Transparency around lobbying:

Written evidence

Section P - Z

The Committee on Standards in Public Life

5th September 2013

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E31	(SPA) Society of Parliamentary Agents
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E36	William Dinan and David Miller

E23: Pagoda PR

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?**

Not in itself, although recent evidence would indicate that some parliamentarians may be susceptible to influence on the basis of inappropriate inducements. This does, as the paper suggests, damage the reputation of lobbying and parliamentary engagement more widely.

In this respect, there is a risk that efforts to encourage more lobbying/campaigning from wider sections of society – especially young people – are undermined. We need to proactively promote the positive achievements of lobbying if we are to secure the confidence and participation of the next generation, who will otherwise view Parliament with cynicism. Politicians could do more to say when they have been persuaded by well run, well evidenced and transparent lobbying campaigns.

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

This is extremely difficult because the current definitions rely on determining an attempt to 'influence'. In many cases such intent is very difficult to determine. The engagement may often have been initiated by the politicians with the intention on influencing the other party. It may be part of a process of 'good practice stakeholder engagement' which companies are encouraged to pursue with only very general 'reputational objectives'. Most effective lobbying involves networks of third party advocates, social and traditional media commentators where it is not clear who initiated the lobbying (indeed several may typically try to claim the credit in the twittersphere)

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

No, recent events have suggested that further regulation of members' interests and disclosure is required. Ultimately public opinion will probably only be satisfied if measures go beyond disclosure to outlawing non-exec and paid advisory roles.

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?**

Ultimately, the solution will lie more with the lobbied. However, the PR and lobbying industry still needs to do much more to raise standards and enforce codes.

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

With members of parliament, disclosure needs to give way to outlawing potential conflicts. Where lobbyists have been involved in actions in which MPs have committed an offence (e,g. through the receipt of inducements) surely there is an opportunity to use charges such as 'conspiracy to commit misconduct in public office' in respect of the lobbyist..

[1] See further paragraph 9 below.

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?**

The first issue is whether they are being lobbied directly. If so there is a need to record meetings and any direct communication for purposes of transparency.

However, if the pressure of influence is being brought to bear through third parties, social media etc, the person being lobbied may not know who is doing the lobbying and who is being paid to advise. These cases where there is no direct contact would be very hard to regulate.

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

Would suggest that CSPL adopts this role rather than adding further bodies

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

Clearly breaches of parliamentary rules require sanction and lobbyists or anyone else aiding and abetting such breaches should be punished

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

   Yes

   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?**

At the moment secret dealings only come to light through 'media stings'. It needs to be clear that any lobbyist (or indeed any party) that conspires with a parliamentarian to breach rules should themselves be liable for prosecution.

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

Perhaps there should be an opportunity for an MP to offer information to the Parliamentary Standards Commissioner for review if they are unclear as to potential conflicts

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?**

Done well – yes

Ian Coldwell

Managing Director, Pagoda PR

E24: Paul Flynn MP

Lobbying is omnipresent in Parliament. It's the lubricant that eases policy and decision-making at all levels in partial ways that subvert the public interest. MPs are stalked, badgered, hunted and nagged by vested interests with bottomless pockets.

It's an infestation that reaches all areas of parliamentary work. Apart from party conferences, approaches to persuade MPs rarely come directly from lobbyists. The processes are subtle and usually aim to be invisible.

Constituents' letters are crafted, select committee witnesses are trained and rehearsed, all party parliamentary groups are subverted and their reports written, lobbyists arrange foreign trips, surreptitiously.

There was widespread support for David Cameron's call for reform in March 2010. Nothing has improved since then. The evidence of several stings by the media proves the eagerness of parliamentarians in both houses to work with the lobbying industry. Four Lords agreed in a sting to legislate for cash. On the Dispatches programme a string of ex-ministers offered to prostitute their influence, time and contacts for money. The influence of endemic lobbying is growing. No new controls have been introduced and there is new permissiveness.

Adviser on Ministerial Interests

The role of the Adviser on Ministerial Interests has been downgraded with the resignation of Sir Philip Mawer. He was replaced by Sir Alex Allan, an individual whose appointment was unanimously opposed by the Public Administration Select Committee (PASC). There was no legitimate inquiry into the Fox-Werritty affair even though it was the most egregious example of the potential power of lobbying to subvert Government policy.

The introduction of the office of Independent Adviser on Ministerial Interests was a major advance in the scrutiny of Ministers and a bulwark against unaccountable lobbying. The previous government introduced this reform. The Adviser, Sir Philip Mawer, investigated one Minister Shahid Malik. This was done entirely independently of the Prime Minister and the civil service. Sir Philip Mawer told PASC he believed he should have been called to investigate the case of Liam Fox MP and Adam Werritty. He said he disagreed with the matter being decided by the Head of the Civil Service, Sir Gus O'Donnell.

The excuse offered was that Sir Gus could deal with the issue speedily. This was political expediency to avoid the embarrassment of a lingering scandal. Liam Fox's resignation was a key factor. It was absolution by resignation. There was no thorough probe into the conduct of the former Defence Secretary and the very serious allegations that his adviser was sponsored by American interests.

The need for a strong and independent examiner of alleged breaches of the Ministerial Code was a recurring concern for PASC in the 1997-2001, 2001-2005 and 2005-2010 Parliaments. The Committee on Standards in Public Life (CSPL) recommended the establishment of a post of independent adviser on Ministers' interests in its 9th Report, published in 2003.

A PASC report in May 2008 warned that it would be difficult to command public confidence in the role of independent adviser "if the Prime Minister can decide that prima facie breaches of the Code will not be investigated". PASC therefore called for the independent adviser to have the power to instigate his own investigations in its report Investigating the Conduct of Ministers. This Report also recommended greater distance between the independent adviser on Ministers' interests and the Cabinet Office, and called for the holder to be appointed through a transparent open competition and subject to a pre-appointment hearing by a parliamentary select committee. These conclusions were not accepted in the Government's response.

The extent of the lobbying of a special adviser to Culture Secretary Jeremy Hunt was a surprise. It included over 500 emails and persistent invitations from a lobbyist seeking to influence the decision on BSkyB. PASC chairman Bernard Jenkin said: “We have a new cabinet secretary, Sir Jeremy Heywood, and he should demonstrate his independence and advise the Prime Minister. If he thinks there has been a prima facie case of breach of ministerial code.”

An extraordinary exchange of letters took place on Prime Minister’s Question day Wednesday 13th June. The PM’s and the Adviser’s letters were both sent and received on the same morning. Sir Alex declined to investigate because the matter was to be considered by the Leveson Inquiry.

PASC reported this year on the issue involving Mr. Andrew Mitchell. The committee said the PM was wrong to ask the Cabinet Secretary to investigate the Andrew Mitchell ‘plebgate’ affair, wrong for not using the Independent Advisor on Ministers’ Interests instead, and wrong for ignoring a previous report of PASC and resolution passed by the Commons.

PASC again drew attention to the Ministerial Code, which specifically says that it is “not the role of the Cabinet Secretary… to enforce the Code.” Yet the PM chose to ask Sir Jeremy Heywood, the Cabinet Secretary, to carry out a very narrowly defined investigation of only one aspect of the Mitchell affair. Clearly investigation was needed, but the PM ignored the Code and the existence of the Adviser.

PASC repeated its call of March 2012, suggesting strengthening the role of the Independent Adviser precisely to avoid the sort of problems that have already arisen in cases like that of Liam Fox and Jeremy Hunt and subsequently Andrew Mitchell. They recommended, amongst other things, giving Sir Alex power to initiate investigation himself. The House of Commons voted to support these recommendations but the Government has simply ignored it.

Only one case has been referred by David Cameron to the Adviser. That was the conduct of Baroness Warsi who had confessed to a venial sin of a minor misdemeanor. The other three potentially more serious allegations were not referred.

The question now is - will the vital role of the Adviser be further degraded or restored to its original function as strengthened by Prime Minister Gordon Brown? The Advisor should be an Independent Rottweiler. It has been reduced to a Politicised Poodle This is not Government by consent with proper respect for precedence and a reforming agenda.

The Revolving Door

The passage of former ministers, senior civil servants, generals and admirals into lucrative retirement jobs is a continuing potential scandal.

The great danger is that decisions taken in office may be corrupted by the prospect of future employment and retirement riches. The present safeguards are woefully inadequate. The policing of the revolving door by the Advisory Committee on Business Appointment (ACOBA) is weak. Its recommendations are not binding.

PASC has called for ACOBA to be abolished and replaced with a new system of statutory regulation with an independent ethics commissioner with legal powers of investigation and enforceable statutory penalties, in accordance with a clear code of conduct.

Transparency International has led the revelations of the grave dangers of the revolving door. There are special risks for those who take employment in areas of work for which they had previous ministerial or other responsibilities.

As a member of PASC and the Select Committee on Political and Constitutional Reform, I hope that the reports of both committees will be studied and the recommendations of PASC adopted. They offer practical and far-reaching reforms that are long overdue. Transparency is the principal reform required. Details of who is lobbying, at what price, who is being lobbied and the resulting outcomes should be published. Claims that this would be an onerous chore are largely bogus. Routines can be cheaply and simply adopted to copy existing details electronically.

One recent example in the House of Lords reveals a need for fresh recommendations.

Lord Blencathra has recently been cleared by the Lords commissioner for standards of breaching any conduct rules. This is despite holding the post of director of the Cayman islands UK whilst also being able to vote on legislature that directly affects the territory.

In the past year, Lord Blencathra has:

* Lobbied the Chancellor George Osborne to reduce the burden of air passenger transport taxes on the Caymans.

* Facilitated an all-expenses-paid trip to the Caymans for three senior MPs with an interest in the islands over the Easter recess, including the chairman of the influential Conservative backbench 1922 Committee.

* Followed an Early Day Motion in the Commons calling for the Caymans to be closed down as a tax haven by trying to introduce the MP responsible, the former Treasury Select Committee member John Cryer, to members of a Cayman Islands delegation in London. (The meeting never took place.)

This behaviour would be unacceptable in the Commons where it is considered ‘inconsistent with the dignity of the House’ for an MP to ‘advocate or initiate any cause or matter on behalf of any outside body or individual in consideration of any remuneration, fee, payment, or reward or benefit in kind, direct or indirect’.

Lords

However in the House of Lords the rules are far more complex and are open to wide interpretation.

The guide to the code of conduct states that a person who is paid by an organisation can give parliamentary advice to it providing the payment '*is not substantially due to membership of the House, but is by reason of personal expertise or experience gained substantially outside Parliament; and that the member was, or would have been, appointed to the position without being a Member of the House*.'

The commissioner found a prima facie case for a breach of this, before concluding that the peer met the overall criteria and had not acted in breach of the code.

'On the basis of his own reported explanation, it seems that that Lord Blencathra was appointed on the basis of his expertise and/or experience gained whilst a Member of Parliament,' he said. 'However, his membership of the House of Lords was not a prerequisite for appointment.'

He added: 'There is no evidence before me to suggest that Lord Blencathra has provided parliamentary advice in return for payment.'

Though the peer had approached MPs and clearly attempted to lobby the chancellor, these overtures did not breach the code either, the commissioner concluded

Lord Blencathra or David Maclean (as he then was) is the former Tory Chief Whip who led an unsuccessful rearguard action to prevent the Freedom of Information Act from being applied to MPs.

If he had pulled it off, the expenses scandal would never have come to light – which is why his expenses were subjected to special scrutiny. They included £3,300 for a quad bike that he used to get around his large rural constituency, Penrith and The Border.

The Commissioner's findings bring to light an aspect of the Guide to the Code of Conduct which may need clarifying. Paragraph 21 bans "influencing Parliament" in return for payment or other incentive or reward. It goes on to provide examples of what is prohibited, including "making use of [a member's] position to arrange meetings with a view to *any person* lobbying Members of either House, ministers or officials." It does not say in terms whether or not members may themselves lobby ministers or officials in return for payment or other incentive or reward.

My answers to the questions posed by the Committee are:

1. Parliamentarians should be free to reach decisions unencumbered by intrusive persuasion by those paid to win further advantages to the already advantaged. The tentacles of the industry are deeply embedded in all parliamentary activity.

2. The core problem is secret corporate lobbying. Transparent work by charities and trade unions is rarely a threat to good government.

3. The Political and Constitutional Reform Committee's are a compromise reached by the members. They should be regarded as a minimum level of reform. The conclusions of PASC in 2009 would give greater protection to the public interests.

4. In other countries, the corporate lobbying industry has been ingenious in finding loopholes in new regulations. The onus should be put on the lobbied politicians who need to restore their reputations and avoid new scandals.

5. The existing rules are woefully permissive and inadequate.

6. The best model for a code of conduct would be an improved version of the Canadian one.

7. An external regulator is essential.

8. Yes. Offending companies and individuals should be barred from contact with parliamentarians and their staff. Access to parliament and all-party parliamentary groups should be denied to them.

9. Many MPs already have no links to lobbyists or those contacts that are in the control of lobbyists such as all-party parliamentary groups and campaigners. There are compelling pressures on parliamentarians to police their own conduct following the expenses scandal.

10. Conflicts are rarely subtle and are easily identified.

11. Yes. The reformed system will fall short of the unattainable influence-free Utopia but enhanced disclosure would be a great improvement to the impartiality of political processes.

Submission by Paul Flynn MP Newport West

E25: PCRC (Political and Constitutional Reform Committee)

This response is based on the comments made in the Political and Constitutional Reform Committee's report *Introducing a statutory register of lobbyists*.

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?*

There is no reason to think that lobbying per se is a problem. As we noted in our Report, *Introducing a statutory register of lobbyists*, the right of all citizens to lobby Government and Parliament, or to engage others to lobby on their behalf, is a fundamental feature of a vibrant democracy.[1]

Our Report did not directly consider whether the abuse of lobbying was widespread. However, we listed a number of potential abuses of the lobbying process which gained considerable media attention.[2]

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

Our Report did not endorse any particular definition of lobbying, as the definition to be adopted depends on the scope of the statutory register.[3] The debate regarding the scope of the statutory register could not be pre-judged.

However, our Report urged the Government to consider all possible definitions of lobbying, as the definition adopted will be the key to the success and effectiveness of any register.[4]

Moreover, we recommended that the Government clarify whether its definition of lobbyists includes the provision of lobbying advice or only direct representation.[5] Clarifying this matter would avoid confusion regarding who should and should not register as a lobbyist, were a register to be established.

We stated that if the activity of lobbying were defined, rather than what a lobbyist is, it should be easier to require anyone who is carrying out the defined activity to be registered as a lobbyist.[6]

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

We thought that the proposals for a Statutory Register of lobbyists, in the form proposed in the Government's Consultation Paper, were insufficient to address public concern over lobbyists having undue influence over politicians.[7]

[1] *Introducing a statutory register of lobbyists,* Second Report of Session 2012-13, page 8, paragraph 13
[2] Page 8, paragraph 15
[3] Page 12, paragraph 25
[4] Page 12, paragraph 25
[5] Page 10, paragraph 20
[6] Page 21, paragraph 61
[7] Page 18, paragraph 48

Our Report concluded that the Government's proposals would do nothing to improve transparency and accountability about lobbying. Imposing a statutory register on a small part of the lobbying industry without requiring registrants to sign up to a code of conduct could paradoxically lead to less regulation of the lobbying industry.[8]

We thought that the Government's proposals only scratched the surface when it came to tackling the public concern about undue access to and influence over the policy making process, and were unlikely to prevent lobbying from becoming the "next big political scandal".[9]

We recommended in our Report that the Government implement a system of medium regulation as a starting point for a statutory register of lobbyists.[10] This system of regulation would include in-house lobbyists as well as third party lobbyists, and would require lobbyists to disclose the issues about which they were lobbying the Government.

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?*

With regards to meetings between lobbyists and Ministers, we recommended a range of ways to improve transparency:

- When details of meetings between Ministers and lobbyists are published, the Government could disclose the clients for whom the lobbyist was working.[11]
- Departments should publish details of Ministerial meetings no more than a month after the month in which the meeting occurred.[12] There are some instances of this process taking eight months, which reduces transparency.
- The Government should publish data on meetings between Ministers and lobbyists in consistent machine-readable file formats to enable easier analysis.[13]
- The information provided about meetings should be more detailed. Specific dates and topics for meetings between Ministers and lobbyists should be released.[14] When topics for meetings are given, vague terms should be avoided. We recommend that the Government publish the specific topic of the meeting, unless immediate security concerns prevent disclosure.[15]
- The Government should provide the company or charity number of any organisation that a Minister meets. This means that, even if the charity or company is listed under an acronym, its identity can be verified.[16]

[8] Page 18, paragraph 48
[9] Page 18, paragraph 47
[10] Page 24, paragraph 72
[11] Page 26, paragraph 75
[12] Page 26, paragraph 78
[13] Page 27, paragraph 80
[14] Page 29, paragraph 83
[15] Page 29, paragraph 84
[16] Page 30, paragraph 86

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

The Public Administration Select Committee published a report in January 2009 that was critical of the lobbying industry. The report concluded that the current system of self-regulation by three different lobbying industry bodies, the Association of Professional Political Consultants, the Public Relations Consultants Association, and the Chartered Institute of Public Relations, allowed lobbyists to pick and choose the rules that applied to them. The Public Administration Select Committee report concluded that the current system was "incompatible with effective self-regulation".[17]

The Government rejected these recommendations, stating their preference for continued self-regulation.[18] The Coalition Government, however, stated their ambition to "regulate lobbying through introducing a statutory register of lobbyists and ensuring greater transparency", thereby recognising that the existing rules are not sufficient.

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?

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?

We proposed that the Government consider introducing a hybrid code of conduct to operate alongside the statutory register of lobbyists.[19] Under such a system, registered lobbyists abide by the code of conduct of their profession, but make it clear which professional body can be contacted if there is an allegation of improper behaviour. This could ensure that those who lobby can be held to account. However, if the Government adopted such a system, it would need to consider what provision it would make for organisations that are not already a member of a professional body with a code of conduct.

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

Under a system of medium regulation, enforcement mechanisms could be limited to removal from the register. Ministers and officials would meet only with lobbyists who were on the register, making removal from the register a meaningful sanction. There could, however, be a facility for retrospective registration for lobbyists (up to 28 days after the meeting occurred).[20]

[17] Public Administration Committee, First Report of Session 2008-2009, "Lobbying: Access and Influence in Whitehall", HC 36, paragraph 57

[18] Public Administration Committee, Eighth Special Report of Session 1008-2009, "Lobbying: Access and Influence in Whitehall: Government Response to the Committee's First Report of Session 2008-2009, HC 1058, paragraph 5

[19] Page 16, paragraph 39

[20] Page 20, paragraph 54

Annex:

Political and Constitutional Reform Committee (House of Commons)

Select Committee Announcement

19 July 2013
For Immediate Release:

New inquiry - The Government's lobbying Bill

The Committee today issues a call for written evidence on the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill

Terms of reference for the inquiry

The Committee is seeking answers to the following questions:

1. Is the definition of "consultant lobbyist" in clause 2 of the Bill likely to lead to a register that enhances transparency about lobbying?

2. Are the definition of "consultant lobbyist" in clause 2 of the Bill and the list of exceptions in schedule 1 of the Bill likely to have any unintended consequences?

3. Is the information that the Bill requires to be listed on the register sufficient to enhance transparency about lobbying?

4. Are there any potential problems with the role envisaged for the Registrar?

5. Does the absence of provision for a statutory or hybrid code of conduct in the Bill present any problems?

6. Are there any further issues raised by Part 1 of the Bill, including drafting issues, that you would like to draw to the Committee's attention?

The Committee would be pleased to receive submissions that cover some or all of the points listed above. Please note that the Committee's inquiry is focused on Part 1 of the Bill (Registration of Consultant Lobbyists) and, while it may be appropriate to refer to the other Parts of the Bill (Non-party campaigning and Trade Unions' Registers of Members) in passing, the Committee will not be considering detailed submissions on these Parts.

How to respond:

The deadline for written submissions is Friday 23 August 2013. The short deadline is to accommodate the likely legislative timetable for the Bill. Submissions should not significantly exceed 3,000 words unless this has been cleared in advance with the Committee secretariat. Written responses to the Committee will usually be treated as evidence to the Committee and may be published. If you object to your response being made public in a volume of evidence, please make this clear when it is submitted.

If you are considering submitting written evidence please read the following guidelines

- **Guidance on submitting written evidence**

FURTHER INFORMATION:

Committee Membership is as follows: Mr Graham Allen (Chair) (Nottingham North), Mr Christopher Chope (Christchurch), Paul Flynn (Newport West) Sheila Gilmore (Edinburgh East), Andrew Griffiths (Burton), Fabian Hamilton (Leeds North East), Simon Hart (Carmarthen West and South Pembrokeshire), Tristram Hunt (Stoke-on-Trent Central), Mrs Eleanor Laing (Epping Forest), Mr Andrew Turner (Isle of Wight) and Stephen Williams (Bristol West).

