

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

INQUIRY INTO LOBBYING

SUBMISSION RECEIVED FROM ALLIANCE FOR LOBBYING TRANSPARENCY

Introduction

The Alliance for Lobbying Transparency (ALT)¹ believes that lobbying serves an important function in politics, allowing different interests in society input into policy making, and helping in the development of better legislation. Many of ALT's members are active lobbyists and see lobbying as an important part of the democratic process. However, we also know that lobbying can subvert democracy, through granting those with the greatest resources privileged access to politicians and undue influence over decision-making.

The Need for Change

Have there been significant changes over the last decade in the way that lobbying is carried out?

Lobbying as an activity has not fundamentally changed over the last decade. Personal contacts and communication with officials remain central to lobbying, as does wider public relations campaigning, particularly through the media. Other, more concerning activities have started to take root in the UK, for example, astroturfing, which is popular in the US and which sees corporations financing campaigns that mimic grassroots activity.

However, what appears to have changed is the scale of the activity. Commercial lobbying is a growing industry. *PR Week* reported in 2012 that agencies focused on public affairs had experienced 'notable growth'.² The industry is estimated to have doubled in size since the early 1990s. Relevant to Scotland is the obvious correlation between an increase in legislative and administrative power and growth in lobbying activity. It has been predicted that more London-based lobbying agencies than currently would establish a base in Scotland should the Scottish people vote for independence.

Is there a problem or perceived problem with lobbying in Scotland? If so, how can this best be addressed? If not, do steps still need to be taken to address any problem arising in future?

Dividing the first question into two parts: first, regarding the perceived problem with lobbying. To date, very few public surveys have focused specifically on attitudes towards lobbying in the UK, and none that we are aware of focus on attitudes in

¹ **The Alliance for Lobbying Transparency (ALT)** is a coalition of NGOs and trade unions, established in response to members' concerns about what we see as the growing influence of professional lobbying on policy-making, and the current absence of any public and parliamentary scrutiny of lobbyists' activities. ALT was formed in September 2007 in response to the launch of the Public Administration Select Committee's inquiry into lobbying, to which we gave evidence.

² Top 150 PR Consultancies' fee income bounces back, *PRWeek*, 3 May 2012: www.brandrepublic.com/news/1129837/

Scotland. However, a number of UK-wide opinion polls and reports show directly, or allude to, public concern over issues of access and influence in politics.

Nearly two thirds of respondents to a June 2013 poll, for example, said they saw lobbying as an issue of growing concern.³ Another 2013 survey revealed that 90 per cent of those polled believe that the UK government is run by a few big entities acting in their own interest.⁴ An October 2011 *Sunday Times* / YouGov poll showed that over 50 per cent of people think lobbyists have too much influence in politics. It also showed that three quarters of people support a register of lobbyists.⁵

The UK Public Administration Select Committee's exhaustive inquiry into lobbying concluded:

There is a genuine issue of concern, widely shared and reflected in measures of public trust, that there is an inside track, largely drawn from the corporate world, who wield privileged access and disproportionate influence.⁶ ...The result of doing nothing would be to increase public mistrust of Government, and to solidify the impression that government listens to favoured groups – big business and party donors in particular – with far more attention than it gives to others.⁷

The lack of transparency in who is lobbying whom and about what is clearly central to the problem. The current chair of the APPC in Scotland claims: "We work 'behind the scenes', operating as the eyes and ears of our clients, as a source of information, advice and counsel".⁸ Lobbying is essential to a functioning, healthy democracy. However, it is the secrecy with which it is carried out and the lack of public scrutiny of lobbying that presents the central problem. Such secrecy breeds suspicion. This suspicion is further increased in the wake of scandal after scandal reported by the media, which damages the reputation of, and public trust in, our political system.

A Register of Lobbyists

To what extent will a register of lobbyists address any problem or perceived problem with lobbying?

A robust statutory register of lobbying activity would help to remedy the situation by improving knowledge about lobbying and the accountability of those involved. It is an essential first step in helping to make decision-making more transparent and accountable, or in other words, more democratic.

