

# STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

## INQUIRY INTO LOBBYING

### SUBMISSION RECEIVED FROM ASSOCIATION FOR SCOTTISH PUBLIC AFFAIRS

The Association for Scottish Public Affairs (ASPA) is the representative body for the public affairs sector in Scotland. It was established in 1998 by public affairs and policy practitioners in Scotland. It has a diverse membership, drawn from businesses, charities, consultancies, membership organisations, trade unions and trade associations.

ASPA members agree, as a condition of membership, to abide by a code of conduct (see <http://www.scottishpublicaffairs.org.uk/>), which governs their engagement with the Scottish Parliament and Government and its agencies and aims to reflect best practice and professional ethics. ASPA members may also have to adhere to standards and codes of conduct set within their own organisations or by professional bodies. Lobbying – done ethically – is both a fundamental right in a democratic society, and makes for better government.

Some of our members operate across the UK, and will therefore engage with UK-wide institutions, and with those in Northern Ireland and in Wales. Those members whose activities are specific to Scotland also engage with UK government institutions, for example with MPs representing Scottish constituencies, or with officials in departments dealing with matters currently reserved to Westminster.

*Q1 Have there been significant changes over the last decade in the way that lobbying is carried out?*

Yes - we have seen the emergence of indigenous lobbying designed around the Scottish Parliament replacing models based on Westminster or other Parliaments.

There has been an increase in lobbying activity and the number of organisations engaging with the Scottish Parliament, Scottish Government, its agencies, local authorities, and other public bodies.

We have seen an increase in the number of in-house lobbyists as well as consultants. Lobbying by representative bodies is more extensive across the public, private and third sectors, including trade unions, charities, and faith organisations.

This lobbying activity reflects the areas and priorities of Scottish Government expenditure ie. health, local government, justice, and education.

Non-Governmental Organisations (NGOs) and third sector organisations account for a significant proportion of lobbying in Scotland.

Lobbying is a multi-media industry which has innovated creatively through using new ideas and technology for engagement and campaigning with the result that much

more lobbying is carried out electronically, including social and mainstream media, as opposed to in person or using published materials.

Lobbying is increasingly an activity that is integrated with a wide range of other communications disciplines, and forms part of organisations' wider communications strategies.

There has been a steady improvement in engagement from Scottish Ministers, MSPs and public sector officials as they have recognised how working with lobbyists can improve their knowledge and understanding of subjects they are expected to legislate on.

There is more senior management involvement from organisations lobbying in Scotland.

The number of channels for lobbying has also increased including social media, Cross Party Groups, Parliamentary receptions, MSP briefings, discussion dinners, the Scottish Parliament Business Exchange, the Scottish Politician of the Year Awards, and the Business in the Parliament conference.

Political parties have also developed their engagement with lobbyists through party conferences and other events which generate revenue for those parties.

*Q2 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?*

No - there is a lack of understanding of lobbying and what is involved in public affairs. We all want legislators to consider the Bills and regulations before them on the most-informed basis possible. Our members are more likely to be informing rather than influencing legislators.

We have seen no evidence of inappropriate lobbying and are not aware of any disciplinary measures under existing codes of conduct which illustrate a problem with lobbying in Scotland.

Misperceptions around lobbying can best be addressed by lobbyists and those they lobby being transparent in their activities and demonstrating how their work informs and educates those legislating in Scotland so that the public benefits from the highest possible calibre of legislation being passed by the Scottish Parliament.

There are responsibilities on both lobbyists and those being lobbied to ensure there is no impropriety. MSPs can help improve the public understanding of lobbying and Parliamentary work by recording, publishing and discussing details of their meetings to illustrate how they are lobbied and by whom.

*Q3 To what extent will the introduction of a register of lobbyists address any problem or perceived problem with lobbying?*

We believe a register of lobbyists would be of very limited value. We do not see how a register of lobbyists will help the public to understand or quantify lobbying activity. Accessibility is one of the founding principles of the Scottish Parliament and we would oppose any measure to treat lobbyists differently to any other member of the public looking to engage with the Scottish Parliament.

*Q4 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?*

We do not accept the case for a register of lobbyists. If a register was introduced then it would be essential for it to establish a level playing field for all organisations and individuals with no exemptions. What incentive would there be to subscribe to a voluntary register? There is a risk that a voluntary register would only attract those already committed to best practice with no incentive for anyone in the future who might not adopt best or good practice to subscribe.

Establishing a register would also risk creating a two-tier system with registered and unregistered lobbyists. Would registered lobbyists receive preferential treatment from those they seek to lobby on the basis they are approved or licensed by a register? Would MSPs, Ministers and public officials continue to meet with unregistered lobbyists?

If a register was introduced it would have to be maintained to the highest standards of data protection and managed by a trusted independent body. It should not be maintained by the Scottish Parliament or Government. It should only hold limited information on lobbyists so their identity can be verified to provide transparency and reassurance to those they seek to engage with.