E26: PLMR (Political Lobbying and Media Relations Ltd)

Executive Summary

i. The Government's proposals do not go far enough to regulate lobbying. A simple, statutory register must cover anyone practicing the act of lobbying, including in-house practitioners, law firms that lobby, management consultancies, not just 'third-party' lobbyists which make up a minority of all activity.

ii. The bodies that currently administer self-regulation in the industry do good work and the majority already subscribe to their code of practice. Signing up to one of the existing codes of conduct should go hand in hand with registration. This would bring the minority of lobbyists who still operate outside of normal practices into the same ethical framework as the majority of the industry.

iii. Political Lobbying and Media Relations (PLMR) already meets these requirements of transparency and ethics. There are no longer any excuses for similar measures not to be introduced across the Public Affairs industry. PLMR has extensive experience in the sector and this qualifies us to say that compliance is neither difficult nor onerous. However, we are concerned about the proposed costs of the new register.

iv. Individual responsibility and transparency are part and parcel of the responsibilities of public office. Those being lobbied must remain accountable for their interactions with lobbyists.

v. It is not unreasonable to expect organisations that lobby to dedicate a set amount to the regulator. However, the proposed costs should not be excessive.

vi. Lobbying is a noble profession and it does not deserve the opprobrium currently attached to it. There are a large number of companies active in the sector carrying out work that makes a real difference to people's lives, improving health, promoting charitable objectives (within all proper Charity Commission boundaries), supporting educational institutions, philanthropic ventures, and conveying their messages to Government. Alongside the purely commercial lobbying, which is equally valid, this cannot be allowed to stop.

PLMR's credentials

PLMR commenced trading on 1st May 2006 and its founder and Managing Director Kevin Craig has, from the very start, been committed to building an agency that has the very highest professional standards, providing first class consultancy advice to clients, outstanding career opportunities and rewards to key staff, and maintaining a commitment to philanthropic works and charitable donations.

PLMR is a member of the Association of Professional Political Consultants (APPC), Public Relations Consultants Association (PRCA), and UK Public Affairs Council (UKPAC). In addition, several staff are individual members of the Chartered Institute of Public Relations and Kevin Craig and Associate Director Elin Twigge are members of the Institute of Directors. Elin is currently Vice Chair at the PRCA Public Affairs Group.

PLMR declares all of its clients on the registers of the APPC, UKPAC and the PRCA. We also publicise clients and causes on our website. MD Kevin Craig has spoken regularly on national broadcast media about the need for openness and transparency in political lobbying.

PLMR pledges 5 per cent net profit to charities every year. To date we have donated £60,598 to causes chosen by our staff. We also carry out pro bono work for charities such as Elizabeth's Legacy of Hope, HEAL, 21st Century Legacy, Earlybird Diabetes Trust and the Rape and Sexual Assault Support Centre. In 2012-13 this constituted over 1,000 hours of manpower, completely free of charge.

PLMR is an SME proudly contributing to the UK economy. We will have paid £329,390 in corporation tax for the period 1 May 2006 to 30 April 2013 to HMRC.

Response to Questions

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

PLMR draws its staff from a number of backgrounds and in our experience the lobbying industry operates with the utmost ethical intent. The activities of the more questionable bodies and rogue individuals that lobby, currently operating outside of any form of professional code, should not be used to disgrace the wider industry. Professional consultancies already sign up to voluntary codes that have long banned practices rightly considered to go beyond the boundaries of fair and open practice. The possession of Parliamentary passes being one example. In addition, reputable consultancies register under APPC, PRCA and UKPAC and publish their staff and client lists. This intelligent regulation does not put lobbyists at a competitive disadvantage: all the consultancies to receive a Public Affairs News Award in 2012 were on the register.

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

Lobbying should be defined as anyone who seeks to influence public policy and law. Lobbying by in-house teams, trade bodies, unions, charities and other types of organisation such as law firms or management consultancies that lobby should be covered by the definition. Any other definition would lead to a partial-register, excluding the vast majority of activity.
Any campaigns run by individual citizens or unfunded groups should be excluded from the definition of lobbying. This form of activity is an integral part of civic life in a representative democracy and to burden it with regulation would cause disproportionate harm.

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

The proposed legislation falls far short of what is required to address the perceived issues and problems around lobbying. The definition of lobbying taken by the Bill only covers consultant lobbyists. As discussed above, consultants make up a minority of people that lobby in the UK. In its current form the register would not cover in-house teams, trade bodies, unions, charities or other regulatory outfits not covered by the same rules such as law firms and business consultancies. In fact, the loopholes are so great that PLMR may not even be eligible to join the register as it stands due to the proportion of public relations vs. public affairs our agency undertakes and the fact we do not make personal representations to Ministers of Permanent Secretaries, but advise our clients how to best communicate.
We wholeheartedly agree with the Political and Constitution Reform Committee that the Government's proposals would result in a less vigorous system than the self-regulatory one currently in place. Like the Committee, we call for a register that covers more than just the minority of lobbyists. The Committee's proposal to standardise the reporting of Ministers' meetings is an excellent, common sense policy. The principle of transparency has already been established on this point; Government should make scrutiny as easy as possible.
On disclosure of issues we take a slightly different view to the Committee. Explicit information on the details of meetings between lobbyists and ministers should not be published. This is a breach of confidentiality, and removes the right of privacy to individual organisations who often have sensitive information that should not be available in the public domain. Having to disclose the nature of all meetings will stop many from being able to meet at all. Ministers will be the poorer for it as they will

not receive input from parties relevant to their areas of responsibility. We believe knowing a meeting took place is enough for the public to scrutinise the relationship between lobbyists and Ministers.

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?

It is clearly a responsibility of those in public office to act and be seen to act in an open and honest fashion. In addition, any statutory register would have to be passed in Parliament making legislators ultimately responsible for it. However, this should not be used by lobbyists as an excuse for continuing with disreputable practices.
The public's negative view of lobbying harms the industry. Lobbyists have a commercial as well as moral incentive to be the ones seeking solutions. The widespread acceptance of self-regulation in the industry tells of how willing lobbyists are to make the changes necessary to restore the public's trust in the industry. Moreover, the push for a universal regulator is embraced by all representative industry bodies, so it is disappointing that this is not the path the Government is proposing.

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

At a minimum, a statutory register that covers the entirety of the industry, including in-house practitioners, must be implemented. In addition, membership of a self-regulatory body and, as such, commitment to a code of conduct should be required alongside statutory registration.
It is not unreasonable to ask organisations that lobby to dedicate a set amount, calculated via formula, to the administration of the Register. However, the cost of such a framework should be kept to a minimum so as not to cripple small businesses and employers in the sector.

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?

The type of interactions between lobbyists and office holder vary as in any industry. By the very nature of our work, we come into contact with political figures via political, personal, social, and charitable contexts, to name but a few. PLMR's consultants come from backgrounds in the House of Commons and the Civil Service and have many such contacts with politicians. It is therefore necessary that holders of public office are responsible and transparent in their dealings with lobbyists.
Ministers and MPs already follow an official code of conduct. It is notable that many of the recent scandals surrounding lobbying would be covered by these guidelines and have not involved lobbyists at all. Instead they have consisted of journalists posing as lobbyists and politicians incriminating themselves.

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

In order to restore the public's trust in lobbying there needs to be meaningful regulation. PLMR supports the introduction of a register but there needs to be detailed and meaningful consultation with the appointed registrar before guidelines for lobbyists are published. As the draft Bill stands there is real ambiguity in language, definition and proposed application.
It is also necessary that commercial sensitivities of clients must remain protected. The confidentiality between client and lobbyists does not represent a smokescreen to underhanded lobbying practices. It serves to protect commercial interests. Financial disclosure would only damage the market. It

would also over-simplify the nature of the lobbying industry. Different clients across different sectors require different services, and these vary markedly in delivery when comparing the approaches of various Public Affairs Consultancies.

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

We do agree that for a code of conduct to be effective there must be appropriate sanctions in place. Whilst we do not see the necessity of introducing a statutory code of conduct – as broad, detailed codes already exist – we do believe that failure to comply with the code or failure to register appropriately should result in fines.

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?

Individual responsibility and transparency are part and parcel of the life of an elected representative and so they should be. MPs must take responsibility but the sector is also willing to be proactive through a universal statutory register. As such, a combination of a universal register and greater, more uniform MP transparency will deliver the best solution and restore public confidence.

a. If not, what are the impediments stopping such a process?
As noted in question six, it is not realistic to record every interaction between lobbyists and politicians as this would create an undue bureaucratic burden. At higher levels of Government it is easier to implement as individuals have larger staffs but MPs, for example, have small offices which would be better engaged in their core work. As such, a combination of a universal register and greater, more uniform MP transparency will deliver the best solution and restore public confidence.

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

See above.

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

Professional lobbyists should always declare who they are approaching an MP or other public figure on behalf of. With that information it is absolutely then the responsibility of the 'lobbied' to ensure they are not conflicted. Pecuniary or other interests should be declared transparently by elected Members.

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 register of all lobbyists, including consultants and in-house practitioners, which notes the client lists of consultancies, combined with a commitment to signing up to a code of conduct for lobbyists, the current rules on reporting Ministers' meetings, and the Freedom of Information Act should prove sufficient to ensure transparency and accountability. However, it must again be noted that the current proposed legislation does not achieve this. Should we be able to improve the proposed legislation to reflect universality, this would restore the public's trust in lobbying and contribute to ethical growth of this important industry.

E27: Political Intelligence

1 Introduction

Political Intelligence is an independent public affairs consultancy, established in 1995, with offices in London, Brussels, Madrid, Edinburgh, Rome and Lisbon. We advise a diverse range of clients on their engagement with political institutions and other stakeholders providing a broad range of services including monitoring and intelligence, strategic advice, stakeholder mapping, engagement programmes and the provision of secretariat services to trade associations and other groups.

As public affairs consultants we are focused on understanding our clients' issues and on enabling them to navigate the political landscape more effectively. We do this on the basis of our understanding of the political system, our clients' sectors and our knowledge of what course of action is most appropriate in any given situation. Contrary to wide-held beliefs, we believe that a political contact book is not necessary for running a successful lobbying campaign. The correct timing, message and approach are vital in developing a well-built case for (or against) change and thus form the key elements of successful lobbying.

Whilst we sometimes come directly into contact with policy makers, we are clear about whom we are representing and we take our ethical responsibilities seriously. In the UK, we have been active members of the APPC since 2007 with staff members represented on both the management board and Young Consultants Committee and are also members of the appropriate bodies in the other countries where we are based.

Below we contend that:

• Lobbying plays a fundamental role in the democratic policy-making process

• Recent media stories have demonstrated that there is a case to regulate the lobbying process, even though no lobbyists were involved

• The Government's proposals are inadequate as they will lead to no improvement in transparency or accountability, exclusively focus on a subset of professional lobbyists and potentially risk undermining the existing professional bodies

• Any regulation needs to cover lobbyists and the lobbied and needs to apply universally and be combined with ethical codes of conduct and standards of behaviour

2 The role of lobbying in a democratic society

Lobbying plays a fundamental role in in the democratic policy making process. Through lobbying, a wide and pluralistic set of interests have a chance to convey their ideas about how public policy should be structured. In doing so lobbyists advise their clients on how best to provide policy makers, who ultimately have to take the decisions and are accountable to their electorate, with information, ideas and insights that would otherwise not be readily available to them.

There are various ways of conveying any relevant information, for example, one-to-one meetings or letter campaigns. However lobbyists can only be successful in influencing public policy if policy makers believe that the case that has been made is convincing and if the information that has been

provided is credible. Only then might they feel inclined to factor in such information into their own deliberations about public policy decisions.

The role of public affairs consultancies, such as Political Intelligence, is to enable their clients, in many ways the real the lobbyists, to meet these conditions and to deliver a credible case to decision makers.

3 The case for lobbying regulation and transparency

We believe that policy makers who have a chance to hear a variety of opinions are more likely to make decisions that are in the public interest. However, we recognise that there are concerns amongst the public about the role that lobbying plays. These concerns seem to be partially about a perceived lack of transparency about what is happening when politicians and lobbyists meet and partially about the belief that lobbyists use undue means to achieve their aims.

As a member of the Association of Professional Political Consultants, we abide by a code that goes beyond the minimum standard and requires us to openly disclose the identity of our clients, prevents us from remunerating in any way MPs, MEPs, or Lords However, the voluntary register of the APPC do not cover all public affairs consultancies and do not require other businesses such as law firms and management consultancies who also may offer similar services to register. Moreover, recent stories in the media seem to have confirmed public suspicions about lobbying. Even though professional lobbyists did not actually play a role in the recent lobbying scandals, the recent media stories demonstrate that there is room for politicians and lobbyists to engage in undue behaviour. For this reason, we believe that it is justified to investigate whether there is a better way to prevent undue behaviour from taking place and to increase public trust in the political process. We believe that increasing transparency and enshrining rules of acceptable behaviour will go a long way towards improving public trust but only if all those who are lobbying politicians and those who are being lobbied comply with the rules.

In theory any attempt made by an individual or organisation that does not have a constitutionally guaranteed role in the policy-making process to influence a political decision could be regarded as lobbying. However, this would include constituents talking to their MPs and MPs talking to Ministers prior to the publication of a Bill. We therefore believe that any attempt to regulate lobbying needs to focus on those who lobby in a professional capacity. We believe that this includes, at a very minimum, public affairs agencies, law firms, management consultancies and in-house teams in corporations or charities. We support the definition of lobbying put forward by the APPC, PRCA and CIPR which is included in the Annex

4 The problems surrounding Government proposals

We initially welcomed the Government's commitment to establishing a lobbying register as only a Government led register would ensure that lobbying registration would be extended beyond the currently voluntary register of the APPC. We further hoped that the Government would take into account the Political and Constitutional Reform Committee's 2012 report which indicated that a partial register would be "too narrow and potentially unworkable"[1] and were subsequently disappointed that the Government choose to ignore the Committee's recommendations and instead proposed a very limited statutory register.

We believe that the Government has not provided a sufficiently robust rationale for introducing a limited register. A review of the reports of Ministerial meetings demonstrates that there have been very few meetings between consultant lobbyists and Ministers[2] and that these consultant lobbyists already publicly disclose their clients. Even if one accepted the Government's rationale that the key issue that needs addressing at present is the inability of Ministers and the public to identify on whose behalf consultant lobbyists have approached them, there are better ways to achieve this stated aim. It seems entirely unthinkable that any Minister would be willing to meet with a consultant lobbyist without enquiring about the purpose of the meeting or the clients involved and it would be far easier and cost-efficient to require Ministers to indicate, in their records of ministerial meetings, the name of the consultancy they talked to and the clients on whose behalf the consultancy made the approach.

We believe that the Government's proposals will lead to a distorted picture of lobbying activity and is likely to have some unintended consequences. The proposals are unlikely to encourage public affairs consultancies, PR consultancies, management consultancies or law firms that are not currently members of the APPC, CIPR or PRCA to become part of the statutory register and disclose their clients. These companies are likely to make use of Schedule 1 Part 1 of the Draft Bill, i.e. they will claim that they are not a lobbying business or that communications with Ministers are "an insubstantial proportion" of their business. Even some of the APPC, CIPR and PRCA members who are currently disclosing their clients would not necessarily be covered by the draft Bill.

In addition, the proposals will burden those consultancies that are already members of voluntary industry codes with extra costs and red tape and without achieving any added benefit for the public.

We therefore disagree with the Government's decision not to propose a hybrid model, incorporating a universal register of professional lobbyists linked to a professional code of conduct. We echo the views of the Political and Constitutional Reform Committee that imposing a statutory register on a small part of the lobbying industry without requiring registrants to sign up to a code of conduct could paradoxically lead to less regulation of the lobbying industry.

5 The way forward

The current proposals are a step back rather than a step forward. The proposals will lead to no improvement in transparency or accountability. They instead, focus exclusively on a subset of professional lobbyists and potentially risk undermining the existing professional bodies by requiring consultant lobbyists to become part of public register that duplicates the information they already provide to their professional body.

We believe the current voluntary system that combines a register with a code of conduct should be taken as the starting point and be extended to all professional lobbyists. Only the combination of universal registration with specific standards surrounding accountability will ensure that the public can build trust in the behaviour of lobbyists. Such an approach would need to be accompanied by robust transparency from those who are being lobbied.. The Committee on Standards in Public Life came to a similar conclusion in its report 'Standards Matter' where it queried whether a register of third party lobbyists was the key to reform suggesting that it would be "better to build on the steps already taken to increase transparency"[3].

We broadly support the Political and Constitutional Reform Committee's proposals in this area 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. We further believe 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 believe 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 argue that Ministerial disclosure of meetings with external stakeholders should be more consistent and timely.

6 Conclusion

Political Intelligence is committed to ensuring that the process of lobbying is both transparent and ethical. We, along with the vast majority of public affairs consultancies, voluntarily disclose our clients and strictly adhere to a professional code of conduct. We welcome moves to improve the current status quo and ensure that the public are confident that the political process is transparent and operates within the highest ethical standards. However, we feel that the Government's proposals represent a missed opportunity and will fail to achieve the stated aim of improved transparency. The absence of a hybrid model and provisions to monitor the conduct of the lobbied results in a backwards step and we urge the Government to reconsider its position.

1 http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpolcon/153/153.pdf

2 http://blog.whoslobbying.com/post/18373367700/less-than-20-lobbying-firm-meetings

3 http://www.official-documents.gov.uk/document/cm85/8519/8519.pdf

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.

E28: PRCA (Public Relations Consultants Association)

Introduction

The PRCA welcomes the Committee's examination of the issue of transparency and lobbying. The PRCA is the professional body that represents over 500 corporate members from the UK public relations and public affairs industry, in the public, private and charitable sectors.

We welcome such studies as a means to increasing awareness of the importance of public affairs and lobbying as a vital, legitimate part of the democratic process. This is crucial because recent parliamentary scandals and subsequent media coverage show that there is a widespread lack of understanding of lobbying, and - perhaps more importantly - who is a lobbyist.

The PRCA would also like to reiterate its disappointment at the recent Bill brought forward by the Government. The PRCA is still in the process of consulting its membership on its response at the time of writing this submission, but its position that the Bill is unfair and unfit for purpose remains unchanged.

PRCA Code of Conduct and Voluntary Register

Members of the PRCA that conduct public affairs or lobbying services are bound by a Public Affairs Code of Conduct, and must submit their details to a Public Affairs Register that is updated quarterly and posted to the PRCA website.

The Register is retrospective, covering those who have conducted lobbying activity in the three months prior to publishing, and includes the following details: an office address and contact information, a list of all staff that conduct lobbying services, and a list of clients who benefit from these services.

The latest copy of the Register can be found at www.prca.org.uk/paregister. At the time of writing there are a total of 83 organisations represented on the PRCA Public Affairs Register, with 1,093 individuals and 1,330 clients. This includes 55 public affairs consultancies and 28 in-house lobbying departments.

Questions

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

The PRCA strongly disagrees with the perception that lobbying in the UK is a problem. Rather, lobbying is a vital part of the democratic process. Countries that have a large concentration of lobbying organisations also tend to be healthy, flourishing democracies. This is not a coincidence. Everyone has a right to influence the policymaking process, be they an individual or an organisation, and in a voluntary, personal or professional capacity. This enables policymakers to make legislative decisions based on as much information as possible.

The PRCA is not aware of any evidence that suggests that abuse of lobbying is widespread or systemic. This is because professional lobbyists understand the ethical procedures of Parliament better than most. In fact, when there does appear to be "lobbying scandals" in the news they usually

do not involve professional lobbyists, but journalists posing as lobbyists and deceiving politicians into behaving in an unethical matter. It should be pointed out that even in these scenarios the responsibility for the unethical conduct ultimately rests with the politician. However, such media coverage gives the false impression that such scandals are potentially pervasive, and the halo effect of misbehaving politicians is that lobbying is tarred with the same brush.

This is further exacerbated by other self-described "lobbying scandals" that do not involve professional lobbyists. Two recent examples include Adam Werrity, who was not a lobbyist but a friend and adviser of a politician, and former military officials alleged to have offered access to the Ministry of Defence. Again, the halo effect is that lobbying and lobbyists are seen as the problem, when the focus should be on the conduct of others.

At the same time the PRCA recognises that transparency and accountability are crucial, which is why we operate our own voluntary Register of lobbyists and have called for a universal Statutory Register.

