. We therefore wish to make three broad proposals in relation to this issue:

- a) **Equality of influence:** the government should enable everyone to have a more effective voice in shaping the public policy agenda.
- b) **Comprehensive scope:** the register should cover professional lobbying of all public bodies, including executive agencies, quangos, health services, local government, All Party Groups and devolved parliaments.
- c) **Transparency in lobbying:** all professional lobbying activity should be covered by the register, with information on clients, who is being lobbied, policy area covered and the amount of money spent on lobbying, and governed by a code of conduct, setting out acceptable professional conduct when lobbying.

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<sup>1</sup> <http://news.bbc.co.uk/1/hi/sci/tech/2580733.stm>;  
[http://en.wikipedia.org/wiki/Cod\\_fishing\\_in\\_Newfoundland](http://en.wikipedia.org/wiki/Cod_fishing_in_Newfoundland)

Each of these points is discussed in more detail below.

#### **A. Equality of influence**

4. Most people are simply not aware of decisions likely to affect them. As a result, government policy and legislation is influenced more by the minority who are able to employ lobbyists or who belong to pressure groups which campaign on their behalf. The consultation document observes that lobbying “can improve results for ensuring that those developing and considering the options are better informed about the available options.” (p 9) But if people are not represented by lobbyists, policy-makers will not be informed about options that reflect their interests. Although a wide range of issues are represented by lobbyists and pressure groups, most people do not feel they have an effective voice in government. This means that many areas of public policy and legislation do not get any input from large sections of the public and are less effective as a result.

5. We therefore propose that the government and parliament should enable the majority to have a more effective voice in shaping the options considered. It has done this on a small scale through initiatives such as participatory budgeting<sup>2</sup> or the involvement of homeless people in the Ministerial Working Group on Preventing and Tackling Homelessness<sup>3</sup>, but it effective public participation needs more sustained support for people to have an equivalent voice to lobbyists. For example, Parliament could promote:

- Citizens’ Briefings, about the democratic process and proposals before parliament (Annex 1);
- Practical political education and opportunities for training and support for lobbying and campaigning (Annex 2);
- Civic Policy Forums on broad policy areas, such as families, environment, international development, transport etc., involving representatives of all stakeholders (Annex 3).

Each of these proposals is summarised in the attached annexes.

#### **B. Comprehensive scope**

6. A statutory register should cover professional lobbying of all public bodies, including executive agencies, quangos, health service bodies, local government and devolved parliaments. The Government’s commitment to localism and increased devolution of public service commissioning to local authorities, General Practitioners, schools and a wide range of other agencies means that lobbying activities is increasingly directed at public bodies below the level of central government. Greater transparency at this level is essential for public accountability and to minimise the risk of corruption or undue influence.

7. We recognise that this may not be achievable at once, but initial plans for the register should include a firm commitment to extending its scope before scandals at a lower tier undermines trust in the devolution of power and decision-making.

#### **C. Transparency in lobbying**

8. Lobbying is an essential part of the democratic process, but it needs to be conducted in an open and accountable way, which is why we propose that a statutory register should be accompanied by a code of conduct and should show who is putting pressure on the government, what they want and how much money they are spending on influencing. The widespread public perception that large companies and rich people buy access and influence

<sup>2</sup> <http://www.participatorybudgeting.org.uk/>

<http://www.communities.gov.uk/publications/communities/participatorybudgetingstudy>

<sup>3</sup> <http://www.groundswell.org.uk/hpcmwgreportresponse.pdf>

<http://www.communities.gov.uk/housing/homelessness/homelessnessworkinggroup/>

undermines trust in our political system. These perceptions were recently reinforced by *The Sunday Times* reports that even foreign companies can access government ministers and the policy-making process by making large donations to the Conservative Party. There have been many scandals about cash for influence over the years, from the recent Fox/Werrity affair to events during previous Labour and Conservative governments.

9. There is evidence that the public supports the introduction of a lobbying register. A recent YouGov poll (October 2011) found that three quarters of people want lobbying to be more transparent. An open and transparent lobbying system should make all lobbying activity visible and accountable. This means that both in-house and agency lobbyists should be covered by the register and that the register includes information on the lobbyist's clients, who is being lobbied, the policy area being lobbied about and the amount spent on lobbying.

10. The public record of lobbying activity should be considered as documents of the political process, like Hansard and other Parliamentary records.

### Definitions

- *What definition of lobbying should be used?*
- *How should lobbyists be defined?*

11. We support a register of paid-for lobbying because we want open and transparent government in which all citizens are able to take part effectively. The definition of lobbying used by the Alliance for Lobbying Transparency is clear:

A "lobbyist" is either a paid employee or is paid by a client, or receives other compensation, to undertake "lobbying activity".

"Lobbying activity" includes: contact or communication with "public officials" regarding:

- The formulation, modification, or adoption of legislation;
- The formulation, modification, or adoption of regulation, policy, or position of HM Government;
- The awarding of any contract, grant or other financial benefit by or on behalf of HM Government;

It would also include any work in support of the above, such as supervision, planning and research or the financing 'think tanks' for lobbying on a particular issue.

By contact we mean arranging or facilitating interaction with public officials. We define communication as including: telephone conversations and any electronic communication; circulating and communicating letters, information material or position papers; organising events and attendance of as a lobbyist, meetings (formal and informal), or promotional activities in support of a lobbying position.

"Public officials" include:

- Paid or unpaid secondees to government, special advisors, and members of government advisory groups;
- Elected / unelected Parliamentarians and their staff;
- Individuals working in Government departments; Executive Agencies and Non-Ministerial Departments and Quangos; Regulatory bodies.

### Scope

- *Should lobbyists or firms acting on a pro bono basis be required to register?*

12. Unpaid lobbying by citizens, lobbying of MPs by constituents, small businesses, smaller charities and small pressure groups should be exempt. (The Alliance for Lobbying

Transparency defines small as organisations that do not employ the equivalent of one full time public affairs person or spend £6,000 or less per quarter on lobbying activity<sup>4</sup>).

13. Substantial pro-bono lobbying by professional lobbyists (e.g. valued at £6,000 or more per quarter at commercial rates) should be registered, whether it is for a charity or other interest, for the sake of transparency and to maintain a level playing field.

- *Should organisations such as Trade Unions, Think Tanks and Charities register?*

14. Yes. There should be a level playing field across all forms of paid-for professional lobbying, since otherwise lobbying activity is likely to avoid registration by moving to areas which are exempt. That is, corporate or private interests employing their own lobbyists or funding charities or think tanks to lobby on their behalf. It is also unfair to multi-client lobbyists to exclude in-house lobbyists.

- *How can public participation in the development of Government policy best be safeguarded?*

15. The register would not apply either to individuals lobbying their own MP or to those participating on a parliamentary inquiry. A lobbying register which covers all lobbying activity and includes information about how much money is being spent on lobbying would allow the public to see who is seeking to influence government policy and what kind of information is being presented, so that they can provide additional information if necessary.

16. Public participation in politics and the development of Government policy can best be safeguarded by increasing transparency and trust in politics, as well as providing independent, non-partisan advice and support for people engaging in politics, as provided by the Parliamentary Outreach and the House of Commons Library. In addition, we propose the development of non-partisan

- Citizens' Briefings, about the democratic process and proposals before parliament;
- Practical political education and opportunities for training and support for lobbying and campaigning;
- Civic Policy Forums on broad policy areas, such as families, environment, international development, transport etc., with representatives of all stakeholders concerned.

Each of these proposals is summarised in the attached annexes.

#### **Information to be included in the register**

- *Should the register include financial information about the cost of lobbying and about any public funding received?*

17. Yes. This can be captured in a short, easy-to-complete form as proposed by Unlock Democracy (a member of Democracy Matters), covering:

- The organisation lobbying;
- The name(s) of individual lobbyist(s);
- Information on any public office held by the lobbyist in the past 5 years (the so-called 'revolving-door');
- The public body being lobbied;
- The name of politician or public official with whom contact has been made (senior civil servant and above);
- A summary of what is being lobbied on, whether legislation, regulation, policy or government contract;
- The amount of money spent on lobbying (a good faith estimate).

<sup>4</sup> [http://www.lobbyingtransparency.org/images/alt\\_essential\\_provisions\\_for\\_a\\_statutory\\_register.pdf](http://www.lobbyingtransparency.org/images/alt_essential_provisions_for_a_statutory_register.pdf) accessed 28 February 2012

18. The form should be added to every quarter, so that it provides a record of lobbying activity over time.

#### Frequency of returns

- *Should returns be required on a quarterly basis?*

19. Yes. Registration should take place within 14 days of a lobbying agency beginning a contract for a client, or a month of an organisation starting to lobby on an issue. The organisation, whether an agency, company, trade body, union or charity, should be responsible for registering and listing individual lobbyists. Agencies should make one filing per client and updated quarterly to create a public record of lobbying activity over time.

20. The information should be accessible to the public through a searchable database.

#### Additional functions

- *Should the register's operator have any additional functions besides accurately reproducing and usefully presenting information provided by the registrants?*

21. Yes. The body which maintains the register should draw up and consult on a code of conduct, setting out acceptable professional conduct for lobbying, and have both the powers and resources to carry out investigations where they believe an organisation is not complying with the code or regulations. We have already seen with the party funding registers the problems that can arise when a regulator has the power to sanction but not to investigate.