³ OnePoll survey of 2,000 members of the public published in *PR Week*, 4 July 2013: www.prweek.com/uk/features/1188888

⁴ Transparency International's Global Corruption Barometer 2013 surveyed 114,000 people in 107 countries: www.transparency.org.uk/news-room/blog/12-blog/679-global-corruption-barometer-2013

⁵ YouGov/Sunday Times poll, 23 October 2011: <http://ukpollingreport.co.uk/blog/archives/4186>

⁶ Public Administration Select Committee (2009) *Lobbying: Access and Influence in Whitehall*, p.3.

⁷ Public Administration Select Committee press release, 5 January 2009

⁸ Behind the Scenes at the APPC Scotland, www.shepwedd.co.uk/knowledge/?a=3725

To whom should such a register apply? Should it be voluntary or compulsory? How should it be maintained and who should maintain it? What level of information should be on it? Should thresholds be set for registration? If so what should they be? What are the likely cost implications of registration for groups that lobby?

A statutory system

ALT is convinced that legislation is required and that voluntary measures will never deliver proper transparency. The current, voluntary disclosure system suffers from a lack of scope and information: it reveals only the names of lobbyists and their clients / employers; it doesn't detail which areas of policy are being lobbied on, nor how much money is being spent, both of which are necessary for proper public scrutiny of influence in policy-making. ALT endorses the view of the Public Administration Select Committee in its 2009 report *Lobbying: Access and Influence in Whitehall*:

In the current climate of public mistrust, voluntary self-regulation of lobbying activity risks being little better than the Emperor's new clothes. Solutions need to be adapted to different constitutional arrangements and political cultures. In the case of the United Kingdom, where there is a culture of discretion and where deals are traditionally done behind closed doors, an element of external compulsion will be needed to provide for meaningful transparency.

The Scottish Parliament has the opportunity to practically enhance the openness and transparency principles it was founded upon by introducing a statutory register that covers all professional paid lobbyists, whether working as consultants or in-house.

Robust definitions are required

To capture the majority of the industry requires a robust definition of the *activity* of lobbying. A lobbyist is then anyone paid to conduct such activities. This is the approach taken by other lobbying disclosure systems around the world. However, it should be noted, that no lobbying register will be able to capture every contact between those who seek to influence public officials. The definition should attempt to capture the vast majority of the most significant lobbying.

ALT suggests the following definition: A "lobbyist" is either a paid employee (in-house) or is paid by a client to undertake "lobbying activity", defined as:

- a. Arranging or facilitating contact with "public officials";
- b. "Communication" with officials to influence legislation, regulation, or government policy, and for government contracts and grants;
- c. All work in support of the above, including supervision, planning and research;
- d. Financing think tanks for lobbying on a particular issue.

We define "public officials" as: MSPs and their staff; individuals working in government departments, officials in the Scottish Parliament, executive agencies, , quangos and regulatory bodies; and paid or unpaid secondees to government, special advisors, and members of government advisory groups. We define "communication" as: telephone conversations; electronic communication; circulating and communicating letters, information material or position papers; organising events and attendance of events as a lobbyist, meetings (formal and informal), or promotional activities in support of a lobbying position.

Thresholds and exemptions

We believe that all paid lobbyists above a certain threshold – possibly based on lobbying spend – should register. This would exempt small businesses and smaller charities from registering.

Certain obvious activities should also be exempt from registration, including: lobbying by public officials acting in their official capacity; matters between an MSP and an individual constituent; official participation in Parliamentary business; administrative requests made by lobbyists; communication by media workers in the course of their work; communication that is made widely and publicly available, such as a speech, article, book, or blog.