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

The definition of lobbying should be broad, simple and without exemptions such as indeterminate thresholds. Unfortunately, the Government's definition is unfit for purpose as it does not understand how the UK lobbying industry operates. Its definition is incredibly narrow as it only covers "consultant lobbyists" who spend a "substantial" course of their business lobbying. Further, it refers only to lobbying Ministers or Permanent Secretaries. This interpretation is so specific that we expect it to cover a tiny proportion of the current 83 organisations on our voluntary Register, if any.

Our consultancy members primarily advise clients on matters of lobbying and public affairs. Directly communicating with Ministers or Permanent Secretaries on behalf of a client does not constitute a substantial part of any of our members' work.

Further, our in-house members have been completely omitted by this definition, yet anecdotal evidence suggests they are more likely to contact ministers directly than their consultancy counterparts.

The three trade bodies that represent the lobbying industry - PRCA, APPC and CIPR – worked collaboratively on a definition of lobbying that would capture all professional lobbyists, be they consultancy, in-house, other third-party lobbyists such as management consultancies etc. We deliberately exempted non-professional lobbying activity such as constituency enquiries.

The definition and a supporting FAQ can be viewed here:

http://www.prca.org.uk/assets/files/Definition%20of%20Lobbying.pdf

http://www.prca.org.uk/assets/files/Definition%20QandA.pdf

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 above in 1 and 2, the proposed legislation is unfair and unfit for purpose. It is unfair because it will result in a tiny group of public affairs consultancies having to register. The PRCA does not take issue with the Register being independent of industry, whilst being funded by those on the Register. However, as so few professional lobbying organisations are expected to go on the Register, the current cost - the Government estimates that it will cost £500,000 in the first year and then £200,000 annually – will be incredibly exorbitant for the simple act of registration required.

It is unfit for purpose as it excludes the majority of lobbyists due to the narrow definition outlined in 2. The Government will not meet its own objective of increasing transparency but instead covering fewer than on existing voluntary models.

We found the Political and Constitutional Reform Committee's proposals to be a helpful and constructive step in the right direction as it fully endeavoured to understand the lobbying industry. The PRCA agrees with the Committee that having no Statutory Register at all would be better than what the Government is currently proposing. We believe the Bill will reduce transparency, rather than increase it, if so few of our members are likely to be required to register.

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?

Although we do not believe there is a lobbying problem, the issue of transparency should certainly focus on both the lobbied as well as lobbyists. The PRCA will continue to operate its voluntary Register and uphold its ethical code of conduct, particularly as we do not expect the majority of our members to be required to go on the Statutory Register.

The PRCA produces its voluntary Register quarterly and within a month of the end of that quarter. This covers all lobbying activity conducted by members including monitoring and advice, and not simply direct communication with policymakers. On the other hand, MPs do not have to publish their meetings, and although the Government does have to publish ministerial meetings it does not do so efficiently. There is a clear asymmetry.

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

To tackle the asymmetry outlined in 4 there clearly needs to be a more efficient system of publishing ministerial meetings, and there needs to be an examination to see whether it should be widened to cover more than just ministers.

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?

It must be recognised that such codes of conduct for Government and Parliamentarians are already in place. There are also existing laws to cover unethical and illegal behaviour such as bribery. It should be obvious to an individual when they are being lobbied, and therefore what response is proportionate and appropriate.

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

As the PRCA does not see a problem with lobbying, we do not think an external regulator of the industry is necessary. In light of the current Bill and its proposed costs, we are concerned that any external regulation would be overly and unnecessarily onerous, and we fear any more legislation would further undermine existing oversight mechanisms such as the PRCA Code of Conduct and PRCA Public Affairs Register.

A broad Statutory Register that covers all professional lobbyists will help improve transparency, and we support the Political and Constitutional Reform Committee's proposal for a "hybrid" model that indicates on the Register whether the lobbying organisation abides by an industry body code of conduct.

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

The PRCA Code of Conduct includes sanctions against members who contravene its rules. The most powerful sanction is to revoke membership. At the same time, media coverage and publicity of misbehaviour is crucial. However, it should be pointed out that our members join the PRCA to demonstrate their adherence to ethical codes.

For Government and Parliament, please see our answer to 6 above.

For the Register, the PRCA is in favour of sanctions for those who do not register that are required to do so by law. However, this must be coupled by a significant reduction in the subscription fee so that organisations do not suffer the vicious cycle of not being able to afford registering, and then suffering financial penalties for not doing so. It is also counter-intuitive to punish a small lobbying consultancy for not declaring its lobbying activity whilst larger in-house lobbying organisations are not required to register at all.

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?

The PRCA has maintained throughout the debate on lobbying that whilst we uphold high ethical standards that our members adhere to, responsibility always ultimately rests with politicians and officials for their personal dealings. It is entirely desirable and feasible that this should be expected of publically accountable individuals and entities.

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

The PRCA is less concerned with conflicts of interest, which the PRCA considers to be straightforward for the politician/official concerned, than it is with the 'revolving door' of former government officials moving directly into roles in industry and business. Rules on the moratorium period that prevents former officials from lobbying should be tightened. We would welcome further examination from the Committee on this issue. It is also worth noting that former MPs/SpAds/ministers etc. that move to in-house roles would not be covered by the Government's Register but would be captured by the PRCA/APPC/CIPR definition.

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?

The lobbying industry is in favour of more transparency, not less. That is why we are disappointed that the Government's current Statutory Register proposal is not going to provide the pertinent information we desire. A Register that covered all professional lobbyists - and in the case of third parties, their clients – would provide the pertinent information and increase transparency by consolidating the existing effective voluntary Registers. The incentive should not be on decision-makers, who need no added incentive to be fair and balanced, but on professional lobbyists currently outside the voluntary models to join a Statutory Register. That is why the exorbitant cost of subscription fees for the Statutory Register should be minimal to encourage, rather than act as a disincentive to, registration.

In sum, a universal Statutory Register of all professional lobbyists coupled with a more efficient and broader system of ministerial meetings and the Freedom of Information regime would ensure sufficient transparency and accountability to enable effective public scrutiny of lobbying. The PRCA hopes this will lead to a greater understanding of the lobbying industry, and recognition that is not the problem.

We strongly urge the Government, even at this late stage, to reconsider its unfair and unfit for purpose proposals. The Committee on Standards in Public Life has the opportunity to make the Government aware of the inherent failings of the Transparency of Lobbying Bill in its response to this call for evidence. We would welcome the opportunity to provide further oral evidence to the Committee.

E29: Ranelagh International Ltd

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 plays a vital role in the political process as it enhances informed debate and ensures that expert information can be fed into the policy development process. Politicians and decision makers do not have specialist knowledge of all the areas on which they legislate. It is therefore essential that those with expert knowledge, including businesses, charities, and trade associations, should seek to educate, inform and advise decision makers. This will then ensure that they are in a position to thoroughly scrutinise the policy developments and proposals. In our experience, abuse of lobbying is not widespread or systemic.

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

Any definition of lobbying should include these key factors:

- Seeking to influence Government policy or change legislation
- Raising awareness of any organisation in Westminster and/or the devolved administrations
- Exchange of information between experts and Parliamentarians, advisers and key decision-makers

To ensure the utmost transparency, a register must include professional lobbyists who are carrying out any activities as described above, whether paid or unpaid. This should include those who lobby in-house (whether for an individual company, charity, union, think tank or trade association), as well as consultant lobbyists.

Ranelagh does not believe that a person's democratic right to engage with their elected representative should be covered. Although many organisations do use the "constituency link" of their often large membership to further a national lobbying campaign, such constituents are not acting on a professional basis and so should not fall within the definition of lobbying/lobbyists.

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?

Ranelagh has serious concerns about the existing proposals, which focus on third-party lobbyists, and do not consider the large pool of organisations which employ in-house lobbyists. To ensure an accurate and transparent register it is essential that these are also included.

Similarly, many management consultancies and law firms also offer lobbying services to their clients. It is imperative that these are included on the register.

Ranelagh already publish a list of all our clients on our company website, to ensure that people can find out who we are working with and for. We support moves to ensure that all companies who lobby, including law firms and management consultancies, follow similar practices.

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 have stated, lobbying has a valuable role in a functional democracy. Recent high profile 'lobbying scandals' have, on the whole, not featured professional consultant lobbyists, but have raised concerns about those being lobbied and the transparency of their actions. Ranelagh would support moves to find a solution which focused on those being lobbied, alongside moves to introduce a comprehensive register of lobbyists.

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

To ensure transparency, details of Ministerial meetings must be published in a timely fashion. Similar publication of meetings by MPs and civil servants should also be considered, to ensure that there is transparency in the lobbying process.

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?

Guidance should be provided for those who will be lobbied. Those being lobbied do have a responsibility to ensure they are acting appropriately, and upholding best practice.

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

Any register of lobbyists should be fully independent of Government, Parliament and NDPBs.

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

It is essential that any register which is established should have penalties for non-compliance, and sanctions for any individuals or companies deemed not to have met minimum standards of best practice. This should include not only being removed from the register, but also no longer being permitted to practise as a public affairs professional for a set period of time. The current industry-led registers do not allow for this.

It is essential that sanctions are also in force for those being lobbied who fail to meet the standards expected of them.

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?

In order to ensure the utmost transparency, responsibility to act appropriately must be taken by lobbyists and those being lobbied. Where those being lobbied provide information on who they are meeting, it ensures that no organisations are able to circumvent an official definition of 'lobbyist' or lobbying' and ensures all meetings are captured.

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

In light of recent events, we believe consideration needs to be given to the risk of potential conflicts of interests for Committee Chairs and Ministers who have significant financial interests in their areas of competency.

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

Ensuring timely publication of Ministerial and Departmental meetings would provide further detail to those concerns about Government decision making, and provide them with sufficient information for them to request further details under Freedom of Information. Ensuring that people know who, and how often, decision makers are meeting interested parties, will help to increase transparency.

E30: Rowan Public Affairs

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?**

Based upon my own experience, no. Lobbying takes place daily by many people and organisations who are ethical, committed to high standards and the presentation of credible, open and ethical lobbying positions. That some unscrupulous people have been exposed on a relative handful of occasions over the last 20 years, does not in itself suggest systematic abuse. The exposure of lobbying scandals, by their very nature, attracts an enormous amount of media coverage, which can create an impression of a problem which is larger than it actually is. It is also worth noting that in some cases, such scandals have been predicated by media 'sting' operations and not by lobbying activity. The issue here is different – how MPs and Peers behave when being 'lobbied'. Overall, the media have done a good job in bringing lobbying abuses to light, but the extensive coverage that follows such revelations needs to be balanced against a proper reflection of how much of a problem really exists.

I am pleased that the Committee has recognised that properly conducted lobbying is legitimate and potentially beneficial.

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

This should be obvious. If any person in a professional capacity seeks audience with an MP, Peer, Minister or civil servant, to argue an issue, or present a case on behalf of a special interest, they are lobbying and should be included in the definition. This includes third party lobbyists, corporate in house lobbyists and representatives, pressure groups, charities and unions. These different sectors contain some of the most powerful lobbies that seek to influence public policy. My answers to questions in this paper assumes that the term 'lobbyist' applies to all these groups.

Exclusions should be related to local citizen groups, individual businesses lobbying their local MP and individuals lobbying on purely personal interests/concerns.

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

No. The Bill will cover only a minority of lobbyists, is appallingly flawed and will almost entirely fail to achieve its intended effect. The scope should be extended in line with my answer to question 2 above. On the issue of disclosure, the CRC's proposals have some merit, but the need to file and publish detailed reports about meetings with Ministers would seem somewhat onerous and could be problematical in those cases where discussions may include matters that are commercial in confidence or where Ministers may wish to discuss options for issues that are not necessarily settled Government policy.

[1] See further paragraph 9 below.

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?**

This issue related mainly to MPs and Peers rather than Ministers and needs to be closely looked at. I have heard it said that it takes a careless (or worse) politician for inappropriate lobbying to work. This issue perhaps relates to the rules surrounding what interests and external involvements that MPs/Peers are allowed to have vis-à-vis MPs pay/Peer allowances etc - though in the wake of the expenses scandal and the recent furore over MPs pay, I see no prospect of this being resolved any time before I retire.

Clear guidance for those being lobbied would perhaps be welcome.

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

My answer is implied in my answer to Question 4. In essence, until MP pay and Peer allowances reflect comparable commercial rates and all kinds of outside interests banned, then it won't be easy to draw a thick red line between Government, Parliament and outside interests. Grey areas could remain. Thankfully incidences of actual corruption are rare.

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?**

There are definite merits in this. The first principle is that no money should be offered or accepted, with this enforced by statute. Hospitality and invitations to events and functions should be declared (and to what event/function). Declaration of expenses and who paid them should be made. I will comment separately on any specific proposals for code or guidance that may emerge.

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

The establishment of UPAC by the lobbying sector was a positive move, spoiled when the PRCA decided to withdraw. This damaged the case for the sector to establish its own regulator. In principle though I would support a renewed effort for sector self-regulation as a Government appointed regulator would imply costs that would need to be borne by the sector.

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

An important question. However, short of placing a lobbyists on a register 'stop list' or prosecuting them if offences are committed, it could be difficult to create sanctions that would have any notable impact. In the case of a 'stop list', MPs and peers would need to be required to consult the register every time a meeting is requested by someone who might be a lobbyist – something that I am sure that they would find onerous. I shall follow the debate about this point with interest as I feel that sanctions should be explored.

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?**

It is certainly desirable in principle, but as the Committee's briefing paper pointed out there are questions of feasibility and potential unintended effects. I can certainly see merit in the declaration of the broad subject matters discussed though.

I remain open minded on the subject, though in relation to (b.) a whole bureaucratic machine would need to be put in place to administer such arrangements as truly vast amounts of paper and reports would be generated if the scope of what is recognised as lobbying is set correctly.

With this and with other disclosure issues, the system should not change in such a way that removes the ability for full and frank discussions to take place between lobbyists, the people they represent, Ministers, MPs and Peers. None of these parties should feel that they have to behave like 'on message' robots at all times and the ability to being able to speak openly can lead to better policy decision making (not just Gvmt policy, but also the policy of the lobbying organisation/group). It should be noted that private discussion is not necessarily about gaining unfair advantage.

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

Some key principles include being alive to possible conflicts and the person being lobbied should gain some idea about what a lobby discussion would be about before agreeing to hold it. This is another area where I have an open mind and will follow what others say with interest.

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?**

I would reiterate that a proper discussion of what 'enhanced disclosure' would mean and imply is needed, but in principle, it probably would. As has been pointed out, the FOI system already goes some way down this road.

Yours faithfully,

Craig Carey-Clinch MCIPR, Managing Director, Rowan Public Affairs (RPA Ltd)

E31: Society of Parliamentary Agents

1 Introduction

1.1 This is the Society of Parliamentary Agents' response to the above Issues and Questions Paper.

1.2 The Society of Parliamentary Agents was formed over 150 years ago. It currently consists of 11 practising individual 'Roll A' agents, all of whom are also practising solicitors (and two of them are also qualified barristers). A Roll A Parliamentary Agent is an individual who is authorised by the UK Parliament to act for the promoters of private legislation in the UK Parliament.

1.3 The Society contributes frequently to consultation exercises where its interests are affected. It has been invited on a number of occasions to give evidence to Parliamentary committees and its members have also often been asked to advise civil servants about matters within their expertise, particularly in relation to the formulation of legislation.

1.4 In this response, we focus on two distinct areas in which our members practise. The first area is what might be called pure Parliamentary Agency work, namely the work that we carry out in the UK Parliament, and which to a great extent only our members carry out, in some cases because nobody else is entitled to. The second area comprises our members' work in acting for those promoting or objecting to secondary legislation, mainly (but not exclusively) in the transport sector, and also our work in advising on Parliamentary procedure and legislative drafting generally. This mirrors the response that we gave to the government when it consulted on its proposals for a statutory register.

1.5 Since that consultation the Transparency and Lobbying, Non-Campaigning and Trade Union Administration Bill has been published. We refer to that as the Transparency and Lobbying Bill in this response.

2 Executive Summary

2.1 Our response focuses on question 2 in the issues and questions paper, namely:

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

Our main contention as summarised below is that our members' activities do not in reality constitute lobbying and should not therefore be regulated at all under any new system.

2.2 It is mainly for that reason that we have not at this stage responded to any of the other questions in the paper. Also, because of the nature of the work we do, we do not think that we are any more qualified than anyone else to answer questions about lobbying generally. For example, we do not think it would be appropriate for us to comment on whether lobbying per se is a problem (question 1).

2.3 In summary, the Society's response to question 2 is:

2.3.1 the work of Parliamentary Agents carrying out Parliamentary Agency work in the UK Parliament should be exempted from any definition of lobbying;

2.3.2 any definition of lobbyist should exclude solicitors, or at least there should be a qualified exemption for lawyers similar to the Australian definition;

2.3.3 in any event, all activities of a solicitor relating to a client involved in promoting or opposing secondary legislation of the type mentioned in paragraph 4.2 below should be exempted from any definition of lobbying;

2.3.4 in any event, drafting primary legislation and amendments to primary legislation and advising on Parliamentary procedure, appearing before Parliamentary Committees, attending meetings, with civil servants, MPs and peers where it supports our advice on drafting and procedure and responding to government consultations should be exempt from the definition of lobbying.

3 Pure Parliamentary Agency Work

3.1 Parliamentary Agents carry out the following work in the UK Parliament:

3.1.1 Representing the promoters of private and hybrid bills: only a Roll A Agent is entitled to do this;

3.1.2 Representing those formally petitioning against private and hybrid bills: Roll A and Roll B Agents are entitled to do this;

3.1.3 Representing the promoters of special procedure orders and hybrid instruments: in practice, only Roll A Agents do this; and

3.1.4 Representing those formally petitioning against special procedure orders and hybrid instruments: Roll A and Roll B Agents are entitled to do this.

3.2 The distinction between a Roll A Parliamentary Agent and a Roll B Parliamentary Agent is as follows. The former are entitled to practise in relation to both promoting and opposing private and hybrid bills, but the latter may only oppose such bills. Roll A agents must apply for inclusion on the Roll to the Speaker, who must be satisfied that the applicant has practical knowledge of the Standing Orders and procedure and practice of the House of Commons regulating private business. Inclusion on Roll A is permanent, subject to the Agent complying with the relevant rules (see below). An individual can apply to be a Roll B agent temporarily in respect of the opposition to any individual piece of legislation. Inclusion on Roll B terminates on the conclusion of the proceedings on that legislation. An applicant for inclusion on Roll B must provide a certificate of respectability when making an application.

3.3 Both Roll A and Roll B agents are governed by a detailed set of rules approved and issued by the Chairman of Committees in the Lords and the Speaker in the Commons. The rules can be found on the UK Parliament website at this link, as an Appendix to the House of Commons Standing Orders (Private Business). There are also a number of practice notes relating to procedure issued by both Houses from time to time and which are applicable to Roll A and Roll B Agents. Parliamentary Agents are personally accountable to the Speaker and the Lord Chairman of Committees.

3.4 Because these procedures, application processes, detailed rules and practice notes are in place which govern their conduct, the Society believes that any definition of "lobbying" should exclude the work of both Roll A and Roll B Agents in relation to any work connected with the promotion of and opposition to private and hybrid bills, special procedure orders and hybrid instruments.

3.5 The fact that solicitors are also governed by their own rules and regulated by the Solicitors Regulation Authority adds further weight, we would submit, to the argument that Agents who are also solicitors should be exempt. This argument is developed in the following paragraphs.

4 Other Work

4.1 In this section we deal with work which our members tend to specialise in but which is not confined to Parliamentary Agents.

Secondary Legislation: Infrastructure authorisation, etc.

4.2 Historically, a very large proportion of the work of Parliamentary Agents has comprised the promotion of and opposition to local legislation which authorises the construction of infrastructure, such as railways and harbours. Originally this was achieved by private bill, but the vast majority is now authorised by secondary legislation using detailed statutory application procedures, concluding in a decision on whether to make an order or grant a licence being taken by the Secretary of State, the Marine Management Organisation or the Welsh Government. The secondary legislation involved relates largely to the energy, transport, water, waste and waste water sectors and includes:

4.2.1 Development consent orders authorising nationally significant infrastructure projects under the Planning Act 2008;

4.2.2 Transport and works orders under the Transport and Works Act 1992;

4.2.3 Harbour revision and empowerment orders under the Harbours Act 1964; and

4.2.4 Marine licences under the Marine and Coastal Access Act 2009.

4.3 In cases such as this our members are generally instructed to advise on all aspects of the promotion or application. The vast majority of the work that they do is purely legal work, for example drafting the orders, advising on application documents and process and evidence. However, there is a certain element of it which might unintentionally be caught as "lobbying" unless that word is carefully drafted. This could include the following activities:

4.3.1 corresponding with and meeting civil servants on individual projects, for example to explain the proposals or the drafting of an order;

4.3.2 representing clients at hearings and public inquiries and submitting documents (including statements of case and evidence) to the decision-maker, or to an inquiry inspector who in turn reports to the decision-maker;

4.3.3 corresponding with and meeting civil servants generally (often at their request) to discuss policy in relation to the way in which applications are dealt with; and

4.3.4 meeting local authority members or officers to explain and discuss the proposals contained in an order and contacting local and other Members of Parliament about the proposals.