22. We also expect that the register would be published in a way that is fully searchable and downloadable so that the data can be analysed if desired.

#### Funding

- *Should the lobbying industry meet the costs of the register and any associated functions?*

23. No. The register should be publicly funded to ensure that there is no financial barrier to anyone wanting to lobby. We recognise the difficulties of finding additional public expenditure, but a lobbying register could pay for itself by improving government accountability since public money can be misspent following well-funded lobbying. A publicly funded register would put the lobbying register on a par with other transparency registers aimed at increasing trust in government, such as the register of donations to political parties, and Hansard as a record of debates in Parliament.

#### Sanctions

- *Should penalties for non-compliance apply? If so, should they be broadly aligned with those for offences under company law?*

24. New rules are only as good as the monitoring and enforcement that goes with them. The body running the register must be given sufficient funds to adequately monitor its accuracy and enforce sanctions. Non-compliance with the lobbying disclosure law, or failure to remedy a breach, could result in a civil fine and in extreme or repeated cases a disqualification from any lobbying activity for a set period, with the level dependent on the extent and gravity of the violation. Anyone who knowingly fails to comply with the lobbying disclosure law, which includes non-payment of fine or no compliance with any disqualification period, could face criminal prosecution.

#### The register's operator

- *Who should run the register – a new body or an existing one? What sort of body should it be?*

25. The lobbying register must be run by an independent body and not the lobbying industry, as at present. It could be run by an existing body, such as the Electoral Commission, which

maintains registers on donations and loans to political parties. This would minimise the costs and reassure the public about its independence.

### Conclusion

26. Trust in government and the democratic process has fallen for many reasons, one of which is the perception that politicians are only in it for themselves and can be bought. Scandals over MPs expenses, cash for honours and access to Ministers for party political donations has reinforced this perception.

27. We believe Parliament and Government can do much more to increase public trust, understanding and participation in democratic politics. A statutory register of professional lobbyists is a small but essential measure to achieve this. Other measures proposed in this submission include:

- a) **Equality of influence:** the government should enable everyone to have a more effective voice in shaping the public policy agenda.
  - Citizens' Briefings on the democratic process and proposals before parliament (Annex 1);
  - Practical political education and opportunities for training and support for lobbying and campaigning (Annex 2);
  - Civic Policy Forums on broad policy areas, involving representatives of all stakeholders (Annex 3).
- b) **Comprehensive scope:** the statutory register should cover professional lobbying of all public bodies, including executive agencies, quangos, health services, local government and devolved parliaments.
- c) **Transparency in lobbying:** all professional lobbying activity should be covered by the register, with information on clients, who is being lobbied, policy area covered and the amount of money spent on lobbying.

28. Lobbying is an essential part of the democratic process, but it must be conducted in an open and transparent manner for all to see who is lobbying whom for what, and how much they are spending on it. An independent, publically funded register of professional lobbying activity is a small but necessary measure to strengthen democratic governance of Britain.

Titus Alexander  
Convener, Democracy Matters

### Annex 1

**Democracy Briefings:** empowering citizens to take part

**Why vote? What elections mean for you**

**A proposal for a pilot project to run free interactive workshops on what local and central government do, how the political process works and how to influence it, with a publicity vouchers distributed by Election Registrars with voter registration forms if possible**

**What will we do?**

The idea is to distribute a voucher for a FREE political education /information session with voter registration details sent out by Returning Officers.

The aim of the sessions is to inform people what local and/or central government does, how the political process works and how people can have more influence about things that matter to them. Sessions would be run by paid facilitators at first, but after the pilot phase they could be run by trained volunteers to deepen political understanding and a greater sense of shared ownership of citizenship as something that belongs to everyone, not the 'authorities'.

Volunteers could be recruited from university politics departments, 6<sup>th</sup> form politics students and civil society, briefed and trained to be neutral on party politics but informed about the political process. The workshops could also be used to recruit participants for longer citizenship courses.

We aim involved the WEA, local authority Returning Officers, citizenship organisations and community groups to develop, pilot and evaluate -

1. information leaflets inviting people to a FREE political information event
2. an introductory workshop on the political process and how to use it effectively
3. what follow-up options people would be interested in, such as courses, coaching, leaflets or a guide to online resources

The project will test ways of promoting and running sessions in wards or constituencies with low voter turn out to find out the most effective way of engaging people in democratic politics.

Each information session will include an interactive game/activity about the political system, a short presentation and if possible a market place of stalls with information from political parties, pressure groups, public services, the electoral commission and others involved in the political process. Sessions will also be used to promote local courses and workshops in citizenship education and local issues.

#### **What are the benefits?**

The sessions will give people (electors) an enjoyable, non-partisan introduction to how politics works and ways in which they can have an effective voice.

The pilot project will also demonstrate “what works” in terms of

- a) attracting people to information sessions in the first place;
- b) informing and engaging people once they come;
- c) stimulating voter turn out;
- d) encouraging participation in politics, through campaigning,

Pilot sessions will be targeted at different groups as well as the general public, to test different approaches to voter engagement.

For people involved in politics, it will offer another way of engaging with voters outside of election period, through the stalls available at sessions.

For education providers it will identify potential demand for courses/workshops in citizenship, political education and current affairs.

#### **Who will you target?**

This pilot project will target all residents of selected wards or constituencies with low voter turn in contrasting areas (rural, urban, ethnically diverse) and venues (eg schools, pub, community centre, sports centre). Students and active members of community groups would be targeted as potential citizenship facilitators.

#### **What kind of assistance would you like from others?**

We would like to do a pilot project and feasibility study for this project, which would benefit from assistance from organisations such as: -

- Electoral Commission – to provide data on potential pilot areas and information for the ‘market place’
- Returning Officers - to send out vouchers / invitations to residents
- Local Government Association – to help set up pilots and provide information for the ‘market place’
- Community education providers/Take Part Network – to help run sessions, train ‘citizen facilitators’ and offer follow-up courses
- Political parties and pressure groups to provide information for the ‘market place’



- Citizenship organisations (eg Hansard Society, Citizenship Foundation, Westminster Explained) – to input / advice into the information workshop content and help with follow-up options, such as courses, leaflets or online resources
- Parliamentary Outreach Service – to provide input and help organise pilots
- Universities – research evidence/experience from similar projects in politics or other fields (eg health promotion) and to support with students on pilot sessions
- Community groups – to help run sessions and train as facilitators
- Student organisations - to help run sessions and train as facilitators

## Annex 2

### What do we mean by practical political education?

Practical political education means learning how to take part in public life at any level, from the very local to global.

It means enabling people to:

- Take part in local community activities and have a voice;
- know who their representatives are, in the community, public services and government;
- access and analyse information about policies, issues, interests and points of view;
- understand formal and informal political processes and structures;
- develop confidence, skills and techniques to influence the political process;
- enable people to bring about social and political change;
- raise issues themselves as well as respond to decision-making opportunities;
- challenge decisions;
- enter the political process themselves as elected representatives.

Three themes are at the heart of practical political education:

1. the **questioning citizen**, confident to ask “why?”, seek the facts, probe and challenge;
2. **openness** in public affairs, with access to information, debate and decision-making;
3. **respect for diversity** of age, ability, gender, race, status and opinions.

Nolan’s **seven principles of public life** are also important: accountability, honesty, integrity, leadership, objectivity, openness and selflessness<sup>5</sup>

#### Principles for practical political education:

The following principles should inform practical political education:

1. **pragmatic**: start from where people are and help them achieve what they want;
2. **pluralistic** in funding, forms of provision, content and values
3. **participative** to develop confidence, communication skills and critical thinking
4. **practical**, to include techniques, knowledge and analysis relevant to active politics
5. **peaceful**: violence is a failure of politics
6. **pro-poor**: prioritise provision for individuals and areas on low incomes.

These principles recognise that society benefits from effective participation by *all* citizens in the political process, including the poor, disadvantaged and disenfranchised who are under represented. The better off in society can afford to fund lobbyists, campaigners and pressure groups to promote their interests. We are all better off when the poor and marginalised can also learn to have their voices heard and their interests addressed in decision-making.

#### How can we support practical political?

<sup>5</sup> [www.archive.official-documents.co.uk/document/parlment/nolan/seven.htm](http://www.archive.official-documents.co.uk/document/parlment/nolan/seven.htm)

Practical political education takes place in many forms, through civil society, the media, community action, the internet, workshops, courses and active participation in politics.

