

# **STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE**

## **INQUIRY INTO LOBBYING**

### **SUBMISSION RECEIVED FROM ASSOCIATION OF PROFESSION POLITICAL CONSULTANTS SCOTLAND (APPC)**

#### **INTRODUCTION**

APPC Scotland welcomes the Committee inquiry into lobbying and the opportunity to submit our views.

We are committed to the principles of openness and transparency, as is evidenced by our public register of clients and consultants, and to maintaining and raising standards in public affairs through our code of conduct. APPC's register and code of conduct is publicly available at [www.appc.org.uk](http://www.appc.org.uk).

Our response seeks to reflect the views expressed by our members following the Committee's call for evidence on its inquiry, and earlier in response to Mr Findlay's consultation paper.

In short, APPC Scotland would be supportive, in principle, of a statutory register in Scotland, so long as it clearly functioned to enhance openness and transparency and improve standards in a way that could not be otherwise achieved, so long as it covered all lobbying activity undertaken in a professional capacity, and so long as the information it contained was verifiable. It would also need to be able to achieve more, and be more cost effective, than the simpler solution of making the relevant sections of or entries in diaries of Minister, Civil Servants and MSPs publically available.

#### **RESPONSES TO QUESTIONS**

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

Yes, there have been a number of significant changes. These include:

- A significant growth in the amount of in-house lobbying. Communications consultants now serve more often as a source of additional capacity to in-house communications teams rather than functioning as the only or primary mechanism for such activity.
- The consultancy sector has become much more inter-disciplinary in nature. Public Affairs and Political Communications are now much more integrated within the range of services provided by PR, media, stakeholder, legal and planning communications consultancies. Similarly, those consultants and consultancies focusing primarily on Public Affairs and political communications have developed a more diverse range of services.
- The focus of 'lobbying' activity has changed significantly and is now focused more on the organisation of profile raising events and exhibitions rather than primarily on 'direct' communication.

- In recent years, there has been a significant increase in the number of independent Public Affairs and Political Communications consultants.
- There has also been a significant increase in the number of former politicians establishing themselves within the consultancy sector.
- There has been a significant increase in the proportion of consultancies that see the importance of operating within the framework of a Code of Conduct. Twenty years ago the APPC had only 6 members, in 2007 there were 36, currently there are 80 across the UK.

**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?**

We do not feel there is a perception of any problems around lobbying in Scotland, though there have been calls for more transparency.

If we are to progress with any proposals for a register, it is important to recognise that scandals around actual lobbying activity have been extremely rare in the UK, and that most of the scandals which have arisen in the last twenty years – primarily at Westminster - have been about broader issues of ethical standards and behaviour, most of which have not involved actual lobbyists.

Furthermore, none of the issues that have arisen over the last twenty years could necessarily have been prevented by the existence of a register. To this extent, any register needs to be conceived of as primarily functioning to enhance openness and transparency, rather than addressing existing, perceived or prospective problems around lobbying or issues around ethical standards.

This is not to say that there are not potential issues to be addressed, or that there is any room for complacency. With specific regard to consultancies, there is a low barrier to entry into the sector – anyone can establish themselves as a consultant. Whilst membership organisations such as APPC do require ongoing training and compliance with the Code of Conduct, membership is voluntary and there are a number of consultants who operate outside the framework of a recognised ethical code, and without any form of training.

For our part, the APPC has continuously sought to enhance standards throughout the life of the Scottish Parliament, by constantly reviewing and tightening the Code of Conduct and by actively seeking to increase the number of consultants and consultancies who sign up to and operate within its framework. It is our expectation that a register would encourage more communications professionals to seek membership of a suitable association.

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

As indicated above, a register of lobbyists in itself would not address any perceived or potential problems and would not necessarily lead to greater transparency. If a statutory register were to be brought forward, APPC Scotland would be more supportive of a **register of lobbying**, rather than a register of lobbyists. Our considered opinion is

that there is much greater clarity over what constitutes an act of lobbying, and a register focussing on lobbying activity would better function to enhance openness and transparency.

In this regard, we are in agreement with the original objective outlined in Neil Findlay's proposed Bill, that – if there is to be a register at all – it should be one which provides information on who is lobbying whom, and on what issues.

### **To whom should such a register apply? Should it be voluntary or compulsory?**

A statutory register should be compulsory and should cover any person undertaking lobbying activity in a professional capacity. This definition covers not just public affairs and political communications consultants, but also those working for law firms, management consultancies, planning consultancies, think tanks, trade associations, trade unions, charities, NGOs and in-house.

Whilst it is often public affairs and political communications consultants who are referred to as 'lobbyists', the reality is that only a small proportion of lobbying is undertaken by consultants. Any register that failed to incorporate the broadest possible range of those undertaking lobbying in a professional capacity would fail to achieve its objective of improving transparency and building public confidence.

#### Exemptions

Any register would need to be formulated in such a way as to specifically exempt individuals lobbying MSPs on personal or constituency matters in a non-professional capacity.

### **How should it be maintained and who should maintain it?**

A register would need to be published online on a regular basis, by whichever body is vested with the responsibility for its publication. For administrative purposes, there would need to be a time lag between the end of the period being covered and the date of publication.