4.4 When we carry out the type of activity mentioned above, our involvement is restricted, in the main, to providing legal input, for example by explaining process or procedure, why a particular drafting style may or may not be appropriate in an individual case or why particular proposed provisions will or will not work in the context of the legislative proposal in hand. When representing clients at hearings and inquiries the solicitor (whether or not a Parliamentary Agent) acts as an advocate with the objective of convincing the decision-maker (directly or indirectly) of the client's case for or against a particular project.

4.5 All this work is governed by the solicitors'' rules of conduct and is regulated by the SRA. For that reason we submit that the activities of a solicitor (whether or not a Parliamentary Agent) in carrying out work in the promotion of or opposition to secondary legislation of the type mentioned in this section requires further regulation. The definition of lobbying should exclude this type of work.

Miscellaneous Parliamentary Work

4.6 Our members are often asked by clients to draft private members' bills and amendments to government bills, and to advise on Parliamentary procedure generally, including advising on select committee inquiries. We do not think that it would be appropriate for such legislative drafting to be included in the definition of lobbying, because it is purely legal work. Neither do we think that advising on parliamentary procedure should be covered.

General exemption for solicitors

4.7 Whilst the vast majority of work our members do can be categorised as purely legal advisory work, there are bound to be areas where the line is not so easy to distinguish, as illustrated above.

4.8 All such work is also regulated by the SRA. We do not think, therefore, that solicitors whose main work is the provision of legal advice, and who may as a small subsidiary part of their work carry out work which falls within a definition of lobbying, should be required to register as lobbyists. Apart from anything else, the result would be that two regulators would have duplicate functions, which could only cause difficulty to all concerned, not least the regulators themselves. Our view is that all activities of solicitors should be exempted from the definition, or that there should be at least some qualified exemption as is contained in the Australian definition of lobbyist. We believe that this is justifiable because -

4.8.1 solicitors are already heavily regulated in relation to all the activities that they do and there is no need for an additional layer of regulation; and

4.8.2 in our members' experience, the work which might strictly fall within the definition of lobbying is only ever likely to be a small proportion of the work of a firm of solicitors in any event and will be regulated as forming part of linked legal work. Identifying and separating out work which might fall within the definition of lobbying could only be an imperfect science and would impose a disproportionate burden on our members given those circumstances.

Society of Parliamentary Agents, 2 August 2013

E32: TaxPayers' Alliance

Responses to the issues raised in the Consultation

The Government is right to point out in the Consultation Paper that lobbying – whether it be by individuals, charities, campaign groups, think-tanks or businesses – is not only a legitimate activity but also one which over the years has done, on the whole, a great deal of good. Lobbying ensures that those drafting laws and regulations are better informed than they otherwise would have been about the potential consequences of their actions, and thereby paves the way for improved legislation.

The Consultation Paper goes on to assert that the Government does not want to create obstacles for those involved in necessary interaction with policymakers, nor to regulate (and potentially deter) *"the essential flow of communication between business leaders and Government, civil figures, community organisations and Government"*, and we welcome these reassurances.

The Government could deal with the regulation of lobbying in a number of ways, ranging from the lightest-touch approach to the most heavy-handed system of regulation. In our view, there are four possible approaches, and we discuss the merits of each in turn.

- Approach 1: No register of lobbyists
- Approach 2: A register of those lobbying for third parties
- Approach 3: A register of those lobbying for third parties and businesses
- Approach 4: A register of everybody lobbying for third parties, businesses and civil society

We support Approach 2, in line with the Government's position in the Consultation Paper.

Approach 1: No register of lobbyists

Some might argue that as long as there is full disclosure of who Ministers have been meeting, there is no need for everyone potentially involved in lobbying to be included on a register. The Consultation Paper states that *"information about which stakeholders are meeting Ministers to put forward their views on policies is… already in the public domain"* by virtue of the publication of quarterly information on Ministers' meetings.

But that does not necessarily ensure maximum transparency about *"who is lobbying and for whom"*, since there are many professional lobbyists who represent a number of different clients. The Government has rightly identified as problematic the fact that some meetings between Ministers and representatives of lobbying firms are being recorded without anyone knowing on whose behalf the lobbyist is lobbying.

So no register is not an option, especially since the Government is now *"committed to introducing a statutory register of lobbyists"* as part of its drive towards making politics more transparent.

Approach 2: A register of those lobbying for third parties

The second approach – and the one which the Government appears to have judged to be the right one, based on the Consultation Paper – is for any register to cover those companies and individuals paid to undertake lobbying activities on behalf of third party clients.

This is the approach which the TaxPayers' Alliance favours.

This means that there is complete transparency when it comes to those companies or individuals who represent a variety of clients, but no unnecessary burden for those who engage in lobbying activities exclusively for a single charity, campaign group, think-tank, community group, trade union, business etc.

The Government appears to accept in the Consultation Paper that whenever anyone is employed exclusively to lobby on behalf of one organisation, it is clear whose interests they are representing. To have them sign up to the register would be potentially costly, time-consuming and bureaucratic – and without any additional transparency being achieved.

Moreover, if any of those in-house lobbyists are attending meetings with Ministers, those encounters are still going to be declared by the Minister in the usual way.

Approach 3: A register of those lobbying for third parties and businesses

The pressure for a statutory register of lobbyists has largely come about because of concerns about the influence of business interests on the policy process. So it could be argued that the statutory register should also cover those lobbying on behalf of profit-making enterprises. Were this third approach to be taken, for-profit organisations would be covered and not-for-profit groups and individuals ('civil society') would be excluded from the need to register.

However, it is possible to imagine difficulties with this third approach:

- Imagine Widgets R Us is a successful widget manufacturer in a town in North Wales and the local MP has the Minister for Widgets visiting his constituency and is keen to show off a local success story. The MP and Minister tour the widget factory with the Managing Director, who uses the opportunity to lobby the visiting minister for tax breaks for widget manufacturers. Should he have been required to register as a lobbyist prior to that extended opportunity for high-level lobbying?

- Likewise, the Association of Corner Shop Owners has tens of thousands of members and a small staff in its London HQ, representing the interests of its members (who run profit-making enterprises). Should all those staff need to register as lobbyists for seeking to do the job they are employed to do, i.e. represent their members' views to those in power? And what about when an individual member accompanies the staff to meetings in Whitehall: does he or she have to register as a lobbyist as well?

Approach 4: A register of everybody lobbying for third parties, businesses and civil society

If the Government were to reject all of the approaches described above, it is hard to see any other remaining viable option except a broad brush catch-all approach that forced anyone involved in lobbying to sign up the register.

We are very concerned that to adopt this fourth approach would be to open a veritable Pandora's Box of those who would potentially fall foul of the need to register – a move which would have the potential to dissuade some from engaging in public policy debates at all. Consider the questions raised by the putative situations in the following examples:

- A think-tank employs a full-time Parliamentary Affairs Manager to take a lead on dealing with government relations who, some might suggest, should be on the register of lobbyists. But what about the organisation's Director General, who also regularly meets with politicians to push her think tank's arguments: should she have to register too? And what about the think-tank's army of researchers with specialist knowledge, each of whom might be called upon to accompany the Parliamentary Affairs Manager to meetings with ministers when their area of expertise is being discussed: would each of them really be expected to register as well?

- A teenage boy is outraged at one of the announcements in the Budget and sets up a Facebook page and website for a campaign to reverse the decision. The campaign – let's call it "Scrap the Window Tax" – hits a nerve, gathers massive momentum and the young man is quoted in the media and ends up securing a meeting with a Treasury Minister to press his case. He has proved himself to be a very successful lobbyist: but wouldn't he have fallen foul of the law if he had failed to register himself as a lobbyist before embarking on his campaign?

- The Government announces plans for an onshore wind farm near a village, so the residents' association in the village is fired into action to oppose the plans. The chairman of the association takes a lead in organising meetings with local council leaders and ministers at the Department for Energy and Climate Change, among others, as well as taking charge of briefing journalists and other opinion formers. He doesn't take a salary but the residents' association covers all his expenses and travel. Will he be expected to have registered as a lobbyist?

- A female pensioner runs a small animal welfare charity in her spare time as a labour of love. She has become well known to the national media who use her as a commentator on animal welfare issues and is a regular protester outside DEFRA, where ministers have got to know her and occasionally engage with her formally on animal issues. Does she need to register as a lobbyist?

- The political editor of a tabloid newspaper has strong views on a whole series of issues and regularly runs campaigns in her pages during which she enjoys access to the relevant government ministers to press her case. It is extraordinarily high-level lobbying, so does the journalist need to register as a lobbyist?

Conclusion

The point we seek to make above is that there are tens, hundreds of thousands, if not millions of "lobbyists" around the country. All kinds of people have reason or desire to try and influence those in power: some are paid to do it, others are not; for some it is part of a day job, for many more it is merely a private passion. Yet we live in a time when many are unwilling to engage with the political process and it would be irresponsible in the extreme to do anything that would hinder or deter that engagement in any way.

Any attempt to introduce a lobbyists' register that goes further than that tightest definitions (Approach 2 and, at a stretch, Approach 3) could result in increasing numbers of people disengaging from the policy-making process altogether, put off by the cost or red tape involved in joining a lobbyists' register. The unintended consequence of such a move could in fact be a higher concentration of lobbyists acting for third parties dominating the policy space, or the criminalisation of scores of people trying to get their point of view across to those in power.

One need only look to the US to see the consequences of heavily-regulated lobbying. The Lobbying Disclosure Act (LDA) has burdened legitimate policy organisations with considerable bureaucracy (forcing them to track how much of each individual's time is spent lobbying, for example) whilst other groups have restructured to navigate their way around the regulated set-up. Meanwhile, non-partisan think-tanks have effectively been politicised, whilst the net effect of the LDA has been to make it harder for lawmakers to get the advice and counsel of experts who want just that: advice, not favours in return. This cannot be a good thing.

In terms of other questions raised in the Consultation:

- We agree there is no justification for demanding that those signing the register should have to declare how much they are paid by the third parties they represent.
- Returns on a quarterly basis seem sensible.
- Those individuals and companies having to sign the register should have to fund it. Assuming that either Approach 2 or 3 is taken, those signing up are from the business community, so taxpayer-funding should not be necessary.
- The register's operator should have no additional functions besides accurately reproducing and usefully presenting information provided by the registrants.
- Assuming that those needing to sign up can provide the relevant details by entering them on a website, the register itself should be relatively cheap to run and there is certainly no justification for creating a mass of associated bureaucracy for the administration of a mere set of online lists. We don't see why this could not be put within the remit of a Cabinet Office civil servant, rather than creating a new quango to be headed by some grandly-titled appointee earning a six-figure sum, which past history sadly shows us is so often the result of the introduction of a burdensome new set of regulations.

E33: Transparency International UK

Summary of key positions

1. TI-UK is concerned that democratic processes in the UK face an increased risk of corruption. It should not be possible for an individual or organisation to buy favourable laws or regulation.

2. The Lobbying Bill, as proposed, is inadequate and needs to be replaced by a Bill that is fit for purpose.

3. Lobbying is one of a number of areas in which special interests, backed by money, can subvert democracy. Others include the revolving door and party political funding. They need to be considered collectively otherwise the tightening of regulation in one area will lead to the exploitation of loopholes in another.

4. All political parties seem to be in denial about the public perception that they, and parliament, are corrupt. Though political leaders may dispute whether it is fair, such perceptions themselves damage democracy, and an adequate response is required

5. There needs to be, among other actions, a cap on donations to political parties; regulation of lobbying that extended beyond the proposed register; proper regulation of the revolving door of employment; reform of the honours system; a renewed emphasis on ethical conduct, with stronger sanctions for breaches.

6. Regulation needs to address both those who seek to influence inappropriately and those who are being lobbied.

7. In each of these areas greater transparency is required; but in many of them, transparency must be supplemented by other measures.

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?

1.1 Transparency International UK (TI-UK) research indicates that there are serious and systemic problems with access to politics and policy-making in the UK; in practice, in oversight and in public trust. However, lobbying cannot be considered in isolation. It is one of a number of ways in which democracy can be subverted by those with large financial resources at their disposal. According to TI research, the British public perceive the government's response to these problems to be inadequate[21]. TI's overall assessment is that recent proposed reforms, including the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill, fail to address the scale, nature and breadth of the problem.

1.2 TI-UK believes that making representations to the government and the legislature is a desirable and necessary part of the democratic process, for business, charities, citizens and all those affected by legislation and regulation. However, there is a risk that politics and policy can be influenced in

[2121] Transparency International '2013 Global Corruptions Barometer', UK specific data

improper ways, and that those who are able to buy greater levels of access, or store up favours through the provision of hospitality or implied offers of future employment, will have a disproportionate and distorting influence. Recent examples suggest that UK politicians fail to see the risks of close relationships with lobbyists, and are not able to maintain the safeguards that are essential to ensuring integrity.

1.3 Historically, the UK's parliament has had a high international reputation and the UK has been well placed on international corruption indices. However, UK politics has recently been affected by several corruption scandals and a public impression has been cemented of a lack of transparency and accountability around access and influence in politics.

1.4 Politicians in the UK generally believe themselves to be acting in the public interest and operating within a relatively uncorrupt system. However, there is a mis-match between this self-perception and public perception. There have been enough scandals in UK politics over the past decade to warrant real action rather than rhetorical promises to introduce real reforms.

1.5 Recent scandals include:

- Cash for access. In June 2013, The Sunday Times and Panorama uncovered three Peers agreeing to carry out Parliamentary work for payment, with one describing the need for a trip to Fiji as a "bribe" to Peers to support a Fiji based lobbying agenda. As part of the same investigation, an MP appeared to offer a Commons security pass to a fake Fijian firm that paid him £4,000 to ask parliamentary questions. In March 2012, the Sunday Times revealed that the Conservative Party's co-Treasurer had been filmed offering the newspaper's undercover reporters posing as representatives of a foreign hedge fund, access to the policy committee at No 10 Downing Street in exchange for a £250,000 donation.

- Select Committee Chair compromised. Also in June 2013, the then Chair of the Energy and Climate Change Select Committee, was filmed boasting about how he can use his leadership of the committee to push his private business interests. He said he could not speak out for them publicly in the Commons because "people will say he's saying this because of his commercial interest". But he assured them: "What I say to people in private is another matter altogether."

- Conflicts of interest with a Prime Ministerial adviser. In July 2013, Conservative Party Campaigns adviser Lynton Crosby was embroiled in allegations of conflicts of interest by providing strategic campaigns advice to the Prime Minister and simultaneously providing lobbying service for clients, including tobacco companies, at a time when the government u-turned on plain-packaging regulations for cigarettes.

- Improper Ministerial access. In October 2011, the Defence Secretary resigned after the press reported that he had allowed a lobbyist friend of his, Adam Werritty, to gain access to the Ministry of Defence without clearance and to accompany him on 18 foreign trips. Werritty had reportedly been present at many meetings where Fox had met military figures, defence contractors and diplomats, and had presented himself as an adviser, despite having no official role.

- News International. Allegations in the wake of the phone hacking enquiry that the influence of Rupert Murdoch and his newspapers significantly distorted UK politicians' political decision making. In July 2011, it was revealed that Prime Minister David Cameron had met key executives of Rupert Murdoch's News Corporation 26 times during his first 15 months in office. In December 2011, the Cabinet Office admitted that this had included one private meeting with Murdoch at a time when he was bidding to take 100 per cent control of Sky television.

- Revolving door offers and "Cabs for hire". Secret recordings of former government ministers revealed offers to sell access to government decision makers to private consultants. In early 2010, a Channel Four Dispatches programme revealed secretly recorded discussions in which six MPs, who thought they were attending an interview for a job with a communications company, had offered to use information or contacts gained in their political roles in order to lobby on behalf of corporate clients. One former cabinet minister described himself as being like "a cab for hire".

- Parliamentarians' expenses. Criminal abuse of expenses was carried out by various members of the House of Commons and the House of Lords.

- Cash for honours. Following the 2006 scandal, party donors have appeared to have been rewarded with seats in the House of Lords.

- Consultancy loophole. Former ministers have appeared to exploit loopholes in rules governing the revolving door between government and business in order to conceal the names of private clients they are working for.

- Self-interested legislation. The Guardian exposed how a serving government minister potentially stood to profit personally from legislation he was piloting in the House of Commons, forcing the minister to declare interests that he had failed to disclose.

1.6 Accordingly, the public perceive a deep problem with lobbying and corruption in Parliament and government, more broadly.

1.7 The 2013 Global Corruption Barometer, published by Transparency International, revealed that:

- 90 per cent of respondents believe that the UK Government is 'run by a few big entities acting in their own interest'.

- 67 per cent of people polled in the survey said they thought political parties in the UK were corrupt or extremely corrupt.

- 55 per cent felt that the UK Parliament is corrupt or extremely corrupt.

- 62 per cent of UK respondents think that the Government's actions in tackling corruption are ineffective.

1.8 In terms of the public's perception, these findings suggest an element of state capture by powerful interests and of complacency in addressing the issues.

1.9 In 2010-11, TI-UK carried out a comprehensive survey on corruption in the UK. In a Report divided into three parts, entitled respectively National Opinion Survey, Assessment of Key Sectors, and a National Integrity System Assessment ('NIS Assessment'), the nature and extent of corruption in the UK was examined. The Report was accompanied by an overview entitled Overview and Policy Recommendations. The research indicated that UK political parties and parliament were two of three areas that were particularly vulnerable to corruption – alongside sport.

1.10 There are currently several opaque and unreported ways to influence policy makers and legislators. Convening meetings, obtaining Parliamentary passes, sponsoring think-tank research, booking meeting rooms in the Palace of Westminster, hosting receptions, and supporting All Party Parliamentary Groups all create an opportunity for lobbyists to meet politicians in an apparently innocuous context without transparency and an opportunity to exchange favour and influence. Under the current system, lobbying is unregulated and unaccountable in several areas:

- Access to civil servants
- poor quality Ministerial/civil servant diary information in the UK Open Government portals
- access based on entertainments/hospitality events
- local government lobbying
- lobbying of agencies, regulators and public services (e.g. NHS)
- procurement-access lobbying for products and services
- political party funding
- honours granted in exchange for favours
- the revolving door between politics and the private sector

1.11 These all present weaknesses in government accountability. Weaknesses and ambiguities in rules are exploited and the rules are poorly enforced.

1.12 The steady stream of political corruption scandals in recent years has eroded public confidence not just in individual politicians, but also in political institutions. There is a danger that the public will cease to regard decisions made by government and parliament as legitimate and fair. This represents a serious threat to our democracy and, ultimately, to the rule of law.

1.13 Because of the systemic nature of the problem, the solution must go beyond reform of lobbying to include a review of the several ways I which special interest groups can subvert democracy through money or access if it is to be effective and help restore public trust in politics and governance in the UK.

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

2.1 TI-UK recognises that the definition of lobbying and of lobbyists is a complex issue. TI-UK believes that any definition should be simple, capture the broad range of lobbying activity, not disincentivise

citizen lobbying and be easy to implement in practice. Based on these criteria, a definition might include anyone paid to: (i) arrange or facilitate contact with policy makers, legislators or their advisors; (ii) communicate with policy makers, legislators or their advisors to influence legislation, regulation, or government policy, and for government contracts and grants; and (iii) work in support of (i) and/or (ii).

2.2 The definition should capture the range of individuals that are liable to be lobbied, including Ministers, Parliamentarians, their advisors and civil servants, regulators, local authorities and those in other public services.

2.3 However, there is a danger in over-engineering a response that might, for example, have the unintended consequence of denying access to an unpaid member of the public lobbying on an issue of great public importance, or lobbying of an MP by a constituent. Ideally, any definition used for the purposes of identifying a threshold for lobbying reporting requirements should minimise the barriers to access to politics and participation from a citizen lobbying point of view and increase transparency of that same citizen. TI-UK is not against trade unions, think tanks and charities being covered by the definition, but notes that the barriers should also be minimised for groups operating in the public interest – for example, those regulated by the Charity Commission – and those with small resources.

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?

3.1 The Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill is inadequate as a means to restore public trust in politics and government. Based on the scale of its shortcomings, TI-UK believes the government should replace the Bill with a more satisfactory Bill after engaging in a thorough review of access and transparency in British politics, responding to public disaffection with the political process and its vulnerability to abuse.

3.2 Further details about TI-UKs recommendations for actions can be found under consultation question 4&5.

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

4.1 As noted in Question 1, the existing rules are insufficient. Further, individuals or political parties that turn a blind eye to the abuses in the UK political system are endangering democratic values and the rule of law.