Ensuring adequate support for practical political education for all means that

- Civil society organisations and charities support their members and users becoming involved in both their own decision-making process and in the wider politics of issues which concern the organisation.
- Voluntary and community associations encourage people to have an effective voice through learning together and mutual support.
- Politicians and public officials actively encourage people to understand and take part in the political process;
- Government departments in local, national and devolved administrations fund provision for people to understand, contribute ideas and take part in decision-making relating to departmental issues;
- Major grant givers, such as the Big Lottery Fund, Unltd and charitable trusts, provide funds for learning about campaigning and engagement on issues they support;
- All adult, community, further and higher education funders and providers create attractive and accessible opportunities for people to learn about issues and political processes;
- Funding for community development, outreach and training for education in citizenship and practical politics is sustained on a coherent and recurrent basis rather than short-term initiatives;
- The BBC, Channel 4, press and other media provide better information on how to influence issues in the news and get involved;

For examples of practical political education and background information, see:

***The Active Citizen: Politics and Public Life***, a programme run by the WEA:

[www.wea.org.uk/pdf/Active%20Citizen%20booklet.pdf](http://www.wea.org.uk/pdf/Active%20Citizen%20booklet.pdf)

Take Part ***was an England-wide programme of bottom-up provision***: [www.takepartpathfinderyh.org](http://www.takepartpathfinderyh.org) or <http://takepart.org/>

Southwark Democracy Hub [www.volunteercentres.org.uk/active\\_citizens\\_hub.aspx](http://www.volunteercentres.org.uk/active_citizens_hub.aspx)

Learning Power: a contribution to the national skills strategy <http://static.novas.org/files/learning-power-262.pdf> with reviews by Francis Maude, Bernard Crick, Helena Kennedy and others.

***Campaigning is OK!*** a guide to building capacity for advocacy, campaigning and practical politics, where to get support and resources available, including training, materials, books and websites. Downloaded from <http://static.novas.org/files/campaigningisok-456.pdf>

### Annex 3

#### Citizens' Policy Forums

Trust in politicians has collapsed. Participation in party politics – the main route into Parliament - is low. Voter turnout in elections was below 65% in all general elections this century and below 40% among 18-24 year olds. Most MPs come from very different backgrounds from the people they represent.

This is bad for society and bad for government. It means that national policy-making does not draw on the diversity of experience and knowledge of people, nor does it reflect their concerns.

While less than 1% of Britons belong to political parties, over 30% are members of voluntary organisations involved in a wide range of issues. By tapping into networks of civil society, Parliament and government could do a much better job.

#### Consultation can't bridge the credibility gap

Ministers and civil servants try to reconcile diverse interests and opinions through countless consultation mechanisms - Green Papers, opinion polls, strategic partnerships, working groups, expert advisory boards, high level summits, independent commissions and inquiries attempt to find sufficient

consensus for action. On many issues this is increasingly difficult, as we've seen with reforms in health and penal policy recently.

Because consultation processes are conducted by Government, which frames the issues and sets the questions, inconvenient evidence is often ignored or dismissed, so that the underlying issues are not addressed.

What we need is a fresh approach which enables all stakeholders to think through the issues in depth together and find a broader consensus.

#### **Civic Forums connecting people with parliament**

This could be done by making Parliament responsible for all consultation processes through a new Upper House or third 'Citizens' Chamber'. All consultative bodies, strategic partnerships and advisory groups in Whitehall should be replaced by more open and accountable forums. Existing bodies such as the Health Forum and Health Watch would become part of the democratic processes, directly linked to Parliament. Regular, statutory Citizens' Policy Forums would create opportunities for millions of people to take part in the political process through their membership of civil society organisations.

Each Citizens Policy Forum would cover one broad policy area, such as community safety, the economy, education, environment, families, health, global issues, rural affairs, poverty reduction, security and youth. Each would have 50 - 150 members representing different interests, including users, consumers, staff, researchers, community groups and elected representatives from other tiers of government.

Members would be elected through democratic associations of civil society and neighbourhood forums, supervised by the Electoral Commission to ensure probity. Each Forum could have a network of local and regional meetings, together with an online forum, all open to the public.

Forums would conduct investigations, lead public consultations on Government proposals, undertake pre-legislative scrutiny of Bills through a Public Reading Stage, monitor the impact of legislation through a Review Stage, and report directly to the House of Commons. Back bench Members of Parliament could play a connecting role, as Forum chairs or convenors.

The cost of Citizens' Policy Forums is unlikely to be greater than consultation costs hidden in Departmental budgets, while greater transparency and participation enables Parliament to draw on a wider pool of expertise.

Instead of being the last western country to have an elected second chamber, Britain could be the first to create a new kind of parliamentary process that enables citizens to take part in politics through the internet, participatory community meetings and the democratic associations of civil society and an entirely new kind of chamber of Parliament.

The House of Commons would still be the deciding chamber, voting the powers and funds for Government; the Upper House could remain a revising chamber, scrutinising legislation, holding the Government to account and conducting investigations; while Citizens' Forums would be a reviewing chamber, taking a long-term, in-depth view on issues and implementation.

Above all, Policy Forums could bridge the gulf between people and Parliament through sustained dialogue between citizens and government. Regular, systematic consideration of legislation by different interests in public, rather than behind the veil of advisory bodies and task groups, will increase trust in politics. By scrutinising legislation at an early stage and evaluating its impact over time, Citizens Policy Forums could bring about profound improvements in the governance of Britain.

The political party which opens democratic participation through Citizens Policy Forums could unleash new energy and momentum for national renewal from the bottom up.

**E12: Dr David Hine and Miss Gillian Peele****Response to the Committee on Standards in Public Life Call for Evidence on Transparency of Lobbying**

David Hine and Gillian Peele

Department of Politics and International Relations

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**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 certainly more controversial today than in the past, and some of what takes place is alleged to be more “abusive” than in the past. Unfortunately there is no formal or agreed definition of abusive lobbying – we explore some simple distinctions of relative seriousness below - and what for some is evidence of “systemic abuse” for others remains “exceptional behaviour”. However, if exceptional behaviour recurs periodically, it is likely, in the context of a much-increased volume of lobbying generally, to raise public concern.

There are certainly reasons why more lobbying is taking place than twenty or thirty years ago. The increase comes from many sources: a less monolithic executive, a legislature apparently more open as a lobbying site than in the past, better-resourced cause groups, more regulatory agencies covering business sectors where there are new regulatory imperatives, public-sector actors that are more conscious of public relations and lobbying needs, a major growth in “in-house” public relations, industry-wide trade associations, and the growth of professionalised independent public relations companies. That said, it is still possible that there is actually less “abuse”, even while there is more lobbying. There are tighter constraints on holders of public office. Twenty years of ethics building, much of it promoted by initiatives from the Committee on Standards in Public Life itself, has sharpened awareness of conflicts of interest, and has stimulated codes of conduct and many other ethics safeguards. This has also fed media and public sensitivity to improper lobbying, which is a further safeguard. The constraints bearing on the lobbied has therefore increased a great deal. Paid advocacy in Parliament is more constrained. The interests of Ministers and civil servants are more closely scrutinised, and there is at least some degree of transparency in official contacts with lobbyists, though probably not enough.

However, even without more abuse of lobbying, there are three grounds for considering the case for more regulation. First, regulation which bears on office holders may still be inadequate, when set against the appetite for more regulation that comes from changing expectations of democratic government more broadly. Demands for transparency, accountability, and equality of access to government decisions vary widely across democracies. There is no conclusive reason to think the current level found in the UK is necessarily the right one. Secondly, some forms of regulation may lose their effectiveness over time. This may be true of transparency provisions. When public debate is heavily loaded with information about the interests of legislators, or about the details of meetings between lobbyists and civil servants, the impact of so much information, and its inhibiting effect on the behaviour of office-holders, may be blunted. Thirdly, and widely commented on, the regulation that has been built up to date has focused exclusively on the lobbied not the lobbyists. There are good reasons why this is so, but at least some democratic systems have tried to regulate the latter.

The problem in basing the case for more regulation on evidence of more abuse is not only that the evidence is ambiguous, but also that there is no clear definition of abuse. Lobbying that induces office-holders knowingly to engage in behaviour which is prohibited by anti-corruption provisions reduces the problem to one of criminal corruption, and is in theory already addressed in criminal law. But even in the absence of an obvious and immediate tangible corrupt personal gain by the office holder, we may want to define some lobbying that is not illegal as abusive. It may arise from asymmetric information

flows to decision-makers, as a result of which the latter are knowingly or unwittingly subject to one-sided lobbying. Or it may arise from some form of undesirable (though not illegal and not immediately personal) exchange that the lobbyist can offer (policy compliance, explicit public support of the governing party, party funding, etc).

Asymmetric information originating in asymmetric access seems quite likely, since governments tend to talk more to those with whom they already have (from their perspective) reliable and useful contacts. It also arises naturally from the different pay-offs to lobbying effort (those with a strong commercial interest in an outcome will put in more effort and resources than those with a more diffused and general interest). Whether either constitutes abuse is questionable. Even if it does, the onus in these areas lies primarily on government and parliament to deal with these asymmetries through rules on transparency, consultation and public engagement.

We get closer to real abusive lobbying when we consider narrower and more personal – though not illegal – gains to the lobbied. These might include party-funding, implied offers of post-employment opportunities that are never explicitly stated (even in private), and are not against post-employment rules, and assistance offered to parliamentarians in return for parliamentary access. It is evident that political parties in the United Kingdom actively foster the belief that financial or other forms of support bring *access* to decision-makers, though when instances of this are revealed, they always deny that *access* involves any form of improper *influence*. It is also evident that there is extensive use of expertise acquired as Ministers, MPs and civil servants in post-employment afterlives these office-holders enjoy as advisers and consultants to lobbyists. Likewise the problem of parliamentary access seems regularly to worry Parliament itself, if its decade-long and still incomplete efforts to regulate All-party Parliamentary Groups is a guide to concern.