Disclosure of information

To deliver real transparency, ALT thinks that lobbyists should be required to disclose:

- Name and business address of the registrant, whether company, organisation, think tank or lobbying consultancy; and the name of any controlling company and any subsidiaries with an interest in the lobbying activity being registered;
- Name and business address of the client for whom lobbying activity is being undertaken:
 - In the case of consultancy a separate filing should be made for each client;
 - In the case of in-house lobbying, registrants should put ‘self’;
- Coalitions, detailing the name of each individual company or organisation member;
- Name of individuals defined as “lobbyists”;
- Information on any public office held by the lobbyist in the past 5 years;
- Public body being lobbied;
- Name of public official with whom contact or communications have been made (senior civil servant and above);
- Summary of what is being lobbied on, including specific (proposed) legislation, regulation, policy, contract, grant etc;
- Description of communication techniques used, for example, meetings or written communications. This should include any additional ‘third party’ lobbying, such as grassroots mobilisation of the public or commissioned reports from think tanks;
- Money spent on lobbying (a good faith estimate of expenditures made on “lobbying activities”).

Financial disclosure is fundamentally necessary to allow the public to judge the significance of the lobbying activity taking place. It would also show trends in lobbying spend, any disparities in lobbying resources, for example, between civil society groups and business, as well as the investment in lobbying made by companies who are seeking government contracts.

Businesses make a strategic investment in lobbying and the financial benefits to companies from lobbying are starting to be quantified. For example, a study by the Cato Institute in the US estimates that a lobbying spend by American corporations of about \$3.5 billion per year results in business subsidies valued at about \$90 billion a

year.⁹ *The Economist* also reports that an index based on the amount of lobbying that American firms do has outperformed the broader market since its creation in 2008, “comparable to the returns of the most blistering hedge fund”.¹⁰

Registrar

ALT believes the register should be run by a body wholly independent of the government and the lobbying industry. ALT strongly believes that the register should be publicly funded, not financed by lobbyists. Lobbying is a democratic right and there must be no financial barrier to participation, especially if the register covers all lobbyists as we propose.

What sanctions should there be for failure to register lobbying activity? How will the register sit alongside the UK register? How will compliance be monitored?

It is essential that the body operating the register should be given sufficient powers to investigate and take court action. Complaints should be directed to and processed by the register’s operator. Registrants should be given a reasonable period to respond to any complaint and/or correct a ‘defective filing’ before any other action is taken. Penalties for failure to comply with the new rules should include fines, and the possibility of criminal prosecution for more serious offences, like knowingly and corruptly failing to comply. A Scottish lobbying register should be run independently of the proposed UK register. While there is no direct comparison with other countries, in the US and Canada federal registers exist alongside state level registers. Lobbyists routinely sign up to both.

What are the implications of a register for (a) the Parliament, (b) MSPs, (c) organisations that lobby and (d) Ministers and civil servants?

The key implication for Parliament and MSPs from having a robust statutory register of lobbyists is that far more information than is currently available will be in the public domain on who, outside of Parliament, is influencing decision-making. This will enable MSPs to better scrutinise decisions, leading to greater accountability in government. The benefits include improving trust in government and the reputation of the industry in the eyes of the public. With regard to Ministers, a register of lobbyists is perhaps not a comfortable thing for government, much like Freedom of Information law. But it is a necessary measure for dealing with declining public trust.

Other measures

Should there be a Code of Conduct for lobbyists? Should it be statutory or voluntary?

A number of voluntary Codes of Conduct currently exist in the lobbying industry. However, adherence to these codes is not monitored and on a number of occasions, seemingly obvious breaches of the Codes have not led to penalties against lobbyists. ALT believes that a statutory code of conduct may help clarify the norms and standards of behaviour required to comply with the disclosure obligations of a lobbying register. A code of conduct should reflect current best practice and give clear

⁹ Steven Strauss, Harvard University, *Business Insider*, 25 November 2011.

¹⁰ *The Economist*, Money and politics, 1 October 2011.

expression to the core principles and spirit of the legislation. Such a code would need to be proactively promoted among those groups and individuals covered by a lobbying register.

**ALLIANCE FOR LOBBYING TRANSPARENCY
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