4.2 Both the practices of lobbyists and those being lobbied are unsatisfactory. For both lobbyists and those being lobbied the following reforms need to be considered:

- Conduct guidelines and transparency reporting requirements need to be strengthened;

- Counter-corruption awareness training needs to be made obligatory;
- Independent authorities should be resourced to audit, investigate and initiate sanctions for breaches of guidelines; and
- Sanctions should be put in place that provide a meaningful deterrent to unethical behaviour.

4.3 Purely from the perspective of a statutory register, which TI-UK believes is only one small component required to address the challenge to public trust in politics, the Bill falls short. At a basic level, considering the Bill as a register of lobbyists only, it exempts the vast majority of lobbyists. Indeed there are strong arguments that that the Bill, because of its minority coverage of the public affairs industry, would result in less transparency not more than the current self-regulation arrangements, which are themselves inadequate. The Bill does not even address the nature of the most recent scandals, which did not involve lobbyists but did involve unethical politicians and conflicts of interest.

4.4 TI-UK believes that lobbying legislation should not solely consider a statutory register. However, any legislation that includes a register should:

- Apply consistently to lobbying of the UK Government, Parliament, devolved legislatures or administrations, regional or local government or other public bodies.
- Cover all organisations and self-employed persons that engage in substantial lobbying activity targeted at public officials. This includes organisations that are not specialist lobbyists but have in-house lobbying capacity and engage in lobbying activity.
- Require that registration should include information such as lobbyists' names, their client list (where appropriate), the subject of their lobbying (respective to their client where appropriate); details of any advisors or practitioners who have held any public office during the previous five years and their expenditure on lobbying (respective to their client where appropriate) on a quarterly basis.
- Be maintained and monitored by an independent body that is empowered to carry out investigations and audits of the information it receives and to maintain a whistleblowers' hotline to receive complaints about violations of the rules.
- Failure to disclose accurate information should be a criminal offence, as is the case in the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill.

4.5 TI-UK notes that the costs of the register could be met by a system for fees proportionate to the annual lobbying budget of organisation, with an exemption for organisations whose spend is below a certain threshold or that are demonstrably operating in the public interested (for example, registered with the Charity Commission).

A register is not enough…

4.6 If a statutory register of lobbying activity with the above features were to be implemented, it would go a long way towards promoting transparency in ways that would inhibit corrupt behaviour. However, a statutory register will not be sufficient to curb abuses of entrusted power for private

gain that take place through other means. The recent scandals on lobbying have provided evidence of politicians willing to stretch or break the rules, something that the proposed lobbyist register would do very little to counter. In the US where a register of lobbyists exists, by the admission of the several Presidents and Presidential candidates, a desirable level of transparency and control of the influence of lobbying has not been achieved.

4.7 Lobbying must be considered within a broader framework of transparency and ethical shortcomings in order to tackle the problems of opaque 'access' in UK politics and policy and to address the widespread public dissatisfaction with the political process.

4.8 The end objective should be for money not to be a distorting factor in forming policy or gaining access to decision makers, and for lobbying on any particular issue or decision to be visible, have an audit trail and for the information to be presented in a manner that is accessible and comparable for the public, media and civil society to scrutinise. The required actions can be divided into: transparency required from those being lobbied; transparency required from lobbying organisations (beyond the lobbyists register); broader reforms required to the governance of political access in the UK.

Required transparency from those being lobbied…

4.9 A feature of recent scandals is that in many cases, the behaviour falls within the existing rules, even though they are at times stretched to breaking point.

4.10 This suggests that the imposition of more rules may work to an extent, but at heart is a greater issue and a greater concern. This is the willingness and ability of UK politicians to act in an unethical manner and put their private interests ahead of the public interest, showing scant regard for the Nolan Principles of Public Life (these are: Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership).

4.11 If politicians are to have legitimacy as lawmakers, they need to be exemplars of personal integrity. Rules must be complied with, not merely because there are penalties for not doing so, but because public servants are expected to have a system of values in which integrity is required for all aspects of their conduct.

4.12 Common threads linking political scandals are ethical failures fuelled by money (often in the form of business, whether business means the City, the media, a factory in the constituency or private consultancies). There is also the related question of whether the bodies, which are charged with ensuring that the letter and spirit of the rules are upheld, are functioning effectively. This collective failure falls well within the Transparency International definition of corruption as 'the abuse of entrusted power for private gain'.

4.13 Overall, the rules relating to the ethical conduct of policy makers and legislators therefore need to be revised, and such revisions should consider the following issues:

- Whether there should be an over-arching rule that any public servant should declare any interest or asset, financial or non-financial, that might reasonably be thought by others to influence, or be capable of influencing, his or her actions or words.

- Although clarification of rules is important, recent history suggests that rules can be exploited or ignored. Indeed the more complex rules become, the easier it can be to evade them or create loopholes. A principles-based system is therefore important to sit alongside the rules, based on the Nolan Principles. This may require additional effort to reinforce an ethical culture within parties, their leaders and individual MPs – for example by appropriate ethical training or mentoring.

- Disclosure of on-financial interests and relationships, and indirect interests, which can be as important as direct financial interests in influencing behaviour. Likewise, some business relationships in which the financial value is negligible, such as frequent low-level hospitality with an influential business person in a constituency, can be highly important. Therefore, financial value alone should not be the test of a rule's relevance and the proposed minimum thresholds should take into account these other factors

- The inclusion, as a default option, of third parties, including children, siblings and close associates within the rules. This would be similar to the presumption when dealing with 'politically-exposed persons' overseas in, for example, anti-money laundering regulations.

- Inclusion of overseas assets, income and activity in the revisions of the appropriate rules.

- Guidance on foreign hospitality and visits outside the UK.

- Although it is understandable that there is a reluctance to impose new administrative burdens on the relevant people and institutions, more reporting or administration may be a necessary step in the re-building of public trust in politicians. It is important that the growing deficit in public trust is weighed against the views of those who oppose additional administration.

- Sanctions, including consideration of the right to recall, must be considered with penalties for non-compliance with the law/rules. Punishment of offenders is critical to help to deter attempts to circumvent the rules. An oversight body with investigative powers should be in a position to designate or initiate the sanctions process and have the resources to investigate claims.

Required transparency from lobbying organisations (beyond the register of lobbyists)...

4.13 Regulation will only be part of the solution; it will also rely on good practice and leadership from the public affairs industry. Organisations are exposed to reputational risk in terms of the potential for their activity to be perceived as unethical. TI-UK believes that all organisations that lobby should aim to perform their lobbying activities to a high ethical and transparency standard, putting pressure on those who do not welcome transparency into their lobbying strategies. Organisations that wish perform lobbying at a robust ethical level should meet at least the following standard:

- Publish membership of trade associations and other representative bodies;

- Publish details of the issues on which it lobbies;

- Publish details of its lobbying expenditure;
- Report on its participation in registers of lobbyists (globally);
- Publish the internal oversight mechanism of the organisation's corporate political activities and reputational risk;
- Publish whether outside auditors or independent experts provide periodic review of the company's political activities;
- Publish how the organisation's controls to ensure that political financial contributions (globally) are not a subterfuge for bribery;
- Publish details of policies and procedures to ensure that those lobbying on the company's behalf are required to comply with the company's policies on political contributions and responsible lobbying (globally); and
- Have in place a specified committee that reviews the company's memberships of and payments to trade associations and other organisations.

Required broader reforms to the governance of political access in the UK…

4.15 Improve the public information on Ministerial meetings. The quality of information available to citizens on lobbying meetings and access to their government's Ministers is very poor. As the Political and Constitutional Reform Committee found, some departments take up to 8 months to publish meeting details on lobbying meetings with Ministers. The level of detail in meeting disclosures also needs to be radically improved, such that obscure terms like 'general discussion' aren't the norm, and the format of meeting data needs to be standardised with a view to publishing all ministerial and official meetings on one website, rather than on many different Government websites. The same nature of transparent lobbying should be considered at an official and a Parliamentary level as well, including looking at party conferences.

4.16 Reform All-Party Parliamentary Groups. There are also concerns about the role of All-Party Parliamentary Groups[22], which are semi-official entities around particular subjects or groups. Businesses and interest groups donate large amounts to these groups and there is a danger that some may be using donations to provide hospitality to MPs and thereby buy influence. A code of conduct for financial and activity public reporting should be implemented and enforced.

4.17 Tackle the revolving door in Whitehall and Westminster. The term 'revolving door' refers to the movement of individuals between positions of public office and jobs in the private or voluntary sector, in either direction. Moving through the revolving door can be beneficial to both sides; improving understanding and communication between public officials and business, and allowing sharing of expertise. However, the revolving door brings risks that government officials will be influenced in their policy or procurement decisions by the interests of past or prospective employers. Conflicts of interest arise particularly for individuals in government who have

[22] Disclosure of interest: Transparency International UK has contributed £2,000 towards the running costs of the APPG on Anti-Corruption.

responsibilities to regulate business activity or who are charged with procuring goods or services from the private sector.

4.18 The survey of public perceptions of the most corrupt sections of British public life carried out for TI-UK in 2010 revealed that the revolving door between government and business comes a close second in the public's ranking of potentially corrupt activities. A public official taking a job with a company that s/he was previously responsible for regulating was rated as potentially corrupt by 80% of respondents, a close second to the 86% who rated a peerage for a businessman who has been a large political party donor as potentially corrupt. A survey conducted by YouGov in January 2012 found that 69% of respondents agreed that it was "too easy for former ministers to get jobs that allow them to make improper use of their time in government".

4.19 In the UK most public officials and politicians recognise the potential for conflicts and try hard to avoid them. Senior civil servants and ministers are required to consult the Advisory Committee on Business Appointments (ACoBA) before taking up appointments. ACoBA can impose waiting periods on individuals, so that they cannot take up appointments until a certain period after leaving office, and can advise that appointments should only be taken on condition that the individual will not engage in lobbying former colleagues. However, the Committee is only an advisory body.

4.20 TI-UK recommends that ACoBA should be replaced with a new statutory body with sufficient resources and powers to regulate the post-public employment of former Ministers and crown servants. The rulings of this new body should be mandatory be grounded in a thorough assessment potential risk areas. New rules could then be drafted to reflect the severity of risk associated with particular roles. It should be mandatory for the new regulatory body to consult departments for advice on the risks associated with particular appointments. The period during which former Ministers and crown servants must undergo scrutiny for appointments in the private sector should be extended from two years to three. The implications of this change for recruiting individuals to government should be fully assessed; the remit of regulation should be extended to include appointments to non-commercial entities; the new body should disclose full information about the procedures for assessing applications and the reasons for its judgements; and the Independent Parliamentary Standards Authority should draw up post-public employment rules for MPs.

4.21 Political Party Funding. Political parties are essential to democracy. They foster debate on policy and provide voters with a way of expressing their preferences. They also provide an entry point for individuals who wish to become politically active, and they support them if they wish to pursue political careers. To do all of this, and to compete in elections, they need funding, all the more so because traditional income sources such as membership dues and trade union subscriptions are declining.

4.22 However, parties also exercise influence and can be extremely powerful. This raises risks that funders will expect gratitude in the form of special influence, and that parties will allow themselves to be influenced in return for much-needed funds. Indeed, political party funding has been at the heart of many political corruption scandals in the UK. The 'cash for access' scandal in March 2012 showed how the absence of a cap on donations to political parties was a major source of vulnerability to corruption. In 2006-07, in the 'cash for honours' scandal, it was revealed that several men who had been nominated for peerages by then prime minister Tony Blair had loaned large amounts of money to the Labour Party. Loans, unlike donations, do not by law have to be declared,

providing they are made at a commercial rate of interest. Blair denied that there was any connection between the loans and the peerage nominations. The Conservative Party and the Liberal Democrats were also revealed to have taken large loans from wealthy individuals.

4.23 There is particular concern that a handful of wealthy individuals and organisations might be able to buy influence or position through making large donations. Indeed, £250m of the £432m donated to political parties between 2001 and mid 2010 was from single donations of more than £100,000 made by individuals, companies or unions. All three major parties made commitments to reform party financing in their pre-election manifestos prior to the 2010 general election.

4.24 In order to make political party funding less vulnerable to corruption, there is a need for a balanced package of reforms that would: promote transparency and accountability, including such that private companies donating to political parties should declare their ultimate ownership and parties report in a standardised way both funding and spending, at the national and constituency level; introduce a cap on donations of £10,000 on donations (per donor per year); reduce expenditure on elections; incentivise political parties to increase their engagement with the electorate and attract smaller donations from a larger number of donors; a ban on all loans, credit facilities and security arrangements provided to a political party other than those on commercial terms from recognised commercial institutions; and allow for consideration of a modest increase in state funding.

4.25 The granting of honours. The UK's honours system should operate as a way of recognising outstanding contributions by individuals to service in the public and private sectors and, at times, involving them in the legislature. Unfortunately, it is vulnerable to abuse and has long been criticised for encouraging inappropriate patronage. In order to reduce the scope for corruption several steps are required. If a cap is not placed on donations to political parties, a political party should be prohibited from nominating a person for honours where that person has provided financial or other support of more than a total value of £10,000 in any one year, to that party or to a person or organisation associated with that party. Similarly, a person who has been nominated for honours by a political party should be prohibited from providing financial or other support to that party in excess of a total value of £10,000 in any one year. The members of the House of Lords Appointments Commission should be entirely independent of any political party. The House of Lords Appointments Commission should vet the suitability of party political, as well as non-party political, nominees. There should be public disclosure of all nominations and reasons for nominations. Finally, penalties under the Honours (Prevention of Abuses) Act should be increased so that they are equivalent to those under other bribery legislation.

CSPL 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?

6.1 Yes. See the answer to 4&5 'Required transparency from those being lobbied…' (Paragraphs 4.9 to 4.13)

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

7.1 Referring to a register of lobbyists, TI-UK believes that any register should be run by an independent body, as indicated above in response to Question 4&5 (Paragraph 4.4)

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

8.1 Both in reference to lobbyists and the register, and in terms of those being lobbied and a code of conduct, TI-UK believes that meaningful sanctioning is critical to restoring ethics and trust in politics. Self regulation in Parliament has been found to be severely lacking to the extent that it threatens public support for the institution.

8.2 For those being lobbied, sanctions, appropriate to whether it is a Parliamentarian or an official, must be included and meaningful penalties for non-compliance with the rules. An oversight body with investigative powers should be in a position to designate or initiate the de-selection/sanctions process and have the resources to investigate claims. Breach of the ethical rules could result in recall proceedings, and/or debarment from any future political office or peerage, or on being appointed to any front bench position. Political parties typically provide insufficient and inconsistent levels of sanctions for ethical breaches and should consider automatic expulsion for significant ethical breaches, for example when an individual has been required to resign a position. Criminal proceedings should be taken forward where appropriate under fraud or bribery charges.

8.3 For lobbyists, as above, a full suite of civil and criminal penalties should apply. The oversight body should be empowered to carry out investigations and audits of the information it receives and to maintain a whistleblowers' hotline to receive complaints about violations of the rules.

CPSL 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?

9.1 Ethical breaches have taken place both on the part of lobbyists and, more commonly revealed, on the part of those being lobbied.

9.2 Both parties should be subject to transparency in their dealings. See the answer to questions 4&5 for the suggested requirement for transparency in the register of lobbyists, the additional non-statutory transparency requirement for lobbying organisations to achieve; and the suggested remit of guidance for public servants on lobbying

9.3 Transparency is an important part of the solution, and does enable the ultimate sanction of the ballot box, but it is insufficient in and of itself. The guidelines for behaviour need to be tighter to prohibit the types of scandals set out in Question 1. Independent investigation of allegations and meaningful sanctions must apply to provide an effective deterrent to unethical public servants who have proven themselves to be willing to exploit public office for private gain.

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

9.4 The monitoring of the reporting by lobbyists and those being lobbied should be undertaken effectively, accompanied by audit and investigative powers, and include sanction powers. A small

increase in bureaucracy is a small price to pay for significantly reducing the risk of corruption in our democracy.

9.5 The system for reporting financial information should be simple but robust. Although such reporting may be regarded as burdensome by some organisations and individuals, the disclosure of such information is important to enable citizens to see how lobbying power is distributed among organisations/individuals and help restore trust in politics.

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

10.1 As referenced above, the oversight authorities for Parliamentarians, officials and for lobbyists should include a duty to provide counter corruption awareness briefings to those affected (Paragraph 4&5.2).

CPSL 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?

11.1 See response to Question 4&5 and 9 for detail as to why transparency is only a component of the required solution.

11.2 It should also be noted that the government has set out plans for Freedom of Information requests to be further restricted on cost grounds, eroding transparency. There should be a presumption in favour of real-time transparency on lobbying and access issues wherever possible. The FoI regime is time consuming and inefficient and the information currently available on Ministerial meetings is unacceptably poor.

11.3 There should be an aspiration to develop high quality reporting on the behalf of both lobbyists and those being lobbied, as outlined above, into an efficient system of transparency over all lobbying contact in real-time. Consideration should be given to how a short simple summary report of lobbying meetings could be required to be produced by both the lobbyist and the individuals being lobbied.

11.4 Lobbying firms and in-house teams should already collect that information for internal reporting. From the perspective of those being lobbied, a headline summary of the content of the meeting and whether any hospitality was received could be posted through a simple software application. The information collected through the app would be available for public scrutiny and it would not be technically difficult for the meta data to be understood so it would be possible to view, for any final decision or issue, the breadth of lobbying and activity undertaken by decision makers at all levels of public policy, and by which organisations. Such a level of transparency, though not technically difficult, would require thorough consideration to ensure the software and data was of the right quality and user-friendly.

11.5 Such transparency could improve the quality of public debate, improve understanding about the breadth of interests in any policy issue, improve awareness about the breadth of work and

meetings carried about by Parliamentarians and public servants, and provide a strong bulwark against distortive lobbying against the public interest. Given the incentives of Parliamentarians to promote their activity for constituents, ethical lobbying organisations to promote their activities (be that on behalf of members, supporters or clients), and civil servants' need for balance in consultation there is a virtuous circle to be exploited by such transparency.

11.6 The sunlightfoundation in the US is developing similar citizen empowering tools at all levels of the US government. MySociety.org has produced useful information to further transparency in the UK. With the right political support, a more effective and more comprehensive system of transparency that could restore trust in politics and limit corruption opportunities could be developed.

Annex I

Transparency International UK (www.transparency.org.uk), the UK national chapter of TI, fights corruption by promoting change in values and attitudes at home and abroad, through programmes that draw on the UK's unique position as a world political and business centre with close links to developing countries.

TI-UK:

- Raises awareness about corruption;
- Advocates legal and regulatory reform at national and international levels;
- Designs practical tools for institutions, individuals and companies wishing to combat corruption; and
- Acts as a leading centre of anti-corruption expertise in the UK.

TI-UK's vision is for a world in which corruption is greatly reduced and the UK has zero tolerance for corruption both at home and abroad.

Nick Maxwell

Research Manager, Transparency International UK

E34: UKPAC

The UK Public Affairs Council (UKPAC) welcomes the opportunity to respond to this consultation into transparency around lobbying by the Committee for Standards in Public Life.

UKPAC operates a register of lobbyists. It was set up by the leading representative bodies in the sector. It is currently funded by the Chartered Institute of Public Relations (CIPR) and the Association of Professional Political Consultants (APPC). The Register is supported by a set of Guiding Principles and self-regulatory arrangements run by the bodies that support UKPAC. The register is open to entities and individuals who are not in CIPR or APPC membership on the basis that they commit to the Guiding Principles.

UKPAC was setup in response to calls from the Public Administration Select Committee in December 2008 for a public register with wide coverage. The UKPAC register has run successfully for two years. It is published online and updated quarterly. It currently details 300-400 employers of approximately 1,400 people working in lobbying and 2,500 organisations who are currently listed as clients by lobby firms who offer services to third parties.

As such the register addresses conventional lobbying consultancies and their staff and employees, individuals who offer services in a personal/freelance capacity and hundreds of staff who see lobbying as their core “in-house” service. The in-house staff publish details of their employers and these cover charities, unions, trade bodies, leading corporate entities, universities and other public bodies.

The register is currently voluntary but it has grown constantly and its coverage reflects the broad community of individuals and entities that seek to inform and influence Government.

UKPAC believes there is a case for maintaining broad coverage under any statutory regime. We believe transparency over who lobbies and who they lobby for is a valuable counter-part to the rules of conduct governing the public sector and parliamentarians.

UKPAC believes this value goes beyond filling minor gaps in the reporting of ministerial meetings. We believe the definition in the Bill as published could result in a statutory register that is all but empty and risks being a costly “white elephant”. UKPAC does not believe a register on this basis is sustainable or something it could support, still less operate.