These cases involve extensive appearance-standard conflicts of interest and are resulting in increasingly frequent public controversies, though as we stress, it is hard to tell if this is the result of more public interest, or more real abuse. There is also some contrary evidence: lobbyists sometimes secure access but complain they have failed to obtain their preferred outcomes. But while it is difficult to tell whether the main pressure comes from changes in the level of public concern, or from real changes in behaviour, both seem to need addressing.

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

Lobbying involves any effort by an individual, business or organisation, public or private, on its own or a client's behalf, to influence public policy, including efforts not just by professional lobbying firms, and commercial businesses operating on their own behalf, but also cause groups, charities, the public-sector and so forth.

To put all lobbying in the same category, as we know, risks placing heavy compliance demands on organisations that may be unable to cope. It may also raise the public costs of regulation to unnecessary levels. We briefly consider each category in turn, though in general we are in favour of an inclusive approach. We think in the long run, if lobbying becomes subject to direct regulation alongside those being lobbied, it will turn out to be necessary to justify exclusions rather than inclusions.

Professional multi-client lobbying firms (MCLFs) are generally agreed to pose the most serious ethical risks. They are commercial businesses *explicitly and exclusively* concerned with lobbying and public affairs. They do not compete to present a conception of the public interest, like parties, nor are they interest groups with their own claims on the political process. They are professional agents for the claims of others and exist solely to make money. They pose several problems.

If there are methods (the purchase of influence, good-will, or even the votes of legislators) that will deliver success, the professional lobbyist will be tempted to use them or more aggressive competitors may do instead. Voluntary codes are inherently weak: an association's need for credibility is tempered

by its desire for membership and resources. Peak associations operating voluntary codes for lobbyists may not cover all lobby firms. Secondly, MCLFs can do what the ultimate client cannot risk, because the brand risks are very different. A MCLF may not suffer at all from occasional adverse exposure; it may win a reputation among worldly clients for leaving no stone unturned. Thirdly, MCLFs are an attractive haven for post-employment, especially for the political class. Something (but possibly not yet enough) has been done about the risks for civil servants and ministers, and now special advisors, but in the more fluid world of parties and party organisation, and of course MPs and peers who have not been in government, the risks remain. Members of think-tanks or party secretariats are under no constraints about what they can do either while in post, or after they have left. Finally MCLFs can sometimes disguise who they are really working for. Some are better thought of as think tanks that rely on commercial client, but this may not be at all clear. In short, if there is to be regulation, it certainly seems to need to involve MCLFs.

However, much more lobbying in the UK appears to take place through in-house resources of companies than through MCLFs. To regulate the latter but not the former would risk driving more of it back in house, and beyond the scope of regulation. The UK Public Affairs Council estimated in its evidence for the 2012 consultation paper that if requirements for formal registration of lobbying were to be introduced a register would need to cover around 100 MCLFs and about 60 companies with in-house specialist teams, along with a further 100+ from charities, unions and professions, bringing the total number of organizations to 275, employing around 1500 people specifically in lobbying. The Cabinet Office's impact assessment of such a register, and the Political and Constitutional Reform Select Committee both put the figure higher still.<sup>6</sup> We have no data to add to this, but it is clear that it is a problematic area under three headings. First, it clearly adds to business costs. Second, it adds to regulatory costs. And finally, the transparency involved may require businesses to release commercially sensitive information. What is evident is that more objective research on these constraints is needed before recommendations are made.

A mandatory register also raises costs for organizations that lobby as an incidental consequence of their core activity and whose resources are limited. However, there is no simple solution to this. The fact that charities and not-for-profit organizations, for example, are deemed to be operating for some public good, does not necessarily mean they should be excused from registration and transparency obligations where they are attempting to influence public policy. That argument is unlikely to have a smooth ride where charities are often attractive to sponsors in proportion to the frugality of their cost bases. Public-public lobbying is a further area where the line between regular interaction and policy dialogue, and explicit lobbying, is difficult to gauge, and where the costs of registration and disclosure might prove high. But areas such as health and higher education are lobbies for public policy, and they are today structured around internal cost and profit centres in ways that create real interests for individuals. We cannot see a strong case for excluding them from the definition of lobbying even though we recognize that including them will add further complications in reconciling new requirements with existing regulations in the area of, for example, charity law.

**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**

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<sup>6</sup> *Introducing a Statutory Register of Lobbyists: Consultation Paper – Impact assessment (IA)*, Cabinet Office 27 November 2011, accessed 15 November 2012 at: <http://www.cabinetoffice.gov.uk/sites/default/files/resources/SRL%20Impact%20Assessment.pdf>  
Political and Constitutional Reform Committee, HC 153, 2nd Report - Introducing a statutory register of lobbyists - Volume I, 2012, p. 12

**(wider registration, disclosure of issues and enhanced Ministerial disclosure) necessary, either as an interim measure or longer term?**

We believe the *Transparency of Lobbying* bill's proposed Register is unlikely to be sufficient to quell public disquiet for the reasons set out by the Political and Constitutional Reform Select Committee, and for reasons explained in previous answers. Multi-client companies are not the only or indeed main issue since most contact between office-holders and lobbyists is direct rather than via third-party lobbyists. Regulation if introduced needs to cover in-house activity. We therefore support the Committee and others who have called for legislation to go well beyond the current bill's proposal: a broader definition of lobbying, disclosure of issues being lobbied on, a statutory or hybrid (industry-run) code of conduct, and more timely and detailed coordination with data provided by Ministers and civil servants about meetings with lobbyists - in forms that make transparency monitoring easier and more effective. However, we do not believe that there is yet a sufficiently-developed understanding of what exactly would be involved in a more extensive system of registration to introduce it, and we are not surprised that the government's bill is modest. Mandatory registers, whether just of MCLFs, or covering a broader range of lobby activities and groups, are clearly problematic to operate. Evidence from the USA suggests that registration alone is likely to be insufficient. In the USA there has been a succession of gradually tougher responses to the inadequacy of registration: the 1946 Lobbying Act, the 1995 Lobbying Disclosures Act and in 2007 the Honest Leadership and Open Government Act. Between these landmark measures there were others. Measures regularly turned out to be insufficient in the face of flexible and well-resourced lobbies. Disclosure was seen as increasingly ineffective because of unclear drafting, weak administrative and enforcement provisions, and ambiguity about who had to register and what had to be disclosed. The US experience strongly suggests that transparency eventually leads to a need for mandatory, officially-backed, codes of conduct.

Such codes involve requirements about truthfulness and transparency of registration, and frank and detailed information about the many "ultimate client identity" issues like those that continue to arise in the US. They would clearly involve detailed sign-up to restrictions on working methods. There would be issues – long-standing ones in the UK – of how this would relate to reform of anti-corruption legislation. Beyond an obvious ban on procuring paid advocacy by office-holders, other much more subjective principles could be invoked, such as restraints against coercion and false representation. To be fully effective it could be claimed that a mandatory register should contain information about who was working for the organisations involved (including their past political or public service background), information about contacts with decision-makers covering meetings, conversations and other contacts, information about the nature of the lobbying targets, and information where appropriate about ultimate clients where there was any ambiguity about this. In some ways these are the natural corollary of public regulation, though they would be exceptionally difficult to police and would be highly intrusive. Two decades of building ethics institutions teaches two important lessons about new regulators: they are often introduced in a hurry, without enough preparation and consideration of what is needed, and they often lack broad consensus. The current situation with regard to *Transparency of Lobbying* seems to us to contain these risks. A register without a code of conduct and means of enforcement other than with regard to registration itself looks woefully inadequate, and likely to undermine the credibility of the proposed Registrar of Consultant Lobbyists almost from the outset. But there is mounting pressure to do something, and our current understanding of what more could or should be done does not generate enough political agreement, or agreement among potentially affected parties, to provide a firm foundation for action.

**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?**

There should be no choice here. What can be done on each front should be done, though it is self-evidently easier to impose restrictions on the lobbied than the lobbyists. We do not believe that everything that needs to be done in relation to the lobbied has been done. We have concerns about the potential conflicts of interests faced by elected representatives, Ministers and civil servants, and we believe more needs to be done in relation to each category, as well as on the lobbyists front. We explore what we think is the most important aspect of this in answer to the next question.

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

We take *existing* rules here to mean the corpus of law and codes applying to office holders rather than lobbyists. Much has been done over two decades to clarify these rules but we think further changes need to be considered. As we said above we agree with the P&CRSC that there is a case for more timely and detailed coordination of data provided by Ministers and civil servants about meetings with lobbyists with data provided by the lobbyists themselves in forms that make transparency monitoring easier and more effective. The expansion and then the integration of all possible sources of information about the inputs to public decision-making is clearly a good in its own right. The knowledge that it is there in the public domain can be expected to have at least some constraining effect on office-holder behaviour. However, there is a risk that with time and effort, lobbyists can comply, but continue to lobby much as before, and likewise office-holders who see advantage in succumbing to lobbying pressure may not all be deterred by transparency provisions. We think there evidence from recent events, in both houses of Parliament, albeit among a minority of members, of a more casual attitude towards influence and lobbying, and a suggestion that registers of interests and declarations of interest release individuals from deeper if less formal ethical obligations.

