

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

INQUIRY INTO LOBBYING

SUBMISSION RECEIVED FROM ASH SCOTLAND

ASH Scotland welcomes the opportunity to respond to the call for evidence regarding Standards, Procedures and Public Appointments Committee's Inquiry on Lobbying. Transparency in the political process is a crucial issue that impacts upon our work in public health, and this response addresses several of the key questions identified in the call for evidence letter.

About ASH Scotland

Action on Smoking and Health (ASH) Scotland is an independent Scottish charity taking action to achieve its vision of a healthier Scotland free from the harm and inequalities caused by tobacco. We work towards improving health and quality of life by trying to:

- limit the number of young people taking up smoking
- reduce the number of adult smokers
- protect people from second hand smoke and tackle the health inequality resulting from tobacco use.

Our activities include an expert information service, lobbying and campaigning, action-based projects, providing professional training and taking forward our partnerships and alliances.

We are particularly interested and invested in the topic of the consultation as the tobacco industry's well-documented history of conducting lobbying work to further its own interests are directly opposed to the public health goals of reducing tobacco consumption. At the same time, as an organisation that engages with the lobbying process and its attendant activities ourselves, our interest in the inquiry is also one of an organisation potentially affected by any revision to lobbying rules. This response will first address general comments about the inquiry. This is followed by addressing some issues with lobbying that relate to ASH Scotland's remit and the need for any regulatory actions on lobbying activity to apply to the tobacco industry, in line with our obligations to an international treaty, the World Health Organisation's *Framework Convention on Tobacco Control*¹. We finish with our comments on a Register of Lobbyists and recommendations regarding legislation that builds on Neil Findlay MSP's member's bill and the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill.

We are happy for this response to be published or to provide more evidence to the Committee in any manner it deems appropriate.

¹ World Health Organisation. Framework Convention on Tobacco Control. Available from: <http://www.who.int/fctc/en/> [Accessed 6 January 2014]

General comments on lobbying

We believe that there is no question of whether lobbying is a legitimate activity, as it is necessary to the process of democratic policymaking. We also recognise the need to regulate lobbying activity in all sectors, from corporate and in-house lobbyists to multi-agency consultancies, third sector organisations, and charities. We propose that there is a need to regulate lobbying in such a manner as to make the activities transparent and the participants accountable in order to serve as an exemplar of disclosure in legislative procedures and ensure that public trust in the democratic process is not eroded.

Through their work with communities and citizens, charities often gain particular insights about how public policies impact on people's lives and wider society. Engaging in lobbying activities in order to help shape policymaking is a natural extension of their work as they can contribute their unique expertise to the policy process. We support the inclusion of charities in lobbying regulations: public trust and confidence in the voluntary sector is generally high, and this trust can be maintained by transparency in lobbying activity.

However, it should also be recognised that charities lobbying Government may be different from commercial enterprises lobbying Government due to differences in their resources, objectives, and operations. Any threshold requirements or costs related to belonging to a registry of lobbyists should be proportionate for charities. We ask for care to be taken in designing measures intended to ensure transparency so that requirements do not become so burdensome as to dissuade those with limited resources or experience from legitimate political engagement.

Summarised, we believe that:

- lobbying regulations should capture lobbying activity from all sectors, however it should also not be so burdensome as to dissuade civic engagement in the political process, particularly for smaller and less experienced organisations
- any register of lobbying (or similar) should prioritise the tracking of topics lobbied on in sufficient detail, in addition to details about those doing the lobbying
- any lobbying regulations should reflect Scotland's existing obligations under the World Health Organisation's *Framework Convention on Tobacco Control* - a legally binding international health treaty, to which the UK is a signatory (see below for further details)

What changes are needed?

The World Health Organisation's Framework Convention on Tobacco Control (FCTC) is the World's first international, legally binding, health treaty. Scotland, as part of the UK has been a party to the FCTC since 2005, and as such has legal obligations pertinent to the current discussion on transparency of lobbying activity. Article 5.3 of the WHO FCTC states that: *[i]n setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.* In order to protect health policy from the commercial

and vested interests of the tobacco industry, there must be transparency when the tobacco industry acts to influence policy.