UKPAC is worried that the process will undermine rather than build on the existing and expanding regime of voluntary registration and self-regulation. If asked, we would be willing in principle to continue to deliver a voluntary register in support of industry bodies and others who value transparency.

Conversely, UKPAC has made clear to Government that we believe a statutory register with workable definitions could be more effectively and economically delivered by a non-statutory body as happens with other registers, with regulation in telecommunications, broadcasting and legal services.

UKPAC believes we have much to offer as such a delivery vehicle. We could build on IT investments made and our understanding of the sector and relationship with the industry. UKPAC has delivered a

robust register at very low cost and is confident it could do the same in relation to a statutory regime – and at far lower cost than any public sector model.

Taking this role would require governance and accountability changes but it would create a model with far greater adaptability. This approach would allow the Registrar to operate a voluntary regime alongside the coverage of the statutory arrangements if there was industry interest in the idea. This would allow those who are not bound to register by statute to do so on a voluntary basis maximising transparency and supporting self-regulatory arrangements. This will matter a lot if the government definition is revised but the statutory duty remains limited to those acting for third parties.

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

Lobbying "per se" is not a problem. Lobbying is a fundamental right of individuals and groups with a shared interest and a wish to inform and influence debate and decision-taking by the Government in its various roles.

Lobbying can take many different forms. The focus of discussion has been on "professional" lobbying – lobbying by those who are paid to inform and influence government, parliament and public bodies more generally. This lobbying is done by entities and individuals from across the spectrum: trade bodies and trades unions, charities, leading companies, professional bodies, public bodies, faith groups and many others. In addition there are lobbying consultancies, law firms, public relations bodies and others who advise clients on when and how to inform and influence or who act directly on behalf of these clients.

If lobbying is a valued and natural part of the democratic process care should be taken in thinking one can distinguish between "good lobbying" and "bad lobbying", at least in terms of the agendas pursued.

But safeguards are needed. If the aim of lobbying is to inform and influence there is clearly a need for a framework to ensure this is done in ways that command trust and confidence over the conduct of those who lobby and those who may be lobbied. That is why there are laws against improper conduct, inducements and bribery. It is why there are established and transparent arrangements for public appointments and for the conduct of public business. It is why guidance exists addressing the behaviour of Ministers, civil servants, parliamentarians and others in and after public life.

It seems right that these measures deal with both conduct and transparency. As a registration body our primary focus is on registration as an important element of transparency which in our case, ties to self-regulatory arrangements addressing conduct of members within the organisations who sponsor UKPAC.

We do not believe there is evidence to show that abuse of lobbying is widespread or systemic. This can reasonably be assumed to be a consequence of the extensive legislative, conduct, transparency and other safeguards that are already in place under existing statutory and non-statutory arrangements. We would highlight the complementary nature of the self-regulatory and transparency arrangements run by or sponsored by industry, charity and other bodies as a key element in this package of safeguards. This is an important issue if there is some risk that

Government action to create a statutory duty might undermine or even result in abandonment of the current voluntary arrangements that serve a public good.

The absence of systemic abuse is not, however, grounds for complacency or inaction. Recent media exposes only once involved an actual lobbying firm that would appear on an industry register. The media "stings" and other reports rather served to highlight the apparent need for changes in the rules of conduct for those in public life or for more robust enforcement of existing rules.

As a Registrar, UKPAC is committed to delivering transparency in the field of lobbying. We and our funding sponsors have argued that there is a case for an inclusive definition of lobbying and for a register that covers all those who lobby as a valuable source of information for the public and for those who may be lobbied, and as a counter-part to rules of conduct on public office-holders. We have supported the self-regulatory arrangements that our founders have in place to address conduct alongside our action to address transparency.

We believe the current anxieties about lobbying, whether justified or not, does have the potential to undermine confidence in the decision making processes of Government and Parliament and need to be addressed.

A statutory duty to register seems a sensible, proportionate and precautionary measure dealing, in particular, with those who might not volunteer transparency or join in self-regulatory schemes. A workable definition is, however, critical, as is a structure that delivers efficiently and effectively without adding to public expenditure.

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

If we are to address lobbying from whatever source on equal terms, a definition needs to cover all who, in a professional (paid) capacity, seek to influence public policy, government decisions or legislation, or provide advice to those who seek to exert such influence.

The definition must be framed in a way that allows it to be applied in practice: that is to say, it must take account of the diversity of the services that public affairs professionals generally provide and the difficulty of making a precise distinction between those that do and do not constitute "lobbying".

Any definition is fraught with difficulty and it is likely, within sensible parameters that a Registrar would have to have some discretion and power of interpretation in the exercise of her or his role.

It is for the Government to make the final policy decision on a definition and exclusions. UKPAC is a registration body, not an interest group representing members. Our contribution to this debate is anchored in the data and experience we have accumulated in running a register of lobbyists for over two years and on how our definition would cross-relate to the Government's proposal.

The current UKPAC register contains all lobby firms within APPC membership and details of the companies, their staff and their client lists. The register also lists some lobby companies and freelance lobbyists who are not in APPC membership. It also contains well over 200 organisations that employ staff who are in CIPR membership and who see informing and influencing Government

as core to their roles. These organisations include leading charities, trade unions, individual companies, trade associations, law firms and educational and other bodies. As such our register, operating on a voluntary basis, details 300-400 organisations, approaching 1,500 employees and around 2,500 declared client companies and other client organisations.

The Government Bill is based on a definition that only addresses “consultants” who work for third parties and only if those consultants engage in direct communications with Ministers of Permanent Secretaries. The Bill also contains an exclusion for those for whom lobbying is not a significant part of their commercial activity. This Bill is drafted in these terms on the basis that its principal or sole purpose is to counter an element of opaqueness in relation the Departmental report of meetings, where some of those meeting are with consultant entities acting for third parties.

The public information on departmental meetings with outside interests suggests that each department has literally a handful of such meetings annually. On this basis a register would seem likely to contain tens of entities rather than hundreds or thousands.

This is a complete distortion of what is happening in the real world in terms of lobbying and risks stigmatising the handful of firms that might meet the definition. A narrow definition, which only covers those who actually meet and make representations and only when in relation to third party clients may prompt those who are considered lobbyists to restructure their services to avoid registration. If all lobbying firms, law practices and others offering services to third parties choose to focus all of their activities on advising, coaching and briefing clients on strategy and communications etc and do not seek to represent or accompany clients in person or in writing the Register could, in principle, be completely blank.

If the definition were to be relaxed to cover all “consultant lobbyists” going about their business as they do today with advice, strategy and so on as part of the definition of lobbying and not as an exclusion, the register would probably extend to perhaps 300-400 entities and freelancers/sole-traders. Such a statutory duty would undoubtedly be a valuable aid to transparency insofar as it would address those who do major work on offering advice and support to third parties but who are not prepared to register on a voluntary basis. But it would be wrong to under-estimate the challenge in identifying and securing registration by an uncertain and variable number of ex Civil Servants, parliamentarians, lawyers, media and communications gurus and others who populate the “Westminster Bubble” and who seek to market their know-how on a very ad hoc basis.

We make reference to the diverse range of people and employers on our current register. A definition that continues to exclude those who are lobbying in an in-house capacity would still deliver a register which was an incomplete representation of those who lobby and those they lobby for. We argue that information on those who lobby is a valuable counter-part to rules of conduct for those who are lobbied. If this is true it is equally true of those who work for third parties and those who make direct representations on their own account.

If a statutory register is set up and excludes the “in-house” community it is open to question whether a separate register of these players is sustainable. It would be unfortunate if action to deliver a statutory register led to less transparency amongst those excluded from that register. We refer to the way in which a Registrar working outside the public sector could deliver a register that

covered those with a statutory duty to register and provide a vehicle for those who are under no duty to register but wish to do so to demonstrate transparency.

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?**

UKPAC believes that limiting a statutory register to third party lobbyists will not go far enough in bringing transparency and consequently public trust in the lobbying industry as a whole. The proposals by the Political and Constitutional Reform Committee would go much further in addressing the issues of concern in lobbying. We do, however, believe that the big gains in terms of transparency in relation to individual issues lobbied about sit with Ministers, Departments and public bodies. See question 4 below.

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?**

Much of the responsibility for dispelling the cloud of suspicion rests on those who are the subject of lobbying and eventually take the decisions. There is no doubt that a register of those engaged in lobbying services provides an aid to public bodies and addresses any suggestion that those who lobby are doing so from a position of anonymity. However, a register of names, client information, issues lobbied about is no substitute for open Government and those being lobbied being required to comply with their own adequate rules.

The reporting on Ministerial meetings is slow and limited in content. Posting "Welsh Affairs" as the one and only descriptor of dozens of meetings by the Welsh Secretary is not illuminating. Departments posting "Introductory meeting" or "Follow up Meeting" are hardly shedding light on ministerial dialogue. FoI and other tools are available to those with an interest in the conduct of Government but we would argue that a spirit of openness would reduce the need for recourse to this somewhat combative approach to finding out what is going on.

We would argue that anyone with an interest in departmental or other engagements on a specific issue would get a proper picture if the department shared information on all meetings rather than seek to piece a jigsaw together by searching for declarations by any and all of those who seek to inform and influence government. The Transport department, for example, would be the place to ask about all ministerial or other meetings with interested parties (those lobbying) on the issue of a second Channel Tunnel. If there had been 50 contacts on this all 50 would be known to the department. It is hard to see how an interested party could get this same picture by searching a register of those who lobby and trying to piece together a picture by that means. This would have even less purpose if the register in question only listed consultants who lobbied direct or consultants generally but excluded in-house people.

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

The existing rules are robust in many regards but do not bring enough transparency in areas such as ministerial meetings. It is for others better placed, to comment on the circumstances in which for

example payment for parliamentarians or others in public office may be made and how these should be reported.

However, we would warn against trying to establish a rule for every conceivable scenario and form of engagement for those in public life and those with whom they interact. Not only is this impossible, but it would detract focus severely from the guiding principles that should apply. The UKPAC approach in dealing with the lobbyist rather than the lobbied has been to focus on guiding principles which, while short and simple, define what is and is not acceptable and provide a basis from which individuals and self-regulatory bodies or others can judge matters that might come before them.

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 answered question 6 with question 7 below**.**

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

UKPAC believes that registration of lobbyists should be linked to principles of ethical conduct. Our preferred approach would be that all registrant lobbyists should be required to subscribe at least to a basic set of principles broadly equivalent to the Guiding Principles of Conduct which appear on the UKPAC website. These are set out below:

1. Transparency & Openness

- Always be clear and precise about your identity and any organisation you represent, either directly or on an advisory basis.
- Never give a false identity or claim to represent an individual/organisation without express permission.

2. Accuracy & Honesty

- Never knowingly make false or misleading claims or misrepresent the views of others, and take action to avoid doing so inadvertently.
- Always provide accurate information.

3. Integrity

- Never offer financial or any other inducement, including direct or indirect payments, offers of employment or substantial gifts or entertainment, to any holder of public office in an attempt to influence the decision making process.
- Clearly declare any relevant financial or other links to the public office holder in order to ensure he or she is protected from a potential conflict of interest.

4. Propriety

- Always seek to follow the rules of the public body to which you are making representations, and where appropriate seek guidance from the public body on any rules of relevance.

- Ensure that in any dealings with holders of public office, you do not encourage them to break the rules of the institution they represent governing their activities.

You will see these address both the conduct of those who lobby and the need to respect the rules and regulations that apply to the lobbied. On balance, we believe that the current mix of laws and rules of conduct on Ministers and others provide an adequate framework and that the focus of any Registrar should be on transparency and not regulating conduct. This view is also informed by the range of self-regulatory and regulatory safeguards that exist in the lobbying sector and that apply to lawyers, charities, unions and others as they go about their business.

UKPAC's current member bodies, APPC and CIPR, both operate their own codes of conduct, observance of which is a condition of membership. UKPAC's role as a registrar focuses on transparency. This has been based on the assurance we can take from the commitment of the member bodies (APPC and CIPR) to a set of guiding principles and to enforcing those on a self-regulatory basis if required.

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

Sanctions and the publicity that might attach to their imposition clearly create a form of leverage.

We agree, therefore, sanction in the form of some financial penalty is appropriate. But we are anxious not to create a "Gotcha" culture with a Registrar more interested in catching people out than in advising on registration and building a culture in which registrants wish to be on the register and do so willingly.

The body responsible would need to be able to distinguish between accidents, carelessness, recklessness and wilful behaviours. A non-statutory body such as UKPAC might be far more effective in delivering compliance through education, dialogue and influence, than a statutory body with the legalistic and mechanical sanctions that come with this status.

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?**

It is surely both desirable and feasible for the lobbied to be open about those who lobby them. This is no more than an extension or aspect of good government. It is hard to imagine a situation in which a Minister or others could meet someone in an official capacity and be unable to identify the organisation the person represented – either as an employee or as a consultant lobbyist.

Issues could arise in less official and possibly more political settings such as party conferences, dinners, receptions etc. But we would expect the same principle to apply. Those in public office have, and should be able to follow, guidance on how they engage with interest groups and individuals.

The Guiding Principles that UKPAC publish and founder members follow (see Section 7 above) address this from the perspective of the lobbyists, highlighting integrity and propriety as core issues for those who may be lobbied.

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

We would refer again to our Guiding Principles and the proposition that underpins them – that there are duties on the lobbying and the lobbied. The lobbied should be well aware of their absolute responsibilities as public office holders and those who lobby them should be equally aware of the high level principles that apply and do nothing to put public office holders in a position where they seem to have a choice between the public interest and personal advancement or gain.

The Committee and others are better placed than UKPAC to offer specific comment on mechanics for building understanding within the public sector.

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 is always scope to improve policy-making and the consultative and other dialogues that ensure this policy-making and decision taking is well informed and in the public interest. We should not, however, under-state the safeguards and robustness that generally exists in our arrangements. The high levels of transparency and democratic engagement that is wired into our instruments of Government are the envy of many around the world and support a system that does now allow or tolerate wrongdoing in scale or frequency.

We have supported the proposal for a register with appropriate coverage paralleling departmental and other action to be more open and informative over Ministerial and other contacts. This is a proportionate precautionary response to concerns over the influence that can come from lobbying and would be a valuable supplement to existing legislative and administrative duties around transparency. It should provide the blend of safeguards necessary to command public trust and confidence.

UK PUBLIC AFFAIRS COUNCIL, JULY 2013

E35: Unlock Democracy

About Us

Unlock Democracy is the UK's leading campaigning organisation for democracy, rights and freedoms. A grassroots movement, we are owned and run by our members. In particular, we campaign for fair, open and honest elections, a stronger Parliament and accountable government, and a written constitution. We want to bring power closer to the people and create a culture of informed political interest and responsibility. Unlock Democracy is a founding member of the Alliance for Lobbying Transparency; set up in 2007 with a number of organisations including Spinwatch, Friends of the Earth and Greenpeace.

Executive Summary

Unlock Democracy welcomed the government's commitment to introduce a statutory register of lobbying interests. However, we are disappointed that proposals that took so long to produce are so limited in scope.

Unlock Democracy is not opposed to lobbying - indeed we lobby Parliament, the UK and devolved governments and local government. Lobbying is a part of the democratic process, the problem is when it's done in secret so the public have no way of knowing who has been putting pressure on the government to do what, or how much money they are spending on exerting that pressure.

The perception that companies and wealthy individuals can buy access and influence is undermining trust in our political system. There have been a number of scandals in recent years that have demonstrated this, from the Fox/Werrity affair[23], to the allegations of Bell Pottinger[24] boasting about their access to the Prime Minister and McKinsey's alleged influencing of the Health and Social Care Bill[25]. This is about a systemic relation between policy makers and the lobbying industry not the actions of a few individuals.

We believe that the government's proposals are fundamentally flawed and will do little to promote transparency in lobbying. Our main concerns are that the definition of lobbying is too narrow and that the level of information recorded in the register would reveal little about the network of relationships between government and those who lobby.

Unlock Democracy wants an open and transparent lobbying system. We believe that the purpose of any lobbying register should be to capture lobbying activity rather than individual lobbyists. This means that both in-house and agency lobbyists should be covered by the register and that the register must include information not just on who the lobbyist's client is, but also who is being lobbied, the policy area that is being lobbied and the amount of money that is being spent on

[23] http://www.guardian.co.uk/politics/2011/oct/23/fox-werritty-labour-10-questions?INTCMP=SRCH accessed 24 February 2012

[24] http://www.independent.co.uk/news/uk/politics/caught-on-camera-top-lobbyists-boasting-how-they-influence-the-pm-6272760.html accessed 24 February 2012

[25] http://www.dailymail.co.uk/news/article-2099940/NHS-health-reforms-Extent-McKinsey--Companys-role-Andrew-Lansleys-proposals.html accessed 24 February 2012

lobbying. This does not have to be an arduous or overly bureaucratic process. Unlock Democracy has completed a mock registration form for the first quarter of 2012 to demonstrate how this could be achieved without putting an undue burden on the organisations concerned.

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 an essential part of a healthy democracy. However, professional lobbying – an industry worth £2 billion in the UK – can subvert democracy by giving those with the greatest resources undue influence and privileged access to politicians. The problem is, at the moment, most of this is done in secret. The public can't make an informed decision about what is or isn't appropriate.

David Cameron outlined what he believed to be the problem of lobbying in February 2010:

"I believe that secret corporate lobbying, like the expenses scandal, goes to the heart of why people are so fed up with politics. It arouses people's worst fears and suspicions about how our political system works, with money buying power, power fishing for money, and a cosy club at the top making decisions in their own interest"[26]

The House of Commons Political and Constitutional Reform select committee agreed, arguing that,

"Newspaper reports alleging close contact between politicians and lobbyists do nothing to reduce the suspicion felt by many ordinary people that large corporations or wealthy individuals have disproportionate influence over political decision making."[27]

Whenever a new scandal comes to light, as recently with the Panorama investigation that led to the resignation of Patrick Mercer MP from the Conservative Party, there is a desire to blame the individual concerned rather than the relationship between our political system and the lobbying industry. However both the number of lobbying scandals and the fact that questions have been raised about lobbyists relationships not just with MPs or government ministers but also civil servants[28], SpAds and members of the House of Lords[29] demonstrate that this is simply not the case.

The perception that companies and wealthy individuals can buy access and influence is undermining trust in our political system. There have been a number of scandals in recent years that have demonstrated this, from the News Corp's lobbying of Jeremy Hunt's office during the decision making process about BSkyB[30], to Fox/Werrity affair[31], to the allegations of Bell Pottinger[32] boasting

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26 David Cameron: Rebuilding trust in politics February 8 2010

[26] http://www.conservatives.com/News/Speeches/2010/02/David_Cameron_Rebuilding_trust_in_politics.aspx

[27] Political and Constitutional Reform select Committee *Introducing a Statutory Register of Lobbyists* paragraph 15 http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpolcon/153/15305.htm#a3

[28] http://www.theguardian.com/news/datablog/2012/jan/24/chemistry-club-lobbying-data accessed 30 July 2013

[29] http://www.thebureauinvestigates.com/2012/04/17/conservative-peer-hired-as-tax-haven-lobbyist/ accessed 30 July 2013

about their access to the Prime Minister and McKinsey's alleged influencing of the Health and Social Care Bill[33]. This goes beyond the actions of any one individual and is about a systemic relationship between the lobbying industry and those involved in policy making. Self-regulation has demonstrably failed and as two House of Commons select committee inquiries and the Standards Committee during the first session at the Scottish Parliament have argued, a statutory register of lobbying activity should be introduced.

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

Unlock Democracy believes the purpose of a lobbying register is as a transparency tool. to provide information on who is seeking to influence government decisions making. Therefore it is essential that the definition of lobbying is broad and covers the activity of lobbying rather than the individual lobbyist. Lobbying is an important part of a democratic culture, it allows different views and experiences to be heard, but we need to be open and honest about who lobbies and what they are lobbying for. This means acknowledging that it is not just large agencies who lobby, but also charities, voluntary sector organisations, trade bodies, companies, trade unions, media organisations and universities.

The government takes the view that only "consultant lobbyists", those lobbying on behalf of third party clients, should be required to register. Unlock Democracy strongly disagrees with this approach. We believe it is unfair to multi-client lobbyists as it excludes the in house lobbyists who account for a significant amount of lobbying activity in the UK. When the government first consulted on these proposals, Mark Harper MP, the minister at the time, argued that in-house lobbyists do not need to be included in the register because,

'When an in-house representative from a company comes to see me, the public knows what's happening and that is transparent. If someone from an agency comes to see me, no-one knows who they're advocating for – and that's not transparent.'[34]

We do not believe that is the case. Unlock Democracy is currently lobbying the Cabinet Office on a number of different policy areas. If we were to have a meeting with a minister it could be about individual elector registration, House of Lords reform, lobbying, boundary changes, party funding or other democratic reform issues that we may wish the government to pursue. This would not be apparent just from the the fact that the minister was meeting us.