We think a risk also exists with post-employment rules for Ministers and civil servants. The potential risk has grown as consultancy and public-relations roles become more widely available after public service, and as greater fluidity between public and private sector becomes a feature of senior UK career structures. The greatest risks posed by post-employment are generally agreed to be using a public office to favour a (potentially) future employer, improperly lobbying and influencing former colleagues and using commercially-sensitive knowledge acquired while in office to secure a post-employment personal and/or employer benefit.

The main safeguard against this is the Advisory Committee on Business Appointments, the composition and decision-processes of which were much criticized in recent years, before new and apparently tougher rules were introduced in February 2011. The new rules addressed the issues raised firstly by the Public Administration Select Committee Lobbying Report of 2008<sup>7</sup> and by claims (in media entrapment exercises) made by certain former ministers and peers, that they had special lobbying capacity available for commercial hire.

A key issue worth exploration is the evidence on which the 2011 rule changes were based: especially the quality of evidence available about lobbying risks, and about the level in the civil service at which those risks lie. Moreover, since the post-employment rules have been tightened, but the structural position of ACOBA is largely unchanged, there remain issues about the structural/legal position of ACOBA itself: its influence over the rules it administers, its powers to monitor the advice it provides (and the resources to do so), its composition, and its standing as a non-statutory body.

We provide in Table 1, at the end of this document, some simple time-series evidence, not immediately visible from the ACOBA Annual Reports, about ACOBA's approach to the imposition of conditions on employment after crown service. Table 1 assembles two lines of data: first, restrictions on the annual 400-700 applications for post-employment approval from crown servants, and secondly the sub-set of

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<sup>7</sup> House of Commons, Public Administration Select Committee (PASC), *Lobby: Access and influence in Whitehall*, First Report of Session, 2008-9.



the most senior appointments that go before ACOBA. The table shows a striking change in practice over a ten-year period. Restrictions imposed on lobbying, in areas where previous employment was relevant to the proposed new roles, have increased quite markedly. Waiting periods have also been imposed more often.

These changes preceded the 2011 rule changes, and seemed to be responses to events and controversies, of which there were several over the period.<sup>8</sup> The fact that, under unchanged rules, outcomes could change strikingly may be thought a matter of concern. It is possible that the nature of the applications ACOBA received over the decade changed quite radically, but this seems unlikely. It seems rather that ACOBA was responding to changing *perceptions* (both public/media perceptions, and its own) of the appearance of ethical risk, and tightening up its response.

The rule changes in 2011 may, on this reading, be a confirmation of the correctness of ACOBA's response, but their delayed arrival, and the discretion this had left to ACOBA for a very lengthy period, looks significant. It raises questions about how objective, evidence-based, and stable the rule-setting process itself is. It likewise raises questions about the objectivity of the advice given on the basis of the rules. And it raises questions about whether the rules as they now stand, and ACOBA's interpretation of them going forward, are necessarily the right ones, rather than a delayed, and still only partial, catch-up, destined shortly to seem again outdated, as public opinion shifts further in the light of new controversy. Certainly this is not an area where there can be complete objectivity about the right level of restriction on post-employment. There are good reasons why the rules should not be so tight as to inhibit public-sector recruitment or post-employment by capable senior crown servants or ministers. Nevertheless, questions remain about past and current practice.

The first is that there is a difference between the rate of conditionality imposed for ACOBA-scrutinised appointments (i.e. senior ones) and that for all crown-servant appointments. This might be justified by the more senior and sensitive nature of the former, but it may not be. Given the complexity of contracting (particularly the need to revise long-running and complex contracts) in areas such as defence or health, or the complexity of corporate tax-liability negotiations in HRMC cases, it may legitimately be asked whether the effective level at which decisions are signed off, and in practice closed off from further discussion, is always a senior one involving responsibility by individuals who will eventually fall into the ACOBA-process.

It may be objected that although the answer is no, departments do have their own procedure for vetting applications at this lower level of seniority (currently SCS2 and SCS1). Moreover, at least until very recently, the outcomes for these processes showed up in the ACOBA reporting process. However, given the evident difference in level of conditionality actually imposed between the two levels, it is still necessary to show that the real risks of impropriety (as opposed to the risks of the *appearance of* impropriety) are greater for the higher-level cases. This does not ever seem to have been argued out in the public documentation available on this subject. Yet those individuals below the ACOBA scrutiny level still have significant responsibility, and there are large numbers involved, especially, but not exclusively, in the defence sector.<sup>9</sup>

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<sup>8</sup> Report of Sir Patrick Brown "Review of the Business Appointment Rules" as laid before the House of Commons library, 20 December 2005. <sup>8</sup> House of Commons, Public Administration Select Committee, *The Business Appointment Rules*, Sixth Report of Session 2006–07, pp. and Cabinet Office, The Advisory Committee on Business Appointments, *Eighth Report 2005-2006*, COI, 2006.

<sup>9</sup> There seems to be uncertainty about the precise scale of applications for post-employment permission across civilian and military MoD employees. In 2008/9, ACOBA reported 121 such applications, but does not seem to use a comparable reporting criterion in 2008/9. An FoI request reported by the Sunday Telegraph stated that in 2009/10, 326 MoD officials or military officers "were cleared to join the private sector" (of which 240 were to defence sector employers). The report does not say how many of these were, in its terms, "cleared" but with some form of conditionality attached. 'A scandal worse than lobbying?' *Sunday Telegraph*, 11 December 2011, 24. Lord Lang

Cabinet Office and Departmental decisions on applications from lower levels of seniority are sent to the ACOBA secretariat, and for some years the ACOBA chair has reported that he has monitored a sample of the lower-level cases to ensure consistency with ACOBA-level practice. Under the 2011 rules, all decisions at SCS2 are scrutinised by permanent secretaries, and ACOBA is required to undertake informal compliance-assurance checks on departments' arrangements for handling applications. As of December 2012, however, when the Thirteenth Annual Report was published, this scrutiny had not taken place. The Thirteenth Report stated that during the year the Secretariat had completed its visits to departments to advise on how its compliance monitoring would operate, but contained no report of the outcome of that monitoring. The consequence is that for three annual reports from 2009/10 onwards, ACOBA did not publish the data it had previously published on the difference between the rate of conditionality imposed for ACOBA-scrutinised appointments (i.e. senior ones) and that for all crown-servant appointments.

It may be legitimately asked how satisfactory the new monitoring is likely to be given the level of the Committee's resources, and the size of the departmental universe ACOBA is expected to monitor. Departments will have their own imperatives and their own long-standing self-narratives about exposure to ethics and propriety risk. In these, expectations about post-employment patterns and opportunities may well have become internalised over long periods, and disruptions may have consequences for staff morale and recruitment and retention. It seems possible, therefore, that there may be significant variations across departmental practice. At the very least, what exists in the public domain about how these risks are assessed, measured and monitored is fairly thin. Possibly there are other sources of compliance monitoring – for example audit requirements, contracting procedures, best-value rules – which mitigate against ethical risks, and which are embedded in ways that reduce risks. If so, it would be helpful to the ACOBA/post-employment/lobbying debate that this evidence be factored into the debate.

The same considerations apply to the monitoring of ACOBA's recommendations. ACOBA has repeated on a number of occasions that it has no real power to monitor or enforce recommendations it makes.<sup>10</sup> Whether individual civil servants really comply with lobbying bans would in any case be an exceptionally difficult matter to determine, and it may be that the UK has to accept that it can create rules and expectations, but that a legally-enforceable framework would be difficult without an intrusive detection mechanism, and without complex, costly and uncertain litigation. There is no obvious answer to this problem, unless by giving the ACOBA or an agent the power to conduct random compliance investigations. This almost certainly requires ACOBA to be placed on a statutory footing with additional costs and resources.

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gave further data, though again data difficult to fit into a comparative framework, in his PASC written evidence in spring 2011. See House of Commons, Public Administration Select Committee, Business Appointment Rules: written evidence by Lord Lang, <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmpublicadm/writev/business/m01.htm>

<sup>10</sup> House of Commons, Public Administration Select Committee, Business Appointment Rules: written evidence by Lord Lang, <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmpublicadm/writev/business/m01.htm>

Table 1: Post-employment applications from Crown Servants 2000/1-2009/10

	Applications	Approved without condition	Conditions Imposed	<b>% with conditions</b>
ACOBA-level applications				
2011-12	56	7	48	<b>85.7</b>
2010-11	63	20	43	<b>68.3</b>
2009-10	62	12	50	<b>80.7</b>
2008-9	179	53	126	<b>70.4</b>
2007-8	79	35	54	<b>68.3</b>
2006-7	88	37	51	<b>58.1</b>
2005-6	79	45	34	<b>43.1</b>
2004-5	71	31	40	<b>56.3</b>
2003-4	49	16	33	<b>67.3</b>
2002-3	38	25	13	<b>34.2</b>
2001-2	33	24	9	<b>27.3</b>
2000-1	93	80	13	<b>14.1</b>
All Crown-servant applications (incl. those considered by ACOBA)				
2008-9	394	243	151	<b>38.3</b>
2007-8	460	312	148	<b>32.1</b>
2006-7	536	374	162	<b>30.2</b>
2005-6	604	466	138	<b>22.8</b>
2004-5	545	375	170	<b>31.2</b>
2003-4	429	329	100	<b>23.3</b>
2002-3	420	358	62	<b>14.8</b>
2001-2	567	496	71	<b>12.5</b>
2000-1	742	579	163	<b>22.1</b>

**Source:** successive Annual Reports of the Advisory Committee on Business Appointments. (Note that the reporting form used in 2009-10, 2010-11, and 2011-12 does not include a data-line for “all crown servants” similar to that for earlier years).