We would also suggest that to ease the administrative burden, those registering should be allowed the option of either submitting information on a rolling basis during the period covered by each published register, or as a single submission to be made before a given date.

The Scottish Information Commissioner or Parliamentary Standards Commissioner would be suitable administrative bodies, however, we would suggest that a suitable independent body (such as UKPAC) could potentially function to administer any and all statutory lobbying registers within the UK. This could be cost-effective and potentially reduce the administrative burden on organisations or individuals whose activities would require them to make submissions to more than one register.

### **What level of information should be on it?**

Should a statutory register of *lobbying* be brought forward, the register should be as complete as possible in order to fulfil the objective of openness and transparency but

also simple and straightforward to complete, and to check. It is also vitally important that all the information should be verifiable.

With this in mind, we would suggest the information required should be as follows:

- **Date** (of contact)
- **Registrants Details** (Person or persons who made contact, name of organisation)
- **Lobbying Undertaken on behalf of:** (for lobbying undertaken on behalf of a third party)
- **Whom Contacted:** (name and position. There will also need to be an option to register multiple or group contacts – for example ‘all MSPs’)
- **Type of Contact:** (meeting, telephone conversation, written briefing, email, etc)
- **Subject:** (issue/s addressed)
- **Regulatory Association** (option to indicate membership of an association with a code of conduct and regulatory regime promoting ethical lobbying)

The guidelines and definitions associated with such a register will need to be clear on context - where specific forms of communication in specific circumstances would constitute lobbying activity, and in which circumstances it would not.

### **Should thresholds be set for registration? If so what should they be?**

There should be no thresholds for registration and the register should apply to all those who are not specifically exempt (as indicated above). Applying financial thresholds or time-based thresholds would reduce the degree of openness and transparency, undermining the objective of such a register. Such thresholds would also be extremely onerous to calculate (particularly for small businesses and independent consultants) and would also be unverifiable. In this regard thresholds could function to provide an opportunity for those wishing to avoid registration an opportunity to do so.

### **What are the likely cost implications of registration for groups that lobby?**

Certainly with regard to our own members, we would anticipate that, given the relatively small proportion of time spent undertaking lobbying activity, time spent completing the register would not be overly onerous were the register to be in the format we have outlined in this submission.

In terms of financial costs, there will need to be clarity on how the register itself is funded. Any consideration given to passing the cost – either in whole or in part - on to those who are registering lobbying activity will need to take into account the impact on those organisations which undertake a significant amount of lobbying, whether or not such costs act as a disincentive to register, and also the broader context of the implications that any such ‘registering fee’ would have for a political system based on openness and accessibility.

### **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?**

Compliance with a requirement to register, and the registration of correct information, can only be ensured – and monitored – if the information required is verifiable. This must be a basic principle of any register, otherwise it is a pointless exercise.

Registered information may be verified by reference to MSP, Ministerial and civil service diaries, and certainly in relation to some information regarding our members could be cross-referenced with the APPC register.

Regarding sanctions, we would propose that a progressive system of warnings and financial sanctions might be appropriate.

Regarding compatibility with the proposed register being developed at Westminster, there would be very little commonality with the type of register we are outlining in this submission, and we recognise that there is potential for some confusion should there be different types of register, requiring different information, in different parts of the UK. However, APPC Scotland is of the opinion that it is more important for the Scottish Parliament to produce a register fit for purpose, rather than to duplicate a flawed system.

### **What, if any, changes should be made to Section 5 of the Code of Conduct for Members of the Scottish Parliament?**

We would propose that consideration be given to revising section 5 of the code both in order to reflect the realities of lobbying activity, and also to remove any implication that guidance applied with reference to ‘commercial lobbyists’ (a misleading concept in itself), need not apply to contact with any other ‘type’ of lobbyist.

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

Although, ideally, APPC Scotland would like to see all those who undertake lobbying in a professional capacity sign up to, and abide by, a suitable Code of Conduct – such as our own – we are in agreement with the 2012 Westminster consultation on a statutory register, that a code of conduct is “a matter for the industry itself, not for the operator of a register”.

However, as indicated previously, we would propose that any register should include an option to indicate whether or not the individual/s registering lobbying activity are subject to a recognised Code of Conduct.

### **Addenda**

For the purposes of a register of lobbying activity, APPC Scotland would suggest the following as a sufficiently robust, comprehensive and explicit definition of lobbying activity:

*Lobbying means in a professional capacity making any oral or written communication (including an electronic communication) to any member of the Scottish Government or its agencies, advisers or officials or member of the Scottish Parliament or their staff or advisers with regard to the formulation, modification, or adoption of legislation; the formulation, modification, or adoption of any rule, regulation, order, policy, or position; the administration of any Government programme or policy, including the negotiation, award, or administration of a contract, grant, loan, permit, or license; or any other official act or decision.*

A 'lobbyist' is therefore defined by activity undertaken, rather than by job description or job title and, for the purposes of the register, would be any person undertaking lobbying activity (as defined above) as part of their professional duties or activities.

**ILLIAM COSTAIN MCCADE  
CHAIR  
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9 JANUARY 2014**