The only relevant threshold for registration would be the act of lobbying. Thresholds based on the number of people involved in lobbying, the number of meetings, events or other contact held would create loopholes that would record some acts of lobbying but not others, distorting the level playing field we would propose.

Financial thresholds are not an accurate or acceptable measure of lobbying activity. They would divulge confidential financial information but not provide a reliable measure of value for lobbying activity as they do not recognise market forces and other pricing or budgetary factors. With the transparent nature of the Scottish Parliament described above, large financial investment in lobbying does not improve access. Equally, very effective information and lobbying campaigns can be carried out with minimal financial commitment.

There is a responsibility on those being lobbied to take appropriate action to verify the identity and interests of anyone seeking to lobby them, as well as the veracity of the information they are being provided in the same way they would any other source of information. They should as a matter of first principle ask lobbyists who they are, who they represent, and what they want to discuss before any engagement with them. They could also ask what, if any, code of conduct those lobbyists subscribe to, or if they are governed by a professional body. If they do not receive

satisfactory answers then they may wish to consider whether it is appropriate to meet or speak with those lobbyists.

Private organisations and clients of consultant lobbyists are entitled to commercial confidentiality and any register would need to accommodate this.

There should be no preferential or discriminatory treatment for lobbyists. Our members and other lobbyists should be treated just like any member of public, with no restriction on our trade or activity. Nor should lobbyists be granted any preferential access over that granted to members of the public.

The cost of any register should be borne by the public if it is for public benefit. A lobbyist levy imposed on those who register could be interpreted as payment for access to public figures which is something ASPA fundamentally opposes.

*Q5 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?*

The question of sanctions for failing to register lobbying activity is a difficult one. We would have grave reservations over any sanction which would deprive people of the right of access to MSPs, Ministers or public officials.

The UK Government's proposed register of lobbyists is flawed and should not be a model for any Scottish register.

Compliance would depend on a number of factors including: the definition of a lobbyist and the act of lobbying; the identification and nomination of someone as a lobbyist or an act of lobbying; and the use and observance of a register by those being lobbied.

As some of our members engage with the Scottish and UK Parliaments and Governments, we would be concerned about the potential burden of adhering to two completely separate regulatory regimes. It is especially concerning as these potentially statutory registers appear to be developing with very limited reference to one another, concentrate on different branches of state, yet have the potential to significantly overlap in terms of regulation and compliance.

*Q6 What are the implications of a register for (a) the Parliament, (b) MSPs, (c) organisations that lobby and (d) Ministers and civil servants?*

The principle of access to the Scottish Parliament is a fundamental one and ASPA would not accept any scheme which discriminated either in favour of or against lobbyists. The Scottish Parliament would need to establish fair, appropriate and transparent procedures to accommodate a register. The MSPs' code of conduct would need to be reviewed to reflect a register and provide guidance and regulation on MSPs responsibilities in their engagement with lobbyists. Organisations and individuals that lobby may be deterred from engaging with Parliament, MSPs and Government if the register was too restrictive or expensive. The codes of conduct for Ministers and public officials would also need to be reviewed to provide guidance and regulations in relation to a register.

*Q7 Whether other changes could be made to improve transparency in lobbying in Scotland? What, if any, changes should be made to Section 5 of the Code of Conduct for Members of the Scottish Parliament?*

The most effective way to demonstrate transparency would be for those who are being lobbied to register those acts of lobbying, as opposed to placing the responsibility on or giving the discretion to the lobbyists. The Code of Conduct could be amended to require Members and their staff to record external meetings and these could be published on a regular basis to provide transparency. Details of constituent meetings could be redacted but all other diary appointments should be made available. This requirement could also be extended to meetings MSP staff have with any third parties on anything other than constituency and constituent's business.

The Code could also be amended to replace the references to "commercial lobbyist" with "lobbyist" in sections 5.1.3, 5.1.4 and 5.1.6 as this distinction could imply that organisations which employ in-house lobbyists are exempt. This would achieve consistency with section 5.1.5.

The committee may also consider a review of the thresholds for declaration of interests and gifts to Members alongside the rules on paid advocacy and payment in kind.

The publication of Ministerial engagements should be reviewed to set a consistent level of detail across the different Ministers entries, and the information should be published as set out on the Scottish Government website no later than three months in arrears.

Fundamental considerations in any changes should be how they improve Members engagement beyond Parliament, and whether they may limit access to Members and the Parliament.

*Q8 Should there be a Code of Conduct for lobbyists? Should it be statutory or voluntary?*

ASPA operates a code of conduct which its members adhere to and which is publicly available on the ASPA website. ASPA also supports the guiding principles for public affairs practitioners established by the CIPR, PRCA and APPC in 2007.

ASPA remains to be convinced of the case for a statutory code of conduct for lobbyists, and the benefits of a statutory code of conduct.

Any code of conduct for lobbyists should be integrated with and supported by changes to the codes of conduct for MSPs, Ministers and public officials.

**ASSOCIATION FOR SCOTTISH PUBLIC AFFAIRS  
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