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?

We are agnostic about this. Codes of conduct already exist for MPs, peers, Ministers and civil servants that explicitly or implicitly cover lobbying. There is a case for making the requirements more explicit and separating them from existing codes, but we wonder if this will add much and may look cumbersome to those on whom it falls. We also believe, in relation to post-employment by civil servants, that the self-regulation involved in a code of conduct will be less effective than the external imposition involved in stronger monitoring of departmental practice with regard to post-employment permissions, and by greater public attention being paid to the work of a (better-resourced) version of the Advisory Committee on Business Appointments.

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

An external regulator covering all aspects of lobbying (registering, monitoring and potentially sanctioning both the lobbyists and the lobbied) would be complex and expensive to operate, though we think in an ideal world it could be very effective. As we imply in our answer to question 4, we think a regulator (as opposed to a Registrar) covering the lobbied will eventually be necessary, but we think the current level of political, business and other political support, and the current understanding of how it would operate and how much it would cost, are so inadequate that to introduce it without further research and modelling would be a mistake.

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

We believe the civil penalties envisaged for non-compliant MCLFs set out in the government bill are appropriate for the modest scope of the bill. A more ambitious regulator requires the capacity not only to fine, but to disqualify lobbyists from action. In the most egregious cases there may be a case for penalties coming from the criminal justice system too, though the bill is already cautious in identifying the boundary between its own penalties and potential for criminal action. There is great scope for difficulty here, as with all regulators whose activities overlap with the reach of the criminal law. Trade unions and charities, and public sector operators, are already subject to restrictions that would need to be coordinated with additional sanctioning. This is just one of the areas where the devil is in the detail, and in which we think the current state of understanding that has emerged from the work of select committees and the government's own pre-legislative work needs further work.

**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?**

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

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

We do not really think (qn. 9) it is either desirable or feasible. We think the current state of civil-service rules and the state of parliamentary codes of conduct makes very clear to officials in these areas what their obligations are with regard to lobbyists, but we believe there is a small minority of individuals who persuade themselves that they are not transgressing the rules when they are. We doubt that for this group "taking pro-active personal responsibility for being transparent in dealings with lobbyists is feasible. It may not even be desirable, if that entailed that there were no other form of supervision or safeguard, but in any case it is not feasible.

We do not think monitoring is possible without an increase in bureaucracy. We think the current weakness in the ACOBA system, described above, is precisely due to its lack of resources in carrying out an important task.

10. **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?**

The answer to the first part of this question (“sufficient balance”) depends not just on the information provided by disclosure, but also, ultimately, on how much lobbying influence coming from organisational or individual power we think is compatible with equality on one side and political freedom on the other. Reasonable people are likely to disagree about this. It also depends on how decision-makers and legislators themselves assess the information about lobbying which they receive. To a considerable extent the arguments that arise here are not differences about lobbying per se, and how to make it transparent, but arguments about conceptions of the social and economic underpinnings of democracy. When such matters arise in relation to other rules of democratic systems, they often involve adjustments to background conditions, of which transparency is one obvious candidate. As we have argued in these responses, transparency provisions are a key remedy, (as is Freedom of Information), but are not always sufficient, may generate information overload, and will not, in the end, create a completely level playing field, since the legislators and at least the top-level decision-makers themselves are partisan creatures who, even when faced with information about lobbying imbalances, will only set aside their partisanship with great difficulty. We think this is not a reason for opposing more transparency and accountability, but for being cautious in the claims we make about its perfectability!

**E13: Dr. John Hogan, Prof. Gary Murphy, Prof. Raj Chari**

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, when carried out properly and ethically, is perfectly legitimate and also necessary for the functioning of a liberal democracy. In our book, *Regulating Lobbying: A Global Comparison*, we argue that many studies over the years, and conducted in many countries, have shown that “Although the term has often had negative connotations, throughout the democratic world the work of lobbyists is essential when policy is formulated” (Chari et al., 2010: 1). Thus, lobbying in and of itself is vital, and should not be a problem when carried out ethically.
  - The problem arises when lobbying is not carried out ethically. This has led to concerns as to what is actually going on within the “black box” of policy making. Miliband (1969) point to the disproportionate influence business has in this environment compared to ordinary citizens, even though other pluralist theorists such as Lindblom (1977) would counter this. Nevertheless, some governments have sought to regulate the activities of lobbyists. In fact, some US states have been regulating the activities of lobbyist for the best part of 150 years, while the US federal government has been regulating lobbying in Washington since 1946. Since we started examining this topic in detail in 2005 for the Irish Department of the Environment, Heritage and Local Government - [http://www.environ.ie/en/Publications/LocalGovernment/Administration/FileDownload,14572\\_en.pdf](http://www.environ.ie/en/Publications/LocalGovernment/Administration/FileDownload,14572_en.pdf) the number of countries around the world that have lobbying regulations in place has doubled, and will likely triple by the end of this decade.
  - In the UK, it seems to us, as outside observers, that lobbying becomes an issue whenever a scandal erupts. As a result, it is a periodic concern in the British media and the British parliament. Since the 1990s, there seems to have been a lobbying scandal in the UK almost every year. Ultimately, the problem is, as the industry is not regulated, it is impossible to say if the abuse of lobbying is widespread or not. On many occasions it seems to take the British newspaper industry – which has a poor ethical record itself – to expose lobbying misdeeds. This uncertainty, as to whether lobbying is a problem, will persist as long as the industry remains unregulated.
  - In other countries, where there is regulation, there is a means of dealing with the problems rogue lobbyists throw up from time to time. But, in those jurisdictions the misbehaviour of lobbyists generally causes less of a crisis, as there are systems in place to deal with it. When the misbehaviour of lobbyists is perceived as particularly problematic, as in the case of the Abramoff scandal in the US, and the system in place is found wanting or weak then the system can be reformed and strengthened as can be seen in the introduction of the Honest Leadership and Open Government Act of 2007. We have seen this many times in our research; initial lobbying laws being repealed or supplemented with new legislation a number of years after their introduction in order to deal with unexpected developments/legislative loopholes or other problems (US federal level lobbying legislation 1946, 1995, 2007; Canadian federal lobbying legislation 1989, 1995, 2005, and 2008).
  - The problem for the industry in the current unregulated environment in the UK is that, as we have seen with other countries, the terms lobbying and lobbyist become pejorative. Even in the countries we have examined that have introduced lobbying regulations, such as Poland, Germany, and Lithuania the word lobbyist is perceived to possess negative connotations. But, once the regulations are in place, less opprobrium is associated with the business of lobbying, provided the regulations can give the public the confidence to believe that this is now a regulated industry. Over time, as the lobbying regulation system functions, and deals with

misbehaviour, while proving greater transparency it is likely that lobbying will come to be accepted the same as any other industry.

- As we were told in the most strongly regulated jurisdiction in the world – Washington State – “where there is a will there is a way.” If a lobbyist really wants to break the rules and misbehave they can. But, in a jurisdiction like that, there are clearly defined penalties for that such behaviour – including very severe fines:  
<http://www.pdc.wa.gov/pageframe.aspx?src=http://apps.leg.wa.gov/rcw/default.aspx?Cite=42.17A>. As such, there was a feeling there that the regulations act as a disincentive to any lobbyists considering acting unethically.