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[30] http://www.dailymail.co.uk/news/article-2149291/Leveson-Inquiry-News-Corp-Jeremy-Hunts-relationship-BSkyB-takeover-bid-revealed.html accessed 30 July 2013

[31] http://www.guardian.co.uk/politics/2011/oct/23/fox-werritty-labour-10-questions?INTCMP=SRCH accessed 24 February 2012

[32] http://www.independent.co.uk/news/uk/politics/caught-on-camera-top-lobbyists-boasting-how-they-influence-the-pm-6272760.html accessed 24 February 2012

[33] http://www.dailymail.co.uk/news/article-2099940/NHS-health-reforms-Extent-McKinsey--Companys-role-Andrew-Lansleys-proposals.html accessed 24 February 2012

[34] http://www.prweek.com/uk/go/news/article/1118304/pr-industry-gears-legislative-battle/ accessed 28 February 2012

The danger in both a narrow definition and also seeking to regulate the specific lobbyist rather than the activity of lobbying, is that it can make lobbying less transparent. The experience in Australia of a very narrowly defined lobbying register, has been that lobbying activity has moved away from agencies and to law firms and accountancy companies.

The government proposals seem to be based on the assumption that lobbyists only seek to influence government by meeting with ministers and permanent secretaries. This is simply not the case. When Unlock Democracy lobbies Parliament, the UK and devolved governments and local government, very little of that activity is focused on meetings with government ministers. The details of a lobbying campaign planned by Phillip Morris International (PMI) against the proposed introduction of plain cigarette packaging are a case in point. Their proposed activities included: commissioning opinion polling, working with think tanks and lawyers, building coalitions of groups opposed to the policy, creating supposedly grassroots campaigns to oppose the plans, briefing key MPs to be influencers within Parliament, commissioning research and polling on attitudes in key marginal constituencies and identifying supportive journalists.[35] None of these activities would be covered by the government's proposed definition of lobbying, although if as also mentioned, PMI hired a lobbying agency to raise the profile of the issue that single aspect of the campaign would be covered.

Together with Spinwatch, Unlock Democracy has published a draft bill demonstrating how we think the lobbying register should work[36]. In our draft bill we define lobbying activity as an organisation or an individual, who for payment, undertakes to:

- Arrange or facilitate a formal or informal meeting with a "public official";
- "Communicate" with a "public official";
- Advise others in a professional capacity in respect of the above activities;
- Work to support a) and b), including any supervision, planning, coordination with the lobbying activities of others, research or other background work that at the time it is done is intended for use in support of a meeting or communication with a public official.

In respect of –

- The holding of a debate or tabling of questions in either House of Parliament, the introduction of any Bill, motion or resolution in either House of Parliament or the passage, defeat or amendment of any Bill or resolution that is before either House of Parliament;
- The formulation, modification, or adoption of regulation, policy, or position of HM Government;

[35] http://www.theguardian.com/business/2013/jul/28/philip-morris-plain-packaging accessed 30 July 2013

[36] http://www.unlockdemocracy.org.uk/pages/publications

- The awarding of any contract, grant or other financial benefit by or on behalf of HM Government.

Although we believe that there should be broad definition of lobbying, there do of course need to be exemptions. For example it would be entirely inappropriate to seek to capture a constituents correspondence with their MP. In our draft bill we proposed the following people should not be covered by the register:

- An individual constituent contacting or communicating with their Member of Parliament;
- Public officials acting in an official capacity;
- Elected members or officials working in international bodies of which the United Kingdom is a member;
- A person contracted to, or on secondment to government or otherwise acting in an official capacity on behalf of a government organisation;
- Diplomats, consular officials or official representatives in the State of foreign governments when acting in their official capacity.

We also proposed that the following activities should be exempt:

- Any oral or written submission made to either House of Parliament, or any of its committees in proceedings that are a matter of public record;
- A public response to an invitation by the government to submit information or evidence, or a public response to a government consultation exercise, or a formal response to a public invitation to tender;
- Administrative requests made by lobbyists, where no attempt is made to influence;
- Any oral or written communication that is made widely and publicly available, such as a speech;
- Communication directly related to negotiations on terms and conditions of employment of public service employees undertaken by trade union or staff association representatives on behalf of their members;
- Communication by media workers in the course of their work.

We believe that this strikes the correct balance between providing transparency and allowing expertise and outside voices into the policy making process.

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?

We believe that the government's proposals are fundamentally flawed and will do little to promote transparency in lobbying. Our main concerns are that the definition of lobbying is too narrow and that the level of information recorded in the register would reveal little about the network of relationships between government and those who lobby.

Unlock Democracy wants an open and transparent lobbying system. We believe that the purpose of any lobbying register should be to capture lobbying activity rather than individual lobbyists. This means that both in-house and agency lobbyists should be covered by the register and that the register must include information not just on who the lobbyist's client is, but also who is being lobbied, the policy area that is being lobbied and the amount of money that is being spent on lobbying. The register should also provide information on the 'revolving door' specifically whether or not the person doing the lobbying has been a senior civil servant, SpAd or elected representative in the last 5 years.

Whilst the Political and Constitutional reform Committee's proposals do not go quite as far as we would like they are a considerable improvement on the government's bill.

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?

Whilst there are certainly improvements that can be made to the system for publishing details of ministerial meetings, in particular the level of information provided about the subject of the meeting, this is not the purpose of the lobbying register. Those that are lobbied are already regulated, those that do the lobbying are not.

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

Self-regulation of the lobbying industry has comprehensively failed. The House of Commons Public Administration Select Committee inquiry in 2008 found that the system of self-regulation was "little better that the emperor's new clothes". Although the industry attempted in 2010 to revive the system, uniting three separate regulatory bodies in one, the UK Public Affairs Council (UKPAC), this too has been found wanting. In particular the register was not kept up to date, leading Austin Mitchell MP to label it "riddled with errors, omissions, inconsistencies and redactions".

On 9 December 2011 self-regulation was discredited further when the Public Relations Consultants Association withdrew from the Council, stating that self-regulation had not been successful, that it lacked "credibility and confidence" and called on the Government quickly to introduce a statutory register "held by an independent body, to run in parallel with the Codes of Conduct that exist already within the industry"[37].

There are a number of reasons why we believe self regulation is inadequate and why it is necessary to introduce statutory regulation. Firstly, for lobbying regulation to effective it needs to be universal – covering both in house and multi-client lobbyists as well as charities, think tanks and law firms that

[37] Email correspondence from Francis Ingham, PRCA to Elizabeth France, Chairman of UKPAC, 9 December 2011 cited in the Political and Constitutional Reform Committee report Introducing a Statutory Register of Lobbyists http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpolcon/153/15302.htm

lobby. The current system of self regulation allows a large proportion of the lobbying industry to remain outside the regulatory framework.

Secondly there is always a danger with any system of self regulation that the interests of the industry will obscure or overcome the desire for regulation only government has the authority to require lobbyists to divulge information, investigate failures to comply with the rules, prosecute breaches and impose sanctions. Thirdly despite several attempts at self regulation the levels of information volunteered by the industry are woefully inadequate. The current system reveals only the names of lobbyists and their clients / employers. It doesn't include which areas of policy are being lobbied on, nor how much money is being spent, both of which are needed to allow proper public scrutiny of influence in policy-making.

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?

Unlock Democracy believes that it is necessary but not sufficient to develop a code of conduct for lobbyists. The code of conduct would help to highlight best practice within the lobbying industry and clarify the standards of behaviour required to comply with the disclosure obligations of a lobbying register. The effectiveness of a code of conduct would depend on whether it was taken up by and promoted within the lobbying industry so we recommend that they are involved in any process to determine what it should include.

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

Unlock Democracy believes it is essential that any lobbying register is administered by an independent body and not the industry itself as is currently the case. We would be happy for it to be added to the remit of an existing body, such as the Electoral Commission, which already maintains registers on donations and loans to political parties. This would help to minimise both the costs and bureaucracy associated with the new regulatory regime, whilst at the same time reassuring the public that the register signals a new era of independence, openness and transparency in lobbying in the UK.

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

Yes we believe that there should be some form of sanctions associated with the lobbying register, In line with international best practice we believe this should be a combination of fines and reputational damage. For more information on this pleaase see our draft bill.

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?

No. Since the cash for questions scandal in the 1990s politicians who are lobbied have been regulated and this has been increased over time. Whilst this regulation could be improved, for example by banning MPs from taking on work as political consultants, this still only captures half of

the relationship. The Prime Minister has said that "we want to be the most open and transparent government in the world."[38]

If that aspiration has a chance of becoming reality then we need to information on both sides of the lobbying relationship.

[38] David Cameron 2010 http://www.opengovpartnership.org/countries/united-kingdom

E36: William Dinan and David Miller

Standards in Public Life Committee inquiry on Lobbying
July 2013

We[39] welcome the Committee on Standards in Public Life examination of transparency issues around lobbying and its recognition that lobbying remains a "significant and continuing risk to ethical standards". This consultation comes at an important moment, as the government is seeking to progress its proposals for a register of commercial lobbyists. We believe that the very limited proposals that the government has brought forward are fundamentally flawed and misguided: they are incapable of addressing the significant risks to ethical standards posed by the range and complexity of relations between elected representatives, officials and all outside interests.

We note that the current inquiry by the Committee for Standards in Public Life comes in the wake of a series of official consultations in the last number of years, notably the two-year investigation by the Public Administration Select Committee (PASC 2008-09) and the more recent Political and Constitutional Reform Committee inquiry (PCRC 2012) on introducing a statutory register of lobbyists. It would be remiss of this current inquiry to fail to fully consider the findings of those inquiries in their deliberations. It appears to us the government has ignored the key lessons from PASC and PCRC for purposes of political expediency.

Our contribution is informed by our experience of researching and campaigning on lobbying disclosure, transparency and ethics issues in the UK and Europe over the past decade. It is based upon two fundamental principles – the right to lobby, and the equally important right for the public to know who is lobbying to influence democratic and regulatory decision-making. The latter right has been seriously neglected in the debate on lobbying in the UK.

We believe that ethical standards and transparency are mutually supportive, and that a culture of openness and disclosure is necessary for promoting ethical standards and probity across public life. This does not simply apply to elected representatives and public officials, but all those seeking to influence policy and decision making as well. This means that *all* lobbyists should be obliged to abide by the highest standards of conduct, part of which should include the routine and timely disclosure of their contacts with politicians and public servants, and the substantive content of those contacts. By placing such information in the public domain, via a comprehensive and mandatory register of lobbyists, we would have a robust system where there is inside disclosure (by government ministers, MPs and officials), outside disclosure (via lobbyist registration and filings), and scrutiny of these by those involved in policy processes, as well as by the media, watchdog groups and members of the public.

Such a system allows for greater accountability - by making known the activities of all those involved in shaping policy and legislation – and will surely enhance transparency and promote ethical standards.

A mandatory and inclusive lobbying disclosure system need not involve undue bureaucracy, and investing some resource in developing a robust and respected regime which enhances transparency and participation, promotes accountability and knowledge of the political system, and helps secure the probity of public life, seems to us a necessary and proportionate use of public funds. It should

[39] Both authors are founders and directors of Spinwatch. SpinWatch was created in 2004 with the aim of promoting greater understanding of the role of PR, propaganda and lobbying. We are founder members of the Alliance for Lobbying Transparency in the UK (ALT UK) and the Alliance for Lobbying Transparency and Ethics Regulation in Europe (ALTER EU).

also restore some confidence in lobbying, which continues to be undermined by the series of scandals, stings and revelations in the media over the last few years, involving actors right across the political class. Properly addressing widespread concerns about lobbying power and impropriety requires a comprehensive solution that must, as a minimum, ensure transparency for all insider and outside interests.

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?

While we fully accept that lobbying is an important and legitimate feature of modern democratic politics, we believe that the scope and scale of lobbying has increased over the last few decades, and it is therefore vitally important that the governance and oversight of lobbying is managed in a way that promotes public confidence in decision-making.

It is not yet possible to definitively answer the question regarding how widespread or systemic the abuse of lobbying may be in the British system, simply because the data does not exist.[40] A mandatory register of *all* lobbyists would go some way to redressing this information gap. However, one can try to draw reasonable conclusions based on what is known and documented in the public domain.

It is important to consider how and why information about the abuse of lobbying comes into the public domain. It should be acknowledged that researching, documenting and exposing deceptive lobbying and misleading public relations is inherently difficult. Those involved would doubtless prefer such activity does not attract public attention and scrutiny, even if no laws are broken. In the British context, where governance and decision-making is often conducted within a culture of secrecy, or with a predisposition against public disclosure, this task is even more challenging. Recently, there has been a spate of revelations (and stings) in the media.[41] *These are strongly*

[40] The British lobbying industry is estimated to have doubled in size since the early 1990s and there were said to be 3000 full time lobbyists (consultants and in-house) in the UK (see Thompson, S and John, S. (2002) Public Affairs in practice: a practical guide to lobbying, pp. 4-5) and is estimated to be a £1.9bn industry in the UK. This may be something of a conservative estimate. A survey published by the Chartered Institute of Public Relations (CIPR) in 2005 indicated some 47,800 people employed in public relations in the UK. Just over 80% of these were identified as working 'in-house' (i.e. working directly for corporations, charities and public bodies) with an even split between those employed in the public and private sectors. If we accept there is something of a blurring between lobbying and PR, and if we include lobbyists working in-house, rather than in consultancies, then the number of professional communications engaged in lobbying and related activities is quite significant. That there is no reliable register of what these people are doing in public affairs is properly a matter of public concern.

[41] For example, since the publication of the PCRC report on lobbying last year there have been the following substantiated stories in the press and broadcast media which indicate that lobbing abuse remains a problem: 'Ex-Conservative minister Lord Blencathra paid to lobby for island tax haven', *The Independent*, 17 April 2012; 'A fifth of the Lords that voted on Health Bill had conflicted interests', *The Bureau of Investigative Journalism*, 24 April 2012; 'News Corp dossier appears to show contacts with minister over BSkyB bid', *The Guardian*, 24 April 2012; 'Alex Salmond admits he planned to lobby Jeremy Hunt over BSkyB', *The Guardian*, 25 April 2012; 'David Cameron aide discussed BSkyB bid with News Corp lobbyist', *The Guardian*, 2 May 2012; 'Fury at lobbyists over lucrative work for brutal Maldives regime', *The Independent*, 7 May 2012; 'Arms firms call up 'generals for hire' ', *Sunday Times*, 14 October 2012; 'David Cameron adviser Jonathan Luff quits to join payday lender Wonga as lobbyist', *The Independent*, 31 October 2012; 'Iain Duncan Smith adviser being paid by thinktank lobbying his department', *The Guardian*, 5 November 2012; 'David Cameron's former NHS privatisation adviser becomes lobbyist', *The Guardian*, 23 November 2012; 'Nuclear lobbyists wined and dined senior civil servants, documents show', *The Guardian*, 28 November 2012; Companies Pay MPs In Lobbying Free-For-All At Westminster, *The Times*, 2 January 2013; 'Ernst & Young lobbies against tax transparency at Downing Street', *The Guardian*, 7 May 2013; 'MP Patrick Mercer quits Tory whip over Panorama lobbying inquiry', *BBC website*, 31 May 2013; 'Lobbying claims: Two peers suspended, one resigns', *BBC website*, 2 June 2013;

suggestive of a culture of lobbying where ethical standards are not adhered to (by lobbyists and elected representatives), where the status quo is unsustainable, and therefore, where mandatory oversight and enforcement are necessary. It is perfectly understandable that revelations about deceptive lobbying and breaches of ethical standards are made known by the media: lobbyists, elected representative and officials who may engage in such practices are precisely those least likely to voluntarily disclose such information.

It seems very unlikely that the media have successfully detected all the cases of lobbying abuse in British public life; it is equally unlikely that the self-regulatory efforts of the lobbying industry can ensure that all their members (not to mention those lobbyists who eschew such voluntary codes of behaviour or disclosure) operate to the highest ethical standards. It is much more likely that there are abuses of lobbying that have not been detected or disclosed.

In order to secure public confidence and help restore public trust in politicians and the wider political class (which includes lobbyists and those seeking to influence decision making), it is necessary that lobbying is transparent. Without transparency lobbyists and those lobbied cannot be held accountable for their actions. We believe that approaches to lobbying disclosure that only capture certain categories of lobbyists (e.g. commercial lobbying consultants, as proposed by the recently published draft bill) are wholly inadequate (see response to Q. 3 below for more detail).

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

The definition of lobbying must be wide enough to capture significant lobbying activity – whether undertaken by consultant lobbyists, corporations, charities, NGOs, lawyers or management consultants. All these groups lobby, and therefore they should be captured in both the definition of lobbying, and the provisions of any register of lobbyists.

The Alliance for Lobbying Transparency has produced the following definitions of lobbyist and lobbying activity[42], which we believe offers a workable basis for a mandatory register of lobbyists. The ALT proposal recommends:

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

“Lobbying activity” includes:
a. Contact – arranging or facilitating interaction with “public officials”;
b. Communication[43] 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;
c. Any work in support of the above, including supervision, planning and research.
d. Financing ‘think tanks’ for lobbying on a particular issue.

ALT recommends that the following exemptions should be applied to lobbying registration and disclosed lobbying activity:

[42] See ALT’s *Essential Provisions for a Statutory Register*, http://www.lobbyingtransparency.org/take-action

[43] Communication includes: 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.

- Lobbying by public officials acting in their official capacity (Note: this does not apply to a public body employing a lobbying firm to carry out lobbying activity on its behalf);
- Official participation in Parliamentary business, for example, giving evidence to a Select Committee;
- Administrative requests made by lobbyists, for example, on the status of a policy, where no attempt is made to influence;
- Matters between an MP and an individual constituent, i.e. a natural person not representing an organisation or business;
- Communication by media workers in the course of their work;
- Communication - a speech, article, book, a blog, twitter or social networking group that is made widely and publicly available.

In our view many of the reactions and responses to lobbying transparency and greater disclosure from those 'inside' the political system tend to be rather negative and pessimistic, and complain about unnecessary bureaucracy and the creation of barriers to participation. There is virtually no empirical evidence to support these assertions, and such misplaced doubts obscure the positive case for disclosure:

Lobbying transparency can benefit the public, the media, elected representatives, public servants and those engaged in lobbying. Lobbying transparency promotes scrutiny, enhances accountability, contributes to informed public debate and can encourage citizens and civil society groups to engage with decision makers.