Successive Scottish Governments have taken commendably strong stances relating to transparency in dealing with the tobacco industry. The Scottish Government has commitment in its recently published tobacco control strategy² to audit the implementation of article 5.3 of the FCTC in Scotland. Freedom of information requests seeking correspondence between the Government and the tobacco industry around the time of the 2010 Tobacco and Primary Medical Services Act show that meetings between Government and industry took place, but were clearly documented and attempts by a tobacco manufacturer to solicit personal meetings with the First Minister were dealt with appropriately³.

However, much of the tobacco industry's history of lobbying demonstrates both overt and covert lobbying practices that aim to undermine public health policy. Dubious activities revealed by tobacco industry documents released through litigation increase the suspicion of politicians and those in public office regarding industry motivations for seeking engagement with decision-makers. Given this climate of mistrust regarding the industry, one of its primary strategies has been to increasingly rely on third parties to do their work for them.

One of the main ways the tobacco industry uses third parties for their own interests is to fund, either wholly or partially, campaigns and research endeavours that support their own interests without openly disclosing their role in the activities. Examples include the use of retail organisations as a 'respectable face' to publically push forward their own agendas and the provision of income to institutions which carry out research considered to be independent and unbiased by both the public and policymakers (further detailed examples are available elsewhere⁴). While commercial interests are free within the law to make attempts to influence policy, particularly when considering the history of an industry such as tobacco, it is critical to track tobacco industry relationships with third parties so that the scope of commercial involvement and financial support is fully disclosed and clear to decision makers and the public.

Registry of Lobbyists

Regarding the register of lobbyists, ASH Scotland supports the development of such a tool for tracking interactions and communications deemed as lobbying activities. However, we also recognise the need for any threshold requirements or costs related to a registry of lobbyists to be proportionate for organisations with limited

² Scottish Government. Tobacco Control Strategy - Creating a Tobacco-Free Generation. 27 March 2013. Available from: <http://www.scotland.gov.uk/Publications/2013/03/3766> [Accessed 6 January 2014]

³ Freedom of Information (Scotland) Act 2002 request for copies of all correspondence and documentation relating to meetings between the Public Health Minister or Scottish Government officials and tobacco manufacturers or smoking lobby groups, between the dates of 21 May 2008 (the publication of the smoking prevention action plan) and 3 March 2010 (Tobacco and Primary Medical Services (Scotland) Act receiving Royal Assent).

⁴ See the ASH London Briefing for the Westminster All Party Parliamentary Group on Smoking and Health. Spring 2012. Available from: http://ash.org.uk/files/documents/ASH_835.pdf [Accessed 6 January 2014]

resources. Particularly for small newly-formed charities or voluntary groups - who may lack experience in lobbying - any regulation should be designed not to confuse or dissuade charities from legitimate lobbying engagement. If there are to be any set thresholds for entry into a lobbying register (either monetary or required expertise), we ask that they not be set at such a level that will inhibit organisations from taking part in the process as legitimate stakeholders. To manage this, the register could adopt a tiered structure of more detailed information provision requirements based on certain mandatory initial information requirements on organisational size (e.g. number of personnel, annual turnover) and spend on lobbying activities (including to third parties), with larger organisations required to provide more detailed further information on their lobbying activities.

Structure and Monitoring of Registry: Recommendations

Based on our points related to a registry of lobbyists coupled with the aforementioned issues of commercial industry's undisclosed use of third parties in lobbying activities, we would make the following recommendations about the structure and monitoring of a registry of lobbyists:

1. the core of any registration system for lobbying should make it clear **what organisations** are lobbying, **who** they are lobbying, **on what issues**, and if the lobbying is **being funded or supported in whole or in part** by any other party that has an interest in the outcome
2. some form of registration system should apply to all organisations seeking to influence policy; however, while we believe that charities should be included in the registry, we believe that care should be taken to ensure that regulatory demands do not become overly burdensome – a tiered registry structure where larger organisations with greater lobbying spend have a requirement to provide more detailed information would be one way to achieve this
3. the design of the registration system should take the role of third party participants into account, as they are often connected to commercial interests; these third parties may include trade organisations, professional PA or PR firms and 'think tanks'
4. the Government should make publically available in a timely fashion all information about lobbying activity gathered through any registration system put in place; this would be best achieved through public avenues (such as the on the web following a regular schedule)
5. existing national and international obligations – such as our particular obligations under the WHO FCTC to ensure transparency for all dealings with the tobacco industry – should require disclosure the nature, extent, and detail of all interactions with the tobacco industries and those whose work is financially supported by the industry