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

- The problem with academic definitions is that they tend to be too vague and as a result unworkable in the real world. As Baumgartner and Leech (1998: 33) point out “the word lobbying has seldom been used the same way twice by those studying the topic”. So, for example, according to Baumgartner and Leech (1998: 33) lobbying constitutes an “an effort to influence the policy process”. Nownes (2006: 5) says that “lobbying is an effort designed to affect what the government does”. However, these definitions could mean anything and everything – as a government engages in myriad policy making there are a lot of ways to try and influence the policy process. Therefore, you should look to other national and sub national jurisdictions for your examples of how lobbying is defined. The Irish government looked to examples from North America, including some US states, and particularly the Canadian provinces of Ontario, British Columbia, as well as the Canadian federal government’s lobbying regulation rules.
- The definition should be as encompassing and as robust as possible. The Irish government in its General Scheme of the Regulation of Lobbying Bill 2013 has sought to ensure that lobbying relates to all communications (direct and indirect and including grassroots communications) by an organisation, or an individual, in their capacity as an employee, officeholder (even purely voluntary role) or shareholder in an organisation. This also includes people or organisations working for third party organisations “on specific policy, legislative matters or prospective decisions with designated public officials or officeholders”. The definition does not encompass non remunerated officers of purely voluntary bodies. The government is defining lobbyists as “any individual, organisation or body who undertakes the activity falling under the definition of lobbying.” Thus, the government is placing more emphasis on regulating the activity of lobbying rather than lobbyists. It is setting out what constitutes lobbying activities, and if an individual or their organisation is engaged in those activities then they are lobbyists and will have to register as such.
- It is also important that any register of lobbyists seeks to capture the level of interaction and the frequency of interaction between state officials and lobbyists (third party or in-house). Senior officials in large companies will probably seek to make contact with cabinet ministers; this is very different from small companies seeking to influence individual MPs, or trade unions seeking to do the same. Therefore it is important to recognise that there is a gradation involved in lobbying.
- It is import to note, as we pointed out above, that the government has to be ready to revise this definition and legislation in light of unforeseen circumstances, be they controversies, or technological developments etc. As such, it is important to recognise the definition of lobbying to be an iterative process that will evolve over time.

- In terms of activities to be excluded from the definition of lobbying, it is important that common sense is applied by legislators and regulators. It is also important that your government looks and learns from experiences in other countries – where there had been much trial and error with this issue. Those not generally required to register would include, for example, officials of foreign governments or supranational organisations (EU, UN, NATO, etc), or, citizens (acting in their own private and non commercial capacity) communicating with their public/constituency representative - as per any liberal democracy. Further, any communications, the revelation of which would endanger life or national security, is not considered lobbying. Participants at parliamentary committee meetings – as these would be a matter of public record. Communications between public office holders, or between them and their civil servants. Communications for a committee established by a minister to inform them on a policy matter. This list is not exhaustive and is just provided as guidance as to what would not be considered lobbying.
- 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<sup>11</sup> (wider registration, disclosure of issues and enhanced Ministerial disclosure) necessary, either as an interim measure or longer term?**
- We feel that the proposed British legislation will not be sufficient to address the problems encountered with lobbying. Confining the register only to third party lobbyists is only part of the equation. In-house lobbyists will also need to be accounted for. In fact, research has shown us that in-house lobbyists can be more numerous and more active than third party lobbyists. If you take a jurisdiction of similar size and population to the UK – the US state of California – it was recently pointed out that AT&T has had more lobbyists active at the state assembly in Sacramento than there are actual members of that state’s House and Senate (120). In the interests of transparency and accountability a government will want to be able to show the public the list of large corporate concerns that are lobbying it. By concentrating on third party lobbyists exclusively, your proposed regulations may end up with a register full of what are effectively very small companies, while the large global concerns that are spending millions and tens of millions of pounds sterling go unregistered and their activities largely hidden from public scrutiny. This was a problem encountered in Australia soon after their regulations were introduced in 2006-2007. As Keane (2008) pointed out a majority of in-house lobbyists did not have to register and were in essence missed out by the legislation.
  - We feel that the Political and Constitutional Reform Committee (PCRC) is going in the right direction with its proposals. Focusing only on third party lobbyists, however, will not work; introducing regulations of medium standard would be a good start - to introduce both the political and lobbying communities to the concept of lobbying regulations. This would bring an element of transparency to UK lobbying that has been absent up to now. Some of the evidence given to the committee is a critical element in finding a solution to this problem – other countries have grappled with this issue before the UK, some much larger, some much smaller, and all have found workable solutions to this problem. As such the UK needs to investigate the approach of the US federal and state governments and the Canadian federal and provincial governments.
  - The PCRC’s recommendations on enhanced disclosure of ministerial meetings are a good idea. As an interviewee from Australia once said to us “it takes two to Tango”, therefore recognising that ministers and MPs have a certain responsibility towards transparency in the lobbying

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<sup>11</sup> See further paragraph 9 below.



equation is critical, especially when we recognise that they are working for, and being paid by citizens, to act in the citizens' interests. Reporting to your employers what you are doing for them cannot be that onerous. In Western Australia there is a requirement that Ministers and their staff complete a form each time they deal with a lobbyist (Hogan et al., 2011). McGrath (2005) pointed out that management consultants, and others working on billable hours, have been recording details of their work for years – recording third party or in-house lobbyists you meet with as a minister or MPs is surely not that difficult.

- If ministers are going to be recording who they are meeting with there will be a need for joined up thinking in terms of IT systems used by UK transparency agencies. It would be ideal if your government provided an online lobbyist register – as is the standard in the US and other jurisdictions, and also presented a record of ministerial meetings on the same website. Rob McKinnon of *Who's Lobbying* highlighted in his evidence to the PCRC the problem in the UK of IT silos that each contain transparency information, but this information is not shared between the various silos. Thus, although there might be a wealth of transparency information in existence, the UK government is failing to link its various strands together and make it easily accessible to the public or even to itself and its officials.

**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?**

- As we discussed above, it is important to recognise that there are two sides in the lobbying relationship. Anti-corruption and FOI legislation along with parliamentary codes of ethics, such as the House of Commons Code of Conduct, will all combined go some way towards findings a solution to certain problems that can arise around lobbying. But, it is important that any lobbying law discusses and identifies clearly those who are likely to be lobbied and the responsibilities that go with occupying such a position of public trust. You will need to clearly define who are public officials or public office holders. There is no one prescription for this – it is usually a national matter – but you can look to other jurisdictions, such as Canada, for examples.
- In many jurisdictions there are now provisions to stymie the revolving door phenomenon or problem - depending on how you look at it. This will mean introducing a cooling off period of a certain duration during which a former public official or office holder (again however defined) is restricted from engaging in lobbying activities (Chari et al, 2010). This restriction may apply to the officer holder's former department or to lobbying the government as a whole – depending on the approach adopted. For instance in Florida "There is a two-year cooling-off period, one of the longest in the US, before legislators can register as lobbyists, but this refers only to former office holders who lobby the particular government body or agency that employed them" Chari et al., 2010: 29).
- However, it would be detrimental to place the burden of policing the system of lobbying regulations mainly on the shoulders of the public office holders as Australia did after 2006 (see Hogan et al., 2011). Nowhere else had done this, and the results have been less than impressive in Australia.

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

- As outside observers, who have not included the UK in our research up to now as it does not have lobbying regulations in place, this question is hard to answer. Based on our research experience, from interviews and questionnaires from all over the world, and from living in Ireland, another country without lobbying regulations, we are of the view that if a country feels that it has problems with the behaviour, or culture, of its lobbying industry, then regulations can

help on all of these fronts. Strengthening the House of Commons Code of Conduct might help. The section in this code of conduct on lobbying is very detailed, but it ultimately leaves the decisions to the MPs to police themselves. As section 3, subsection 101 of the House of Commons Code states: "In common with the rules of the House relating to registration and declaration of interest the main responsibility for observation of the ban on lobbying for reward or consideration lies with the individual Member." We have found that self regulation of the lobbying industry has been found wanting in many of the jurisdictions we examined, and as a result they implemented statutory regulations with various penalties included. You yourselves have seen the problems that have arisen from the British press self regulating and how this has let society down, or the MPs expenses scandals. Relying on MPs to regulate themselves when it comes to lobbying, while high-minded, is a weakness in the system. Introducing a lobbying law, such as those found in North America, can make a difference, instilling greater confidence in the political system and also recognition that lobbying – like more other industries – medicine, accounting, the law, etc – is a regulated business.

- 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?**
- We think that a code of conduct for those organisations would be helpful. Those organisations might already have codes of conduct in place and material in relation to how to deal with being lobbied could simply be simply added to. The code of conduct should draw from any lobbying regulation legislation that is introduced in the UK. This is a link to the Lobbying Code of Conduct in Canberra: [http://lobbyists.pmc.gov.au/conduct\\_code.cfm](http://lobbyists.pmc.gov.au/conduct_code.cfm) The Australian Public Service also has its own code of conduct for working with lobbyists: <http://www.apsc.gov.au/publications-and-media/current-publications/aps-values-and-code-of-conduct-in-practice/working-with-lobbyists> This code clearly states that "A main aim of the Code is to ensure that Government representatives who deal with lobbyists are able to establish which interests the lobbyist represents in order to make appropriate judgments about their motives." The lobbyist registrar should also be able to help with these codes of conduct – providing guidance and advice as to where codes can be improved to conform with whatever legislation they are operating under.
  - We also feel it is import to recognise the need to have a code of conduct for lobbyists also. In Canada, at the federal level they have a code of conduct for lobbyists that conforms to the legislation in place to regulate lobbying: [http://ocl-cal.gc.ca/eic/site/012.nsf/eng/h\\_00014.html](http://ocl-cal.gc.ca/eic/site/012.nsf/eng/h_00014.html). The preamble to the Lobbyists' Code of Conduct states that "The *Lobbyists' Code of Conduct* is founded on four concepts stated in the *Lobbying Act*". The code of conduct is built on top of the legislation and has been refined as the legislation has evolved. The four concepts are: free and open access to government; lobbying is a legitimate activity; citizens have a right to know; and regulations should not impede citizens access to their government.
- 7. Is there a case for establishing an external regulator for lobbying or are existing oversight mechanisms sufficient?**
- There is certainly a case in the UK for considering the introduction of a system for regulating lobbyists. What is in place at the moment does not seem to be working – with the variety of crises that erupt from time to time. In fact it seems to be the British press - themselves no paragons of virtue - who are exposing corrupt lobbying practices. Introducing a lobbying law, with clearly set our penalties for misbehaviour on the part of lobbyists, and establishing the office of a lobbying registrar or commissioner, who will provide the public with access to an online list of lobbyists, that will be updated in real time, will help a lot.