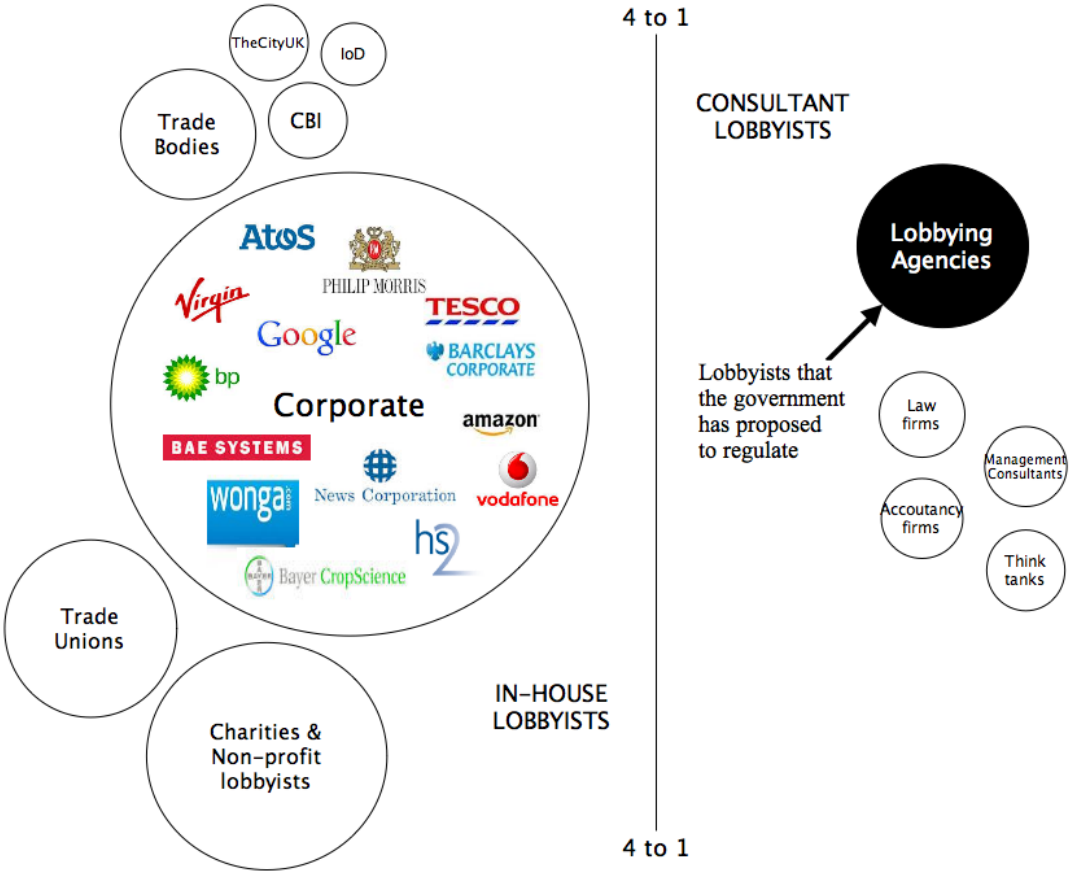
3. Is the proposed legislation for a Statutory Register of lobbyists likely to be sufficient to address the problem; and are the Political and Constitutional Reform Committee's proposals (wider registration, disclosure of issues and enhanced Ministerial disclosure) necessary, either as an interim measure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

The government's draft bill is poorly conceived and appears, in part, to be a rather hasty response to media headlines. The fact that the government has ignored the balanced conclusions and recommendations of PASC's (2009) inquiry – based on cross-party agreement and a careful consideration of the evidence – is highly regrettable. In this context – where all the careful analysis and groundwork has been prepared by a non-partisan committee - is not clear what problem the government's proposals for a Statutory Register of lobbyists seeks to address. The most glaring problems with the current proposals are:

- The exclusion of in-house lobbyists
- The dearth of meaningful disclosure

A fundamental flaw with the current government proposals is that they will not capture the majority of lobbying or lobbyists. The exclusion of in-house lobbyists from the proposed Register is both bizarre and short-sighted: there seems little point in going to the trouble of creating a Statutory Register if it is designed to fail, which is what we suspect is the most likely outcome of the current proposals. One lesson that can be drawn from other jurisdictions that have implemented lobbying disclosure reforms is that the systems that best deliver transparency are those without loopholes and exemptions. The most likely effect of the proposed Statutory Register is that it will encourage clients who would prefer to continue their lobbying in secret to conduct their affairs exclusively in-house, or to retain others (e.g. such as law firms, management consultants, accountancy firms) who offer public affairs services but are not covered by the governments narrowly drawn understanding

of lobbying. The graphic below illustrates how little of the lobbying sector will be captured by the current proposals.[44]



In addition to excluding the majority of lobbyists, the minimal register in the offing would contain no information on lobbying activities: whom are they lobbying, what are they seeking to influence, and how much are they spending trying to influence government. The government has proposed a register merely of commercial lobbyists (which will include information – often already in the public domain – on whether a lobbyists has previously worked in government and has now passed through the 'revolving door'), and their clients, but nothing on their interactions with government. It is one thing to know who is lobbying for whom, but without disclosure of who in government they are lobbying and what they are lobbying for, it would be impossible to properly scrutinise how influence is brought to bear in the political system. What a real statutory register of lobbyists shows is which policies, legislation, regulation and government contracts they are seeking to influence and which branches of government they are targeting. In comparison to other lobbying disclosure systems currently in operation across Europe we can see that the UK proposals are among *the weakest of the weak.*[45]

Table 1: Statutory provisions of lobbying laws in Europe (2011)
Craig Holman and William Luneburg (2012) *Interest Groups & Advocacy*, vol 1

Type of lobbyist regulation	*Weak lobbyist systems*	*Strong lobbyist systems*

[44] For more detailed analysis of the breakdown between consultancy and non-consultancy lobbying in the UK see the SpinWatch response to the PCRC inquiry, January 2012, pp 4-6. http://www.lobbyingtransparency.org/take-action

[45] We have inserted the UK column in table 1 developed by Holman & Luneberg to illustrate the very limited nature of the proposed UK Statutory Register

	UK	France	Georgia	Germany	Lithuania	Macedonia	Poland	EP	EC	Austria	Slovenia
Mandatory or voluntary registration	M	V	V	V	M	V	M	V	V	M	M
Access pass to lawmakers	-	X	X	X	X	X	X	X	-	X	X
Lobbyist registrants:											
a. Non-profit entities	-	X	-	X	-	-	-	X	X	X	-
b. For-profit entities	-	X	-	X	-	-	-	X	X	X	-
c. Contract lobbyists	X	X	X	-	X	X	X	X	X	X	X
Covered officials:											
a. Legislative	X	X	X	X	X	X	X	X	X	X	X
b. Executive	X	-	X	-	-	X	X	-	-	X	X
Registrants disclose:											
a. Lobbyist name	X	X	X	-	X	X	X	X	-	X	X
b. Lobbyist employer	X	X	X	X	X	X	X	X	X	X	X
c. Lobbyist client	X	X	-	-	X	X	X	X	X	X	X
d. General issue lobbied	-	-	X	-	-	-	-	X	X	X	-
e. Specific measure lobbied	-	X	X	-	X	X	X	-	-	X	X
f. Aggregate lobbying income	-	-	-	-	X	-	-	X	X	X	X
g. Lobbying income per client	-	-	X	-	X	X	-	X	X	X	X
h. Aggregate lobbying spending	-	-	-	-	X	-	-	-	-	X	-
i. Lobbying spending per issue	-	-	-	-	-	-	-	-	-	-	-
j. Lobbying contacts	-	-	-	-	-	X	X	-	-	X	X
k. Political spending/contributions	-	-	-	-	-	-	-	-	-	-	X
Fines/imprisonment for violations	-	-	-	-	X	-	X	-	-	X	X
Internet access to lobbying records	X	X	-	-	X	--	-	X	X	X	X
Code of conduct required for	-	X	-	-	-	X	-	X	X	X	-

registered
lobbyists

EP = European Parliament; EC = European Commission

The government's proposals for a statutory register of lobbyists are fundamentally flawed, and will deliver little more than the system of voluntary self-regulation that currently exists. The minimal information that lobbyists would be required to declare – compounded by the fact that this would only apply to a minority of lobbyists (those working for agencies) suggests that the proposed register is - by design - incapable of delivering transparency surrounding lobbying.

A proper transparency register would disclose information on:

Who is trying to influence policy, legislation, regulation, and the award of public contracts;
What resources they are devoting to these efforts;
Who has been lobbied by outside interests.

A simple test of the efficacy of such a disclosure system would be if any interested party can simply log onto a publicly available Statutory Register and check how much lobbyist X has spent on lobbying, what issues they have worked on, and who they have been in contact with over the reporting period. The coverage of the proposed Register means that around 80% of those that should be disclosing their lobbying activities (assuming the purpose of a register is to bring transparency to lobbying) will not be required to open up their lobbying to public scrutiny.

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 and probity in public life are a concern – and should be a responsibility – of all those engaged in public affairs. The debate on the regulation of lobbying in the UK differs from other polities in that the focus tends to be upon legislators rather than the lobbyists themselves.[46] We believe extending the logic of the members code to include lobbyists (very broadly understood) properly balances the rights and responsibilities of those parties engaged in promoting and deciding on legislation. A mandatory register of lobbyists would mean that all those parties involved in proposing, opposing, drafting and scrutinising legislation would be required to make their role in the policy making process open to external scrutiny. By requiring openness and transparency of lobbyists - as well as of elected representatives, ministers and officials - the political process is more likely to be accountable and responsive to critical publicity. Given public mistrust of the relations between vested interests of all kinds and elected representatives, it is surely consistent to extend the same principle of vigilance to the lobbying industry as a whole, whatever form it may take.

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

The existing rules are woefully inadequate to ensure lobbying transparency in the UK. Westminster now lags behind many other developed democracies in managing lobbying disclosure, and the plans the government has announced to create a Statutory Register will not bring the UK up to anything approaching standards of best practice elsewhere. While there is a relatively developed system in the UK of monitoring MPs and Ministers interests, there is nothing in place to match this with outside interests – that is, what lobbyists are interested in influencing, and their lobbying practices. Current plans for a Statutory Register of lobbyists need to be rethought: in particular they need to be extended to cover all lobbyists (whose activity – measured in money and/or time spent on lobbying

[46] Jordan, G. (1998) 'Towards Regulation in the UK, From "General Good Sense" to "Formalised Rules"', *Parliamentary Affairs*, Vol. 51 No. 4, pp. 524.

– is above an agreed threshold) and they need to be drafted to ensure that meaningful information is put in the public domain in a timely fashion that facilitates public scrutiny and accountability. Details of what information could be disclosed can be gleaned from the systems of lobbying registration developed in the United States and Canada (see appendix 1). It is clear that when compared with other lobbying registration systems that the UK proposals are very weak and lack ambition. To proceed with these plans would represent a real lost opportunity to seriously tackle concerns over undue influence and impropriety that have been raised by media, campaign groups and Committees of Parliament. Such concerns will persist until proper lobbying transparency, and appropriate sanctions, are 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 or guidance on best practice may help clarify the norms and standards of behaviour required to comply with the disclosure obligations of a lobbying register for all concerned parties. A code of conduct for those lobbied should include a presumption towards disclosure, where the minister, elected representative of officials lobbied should proactively disclose the lobbying contact, as well as some detail on the substance of the contact. Such a provision might go some way to mitigate the weak proposals for a statutory register. Such a code would need to be proactively promoted not only amongst those groups and individuals covered by a proposed lobbying register, but could be applied to all outside interests.

However, we remain unconvinced of the efficacy of codes of conduct unless they are underpinned with some mechanism to ensure compliance. There needs to be some means of making compliance with codes of conduct not simply a matter of personal choice: disclosure and transparency obligations certainly have a positive role to play in this regard. Nevertheless, we fear that achieving lobbying transparency via a combination of the proposed limited Statutory Register and a code of conduct for the lobbied (however proactively implemented), is very unlikely to be a success. Moreover, such a system will not make any difference to ethical standards of behaviour. A more robust mandatory approach is required in relation to all outside interests.

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

Yes. We believe that an external regulator that is independent of both the lobbying industry and government is a necessity. Such a regulator could be created along the lines of the Office of the Information Commissioner. It is important that such a regulator has powers to compel witnesses and disclosures to ensure the system of lobbying regulation is as effective as possible. The regulator should be protected from party political influence, and should not be dependent on any committee (as is the Parliamentary Commissioner for Standards, who reports to the Committee on Standards). In creating such an external regulator, it may make sense to try to bring together some of the different offices and committees that currently handle different aspects of the relationships between government, Parliament and outside interests. For example, some or all of the scattered ethical and transparency functions the Committee for Standards in Public Life, the Serjeant at Arms office, the Advisory committee on Business Appointments (ACoBA) etc., could be combined to create a powerful and independent ethics and transparency regulator. The Canadian model, which comprises an independent Commissioner of Lobbying, and an Office of the Commissioner of Lobbying of Canada, seems to us to be a system that has many commendable features (notably, the Commissioner is appointed for a seven year term, and oversees both the registration of lobbyists, as well as having significant investigatory functions).[47]

[47] For more information and detail see http://www.ocl-cal.gc.ca/eic/site/012.nsf/eng/h_00007.html

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

Yes, sanctions are a prerequisite for any meaningful lobbying disclosure system. It is important that lobby registers are reliable, populated with data that is both accurate and timely: sanctions are an important and effective means of securing compliance to ensure full lobbying disclosure. As can be seen with various voluntary systems a basic 'name and shame' approach is insufficient to ensure that regulations are abided by. Based on the experience of other polities it would seem that a sliding scale of sanctions is best suited to ensuring timely and proper lobbying disclosure. For minor errors and oversights in reporting, sanctions such as withdrawal of access to the parliamentary complex might be appropriate, whereas for more serious and systematic breaches (such as deliberate deception, misleading filings, failure to respond to queries from the regulator and non-disclosures) financial penalties and even jail sentences are more suitable and proportionate. The US system operates a mixture of civil penalties and criminal sanctions, which the preference being for negotiated settlements of non-compliant registrations in the first instance, but with the option that the regulator can pursue criminal penalties if deemed necessary.

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 think such an approach by itself is neither desirable nor feasible. This is not a panacea for lobby regulation and voluntary personal disclosure is no substitute for a robust mandatory approach. In both the case of ethical standards for public servants, and for lobbyists, transparency and disclosure is required and it must be clear that the disclosure does not rely only on the individual judgement of the people making those disclosures. There has to be some external arbiter to collect and monitor the disclosure and to have sufficient powers to investigate and - if necessary – to sanction those who do not comply.

a. If not, what are the impediments stopping such a process? We think that such an approach – on its own, or with the limited disclosure proposal currently being pursued by the UK government - is neither desirable nor feasible for the reasons set out above: namely, that it is likely to produce different types or levels of disclosures, which may be heavily skewed by the preferences of the person making the disclosure. Even with guidance it is likely such a system would suffer from the discretion of those lobbied. In some cases what is perceived as lobbying might vary between those who are in contact of dialogue with outside interests, leading to a distorted picture of lobbying.

b. How could it be monitored properly without leading to an increase in bureaucracy? It is not possible to run a credible lobbyists registration regime without some form of bureaucracy to support that function. A new system for improving the ethical conduct of public servants and representatives could bring together the various rules and regulations currently in existence regarding relations with outside interests at Westminster. This in itself could also lead to a reduction of bureaucracy and a streamlined set of ethical procedures.

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

All public representatives and public servants should be trained in ethics and conflict of interest and in recognising various forms of conflict (e.g. pre- versus post-public employment) and how to manage these. The OECD has an ongoing transparency and public ethics brief and is one obvious

body that may be able to help in understanding and adopting best practice.[48] Likewise, there are several very useful models and sets of guidance in place in the U.S. and Canada that could be drawn upon to develop best practice in the UK. The Office of the Conflict of Interest and Ethics Commissioner in Canada[49] publishes a range of guidelines, information notices and summaries for elected representatives, officials and also the media, to try to ensure that rules and regulations are widely understood by all key stakeholders. We would see this function as an important part of the remit of a combined ethics and lobbying regulator recommended above (see response to Q. 7)

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?

In general such an approach would mark some improvement on the status quo, but whether it really enables proper public scrutiny of lobbying very much depends on how far it goes. Transparency is a process that has its own effects and will allow citizens to more effectively engage in democracy. There can be no meaningful progress on this without requiring disclosure and ethical behaviour from both lobbyists and lobbied. We cannot see how such an outcome can be achieved outwith a mandatory and inclusive system.

It appears to us that the incentives for decision makers and legislators to balance competing views and interests in their deliberations will not be significantly changed via voluntary or piecemeal disclosure measures. While it is understandable that those seeking solutions to the problem of lobbying transparency and regulation might first look to existing legislation, such as Freedom of Information (FoI), to assist lobbying disclosure and wider transparency in relation to contacts between government and outside interests, such an incrementalist and ad hoc approach is not likely to produce the desired outcomes of lobbying transparency, accountability, enhanced ethics or public scrutiny.

The example of FoI is illustrative of the problems of a piecemeal approach to lobbying disclosure. If a system is introduced where disclosure of lobbying contacts, and the substance of those contacts, depends on enhanced (voluntary) disclosure by lobbyists and / or the lobbied then we are at the mercy of what those parties actually disclose. If FoI is thereafter relied on as a legislative guarantor to ensure that sufficient information can be forced into the public domain then we are again faced with the problem of hoping that someone actually submits – and pursues – freedom of information requests to compel disclosure. Such an approach is very likely to be arbitrary, very time-consuming, costly, and therefore highly inefficient. FoI requests, and the attendant reviews and appeals, consume lots of resources - both in the public sector, and on behalf of the requester, in terms of time and effort. *The time factor is critical here, as delays to disclosure clearly impinge on the ability of media and public to effectively scrutinise and hold lobbyists and lobbied to account*. In our view it is highly preferable – and likely more efficient, fair and democratic - that a mandatory lobbying disclosure approach is adopted.

In practice a mandatory system would mean that all lobbyists disclose – routinely, in a timely manner – key information about their contacts with elected representatives and public officials. Clear rules and guidelines can be developed whereby all parties are aware of what is expected of them. Such a system would not then be prisoner to the preferences of lobbyists, lobbied, the interests of media or the particular concerns of members of the general public (who might submit

[48] OECD 'Fighting corruption in the public sector: Managing Conflict of Interest in the Public Service' http://www.oecd.org/gov/ethics/managingconflictofinterestinthepublicservice.htm
[49] http://ciec-ccie.gc.ca/Default.aspx?pid=4&lang=en

FoI requests in the absence of a lobbying register) to determine what information is placed in the public domain. A mandatory approach offers an efficient and equitable solution to the transparency and disclosure problem. It creates a level playing field, with proportionate bureaucracy and sanctions. It also ensures that reliable and comparable information about lobbying activity is available in the public domain. The creation of an independent regulator to implement and monitor such a system is necessary, and we believe that such administration need not be overly bureaucratic.

We appreciate that this consultation is grappling with very important principles of democratic access and equity, in a context where there is widespread and increasing distrust of the political system (not just politicians, but the wider political class that includes lobbyists). This inquiry comes at an important moment when there are government proposals in the offing that purport to address some of the questions about transparency and confidence in the system of decision-making that have been mentioned above. It is our firm view that the government proposals to only require disclosure by lobbying consultants are at best misguided. As we have argued, the likely outcomes of such a partial mandatory system are that:

- the public will not have an accurate picture of political lobbying in the UK because most of that activity is not covered by the currently proposals

- lobbying consultancies will be placed at a competitive disadvantage relative to those service providers not covered by governments proposals (lawyers, management consultants and accountancy firms offering public affairs services)

- more lobbying activity will be undertaken in-house (by corporations, trade associations, charities) to avoid disclosure obligations

To secure proper and meaningful lobbing transparency a mandatory approach *that includes all lobbyists* is necessary.

Appendix 1:
Lobbying and transparency: A comparative analysis of regulatory reform
Craig Holman and William Luneburg (2012) *Interest Groups & Advocacy*, vol 1

Table 1. The basic features of the lobbying regimes of the United States and Canada

Elements of lobbying regime	*United States*	*Canada*
Specifies the type of activity that attracts a registration obligation[a] *in terms of*:		
a. Oral and written communications (subject to certain exceptions for various public and/or closely regulated proceedings and in the case of persons lobbying on their own behalf or as volunteers)	Yes	Yes
b. Directed to both administrative and legislative branch officials	Yes	Yes
c. As long as the communications deal with governmental policymaking or its implementation	Yes	Yes
d. Though the level of official in the governmental hierarchy contacted may be relevant to determining coverage	Yes	No
Entities that must register are divided into two classes: persons or entities that lobby on their own behalf and those that lobby for third parties, where registration turns in part on	Yes	Yes
a. The amount of time spent on lobbying	Yes	Yes

Elements of lobbying regime	*United States*	*Canada*
b. The fees earned from or funds expended for lobbying activities	Yes	No
Registration form requires the disclosure of basic information about the registrant (for example, name, address, client) and the expected areas/issues of to be lobbied plus	Yes	Yes
a. The techniques of lobbying to be used (for example, grass-roots)	No	Yes
b. Governmental positions formerly held by lobbyists covered by the registration	Yes	Yes
c. Names of lobbying coalition members	Yes[b]	Yes
d. Monetary contributions to the lobbying efforts from third parties (for example, where the registrant is a lobbying coalition)	Yes	No
e. The names of the lobbyist employees of the registrant	Yes	Yes
Periodic reports required of lobbying and related activity covering	Yes	Yes
a. The general and specific subject matter(s) of lobbying activities	Yes	Yes
b. The names of active lobbyists	Yes	Yes
c. Amount of money paid for or spent on lobbying activities	Yes	No
d. The names of the specific officials contacted as part of the lobbying efforts and the subject matter(s) discussed	No	Yes
e. The specific content of communications with contacted officials or entities or a summary thereof	No	No
f. Political contributions and other disbursements to or for the benefit of covered officials	Yes	No
Administration of disclosure regime by		
a. An official affiliated with the legislative branch of government	Yes	Yes
b. Who may issue guidance documents clarifying the requirements of the disclosure regime for those who may be subject to it	Yes	Yes
c. With powers of investigation of potential violations	Yes	Yes
d. Powers to sanction violators themselves	No	No
e. Relying on other governmental officials to prosecute violations	Yes	Yes
f. With possible sanctions to include fines and imprisonment	Yes	Yes
Internet-accessible and searchable databases of information provided on registrations and periodic reports (maintained by the administrator of the lobbying regime)	Yes	Yes
A lobbyist code of conduct	No	Yes

[a] The LA, unlike the LDA, does not define or use the term 'lobbyist' for coverage purposes.
[b] This disclosure applies where the contribution to lobbying activities exceeds $5000 in a quarterly period.