- Once the law is on the statute books it can be reviewed as necessary to see if it is working and achieving its objectives. In most of the jurisdictions that we have examined, when it came to revising their initial lobbying laws, those jurisdictions made them stronger with each iteration – not weaker, as has been noticed with amendments to FOI legislation in many jurisdictions including Ireland. This seems to come from growing confidence on the part of the public, legislators and lobbyists themselves that strengthening an established lobbying law, that they have become used to working with and following, actually holds benefits for each of the three sets of interested parties.
- Most countries, states and provinces that we have studied have established lobbying registrars either in their own new offices, or placed them within extant integrity/transparency frameworks. So, at the Canadian federal level, the office of the registrar is referred to as the Office of the Commissioner of Lobbying of Canada - <http://ocl-cal.gc.ca/eic/site/012.nsf/eng/home> In Ontario the lobbying registrar's functions are included in the Office of the Integrity Commissioner - <http://www.oico.on.ca/oic/OICweb2.nsf/IntegrityCommissionerEn?OpenPage>. In Washington State the register of lobbyists is to be found in the office of the Public Disclosure Commission - <http://www.pdc.wa.gov/> In each of these websites can be found online lists of registered lobbyists, along with details on the legislation in force, codes of conduct in operation, instructions on how to register as a lobbyist, and more information on lobbying. These bodies function as information centres on a range of issue to do with lobbying.

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

- Yes, we fully agree that sanctions are a necessity. From our experience, looking at a lot of different lobbying regulatory systems, we found that systems with weak or no sanctions were most vulnerable to abuse. Such systems also failed to gain the respect of those the regulations were meant to monitor (the lobbyists), and those they were meant to protect (the public).
- In Australia, for instance, the punishment for lobbyists who break the federal code 'is to be excluded from the register. Thus, the penalty for operating without a licence is that you stay unlicensed.'<sup>12</sup> This is similar to the "punishment" found in Western Australia. Professor John Warhurst of the Australian National University condemned the code as timid, narrow, and one that would leave the public in the dark as to most lobbying activity.<sup>13</sup> This Australian registration code effectively attempts to do the same thing as the much more robust US lobbying legislation, but clearly has not gone as far as that legislation. The problem with the Australian system is that it fails to punish dishonest lobbyists. There are many other problems with the Australian regulations that we will not go into here, but ready lessons that could have been taken from the US or Canadian experience, seem to have been ignored.
- In the United States, the Honest Leadership and Open Government Act (2007) imposed what it called "increased civil and criminal penalties for failure to comply with lobbying disclosure requirements". These penalties included civil penalties of up to \$200,000, up from \$50,000 in 1995; and criminal penalties of up to 5 years in prison. In the US case, the penalties are very clearly set out.
- Ireland, which is currently in the process of introducing lobbying regulations, has also set out penalties for failure to comply with lobbying regulations in its draft bill. Its penalties are set out somewhat differently to those in the US, but are still in line with them in terms of structure. On summary conviction fines can be as high as €5,000 and up to 12 months imprisonment. On

<sup>12</sup> *Sydney Morning Herald*, 5 April, 2008, p. 19.

<sup>13</sup> *Sydney Morning Herald*, 16 June, 2008, p. 7.

conviction upon indictment the fines will be determined by the court and imprisonment can be for up to 5 years. However, an initial fine of €5,000 is relatively low. Nevertheless, Ireland is going a lot further than Australia has in terms of setting out more clearly defined penalties.

**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?**

- We feel that individuals who are lobbied should be transparent about it. But, we feel that this should not be left to their discretion. If self-regulation was not a problem then there would never be any controversies over the British newspapers, lobbyists, or MPs expenses.
- We also feel that if you are planning on regulating lobbying then you need to remain particularly focused on the lobbyists – the lobbyists (be they third party or in-house). Nearly all jurisdictions that have introduced legislation to regulate lobbying have sought to focus the regulations on the lobbyists particular behaviour. It is the lobbying industry you wish to regulate, not their clients, or those they are lobbying. In our research (see Chari et al., 2010) we found that lobbyists themselves were usually highly supportive of lobbying regulations that worked and were perceived by the wider community as working. These regulations served to legitimise their industry and remove some of the negative connotations associated with it. It turns out that lobbyists are very keen to use the official registers – where they have to record their details, activities and clients – as tools for advertising themselves. They point to the registers, showing their client base to prospective customers, in order to advertise their abilities and who they are working for.
- There is a danger here, suggested by your questions, that you may hope to resolve all your lobbying issues in one piece of legislation. That is probably not going to happen and you need to recognise that from the start. This is going to be an ongoing iterative process. Once lobbying legislation is in place, like any other piece of legislation that is tied to policy and policy ideas, it is going change and transform over time.

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

- You might be placing a very heavy burden on public representatives to be able to identify and differentiate lobbyists from non lobbyists. Western Australian's Contact with Lobbyists Code "requires that an unregistered lobbyist not be permitted to lobby a government representative". However, enforcement of this requirement falls upon the government representative. This is partly accomplished by the code requiring the lobbyist to inform the government representative that they are a lobbyist, are registered, are working for a third party, supplying the name of that party and stating the subject of their approach. While this may seem a fairly simple requirement, it places an onus upon the honesty of the lobbyist, and the ability of the government representative to differentiate between registered and unregistered lobbyists" (Hogan et al, 2011: 37). To implement such a system you would be asking a lot of public representatives. Whereas a system of lobbying regulations, policed by a lobbying registrar, and that would issue lobbyists with ID cards, would make this process a lot easier, and reduce a burden on public representatives and not rely on the honesty of lobbyists.
- That said, with practically everyone owning smartphones today, taking a scan of the barcode on a lobbyist's ID card - that would link to the online register of lobbyists - should be an easy matter for any public representative wishing to confirm the credentials of any lobbyists approaching them. Recent advances in technology can help in making the regulation of lobbying easier. The fact that the UK is starting from a *tabula rasa* in terms of regulating lobbying does present some

opportunities to technologically leapfrog jurisdictions like the US and Canada in terms of how the regulations can be implemented.

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

- Lobbying could be regulated through the expansion of, or integration into, an extant transparency institution – like the UK’s Information Commissioner. Why not simply Install a lobbying registrar, or commissioner, in that physical institution? In fact, such a set up might help in terms of integrating the UK’s disparate transparency apparatus, housing a number of institutions under the one physical roof. The system could also be self financing - through the fines it would impose on lobbyists who fail to comply with the rules. There will be a cost to regulating lobbying, but that cost should easily provide value for money in terms of the economic efficiencies realised from a more open and transparent policy making environment resulting from the regulations – provided there is a commitment to implement a genuine and workable regulatory regime.

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

- The lobbying regulations introduced in the UK should explicitly deal with the issue of conflicts of interest and how these can be resolved. Citizens should also be able to contact the lobbying registrar or commissioner, when that office is established, in order to be able to clarify any concerns they might have over conflicts of interest. People in state employment should be able to consult codes of conduct that will have been amended to take account of the new lobbying regulations in place - as we saw in the case of Canada discussed above.

**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?**

- There seems to be an inbuilt assumption in the first part of this question that public officials are not balanced in the views that they seek at the moment. We feel that this is coming at the issue from the wrong angle, it assumes an inbuilt prejudice in favour of big money which is not true. If it was, then we should be seeing lobbying scandals every week.
- We think that it is impossible, given human nature, and the vagaries of policy making and legislation drafting, to be sure what you exactly mean by “enhanced disclosure requirements” – the term is too vague. From our experience, we feel that lobbying regulations have generally had a positive impact upon citizens, governments and the lobbying industry. Only in those jurisdictions where the regulations were introduced as window dressing, or as a form of symbolic politics – as in Australia – have the results for lobbying regulations been unimpressive. But, even there, as a result of the poor results from the initial attempts to regulate lobbying there are moves afoot to strengthen the regulations and bring them into line with lobbying regulations elsewhere.
- In our latest paper we argue that lobbying regulations and FOI legislation should be seen as two sides of the transparency coin and that they in fact work to complement each other. It would be our view that lobbying regulations, operating in conjunction with FOI legislation, go a significant way towards ensuring transparency and accountability in a liberal democracy. But, it must never be lost sight of that in a liberal democracy nothing is every finally resolved – the lobbying regulation you introduce, just as the FOI legislation you have introduced in the past, will have to

be revisited from time to time. Regulating the lobbying industry – as we have emphasised throughout – is an iterative process. Loopholes will appear from time to time due to circumstances or technology, and the regulations will need to be changed to account for this.

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