

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

INQUIRY INTO LOBBYING

SUBMISSION RECEIVED FROM EPILEPSY CONSORTIUM SCOTLAND

Epilepsy Consortium Scotland

The Epilepsy Consortium Scotland (ECS) is a collaboration of organisations and individuals in Scotland coming together to highlight epilepsy issues. It was developed to inform the Scottish Government and other policy makers about areas of concern around health, social care and related public policy matters. The ECS acts as a collective voice for the wider epilepsy community in Scotland and hosts the Secretariat to the Parliamentary Cross Party Group on Epilepsy. This response has been endorsed by the following members: Epilepsy Scotland; Epilepsy Connections; the Lanarkshire Epilepsy Support Group, Special Products Ltd; UCB Pharma Ltd.; and Linda Radcliffe, Epilepsy & Learning Disability Specialist Nurse, Glasgow. The ECS thanks the Committee for this opportunity to give evidence.

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

The ECS is not aware that there have been significant changes in the way lobbying is carried out in Scotland, other than a perceived increase in overall lobbying activity. Small-scale and voluntary groups have become increasingly adept in their use of IT and media-relations over the past decade and are increasingly proactive in making arrangements to meet with MSPs. The rise in requests to be seen by lobbyists places more demands on MSPs' time, however we perceive the issue to be one of increased lobbying 'traffic' than change of tactics. Furthermore, there are an increasing number of people who as a result of elections have ceased to work in political office and are now working in lobbying or as special advisors.

2. 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?

The ECS notes the absence of lobbying 'scandal' at Holyrood and is aware of no evidence of a tangible problem of lobbyists exerting undue influence on Scottish MSPs and Ministers.

The fact that the Scottish Government has indicated it wishes to legislate on this issue within the current parliamentary session suggests that some concern exists. The ECS recognises that controversy has emerged from Westminster and that this may be the premise for any such legislation. It would therefore seem that any Scottish legislation would be of a precautionary nature, to ensure government systems here are adequate in perpetuating the transparency already enshrined in the Scottish Parliament.

The ECS believes that any proposed legislation, which might include charities and grassroots advocacy groups, must be a proportionate response to an evidenced issue. We believe that any regulation of lobbyists in Scotland should be specifically formed to reflect the culture of political participation in Scotland, and the particular working practices of the Scottish Parliament. We believe it must not create a barrier to parliamentary engagement for organisations representing the most vulnerable and disadvantaged members of society.

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

Although the ECS does not perceive that there is a tangible problem with lobbying in Scotland, we do not object to a register of lobbyists in principle, as we recognise that accountability and ethical conduct around lobbying is integral to fair and open government. We do believe, however, that responsibility for this rests ultimately with MSPs and Ministers; how much and why they choose their thoughts and decision-making to be influenced by contact with lobbyists cannot be controlled by a register.

There are clear ministerial and MSP codes about what is unacceptable concerning elected members working with lobbyists to their own personal gain. There are already systems in place to penalise those who allow themselves to be unduly influenced. Is the ultimate concern of the prospective legislation around 'undue' influence for politicians' personal gain, or rather around 'disproportionate' influence on policy making by (often competing) external bodies? If it is the latter, on the basis of the information contained in a proposed register, who will judge what constitutes disproportionate influence and by what standards? One cannot simply assume that an MSP or Ministerial decision has been made solely due to the disproportionate influence of one lobbyist or the other, without reference to a number of other variables which might not be controlled for. There are also few occasions when a sole MSP will have the power to drive through a piece of public policy.

4. 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?

To whom should such a register apply?

Deciding to whom such a register should apply largely depends upon how 'lobbying' is defined. In practice, it is difficult to envisage a workable definition of lobbying without inappropriately including or excluding activities. It is difficult to articulate where information-sharing ends and lobbying begins. This is problematic for defining lobbying and consequently for deciding who should be on a register and what information should be disclosed and recorded. We also hold concerns about articulating the role of charity members and volunteers in lobbying for third sector organisations. In the event of legislation being drafted, the ECS would suggest a short term working group to consider the boundaries around what constitutes lobbying activity and recommends that such a group contain third sector representation.

We do not believe that Cross Party Group Secretariats should be included in a lobbying register as they fulfil an impartial, administrative role and are already bound by the ministerial Code of Conduct and regulated by the Standards, Procedures and Public Appointments Committee.

It is also worth noting that there are significant differences between consultant/professional lobbyists working to commercially benefit shareholders or self-interest groups, and charities working to improve public policy to the benefit of MSPs' most disadvantaged constituents. Charities generally seek better policy-making to the benefit of the most vulnerable members of the community and to society as a whole – an aim which is largely shared by politicians. Much of this contact would not constitute 'lobbying' but rather working together towards shared aims.

Some ECS members feel that within this, however, further distinctions could be drawn between small charities addressing mainly local issues, or working together with other such groups, to widen their scope, in coalitions and umbrella organisations and large professionalised voluntary organisations. The latter may be more likely to employ their own lobbyists or outsource such work to the same consultants utilized by the private sector. Although these organizations may be charities and as such not motivated by profit, many thousands of their employees depend for their livelihood on their success in an increasingly competitive market.

Should it be voluntary or compulsory?

The ECS believes that if a register is to be created using legislation, as has been indicated by the Scottish Government, it should be compulsory. It would appear to make little sense to use the legislative process in the creation of a voluntary register.

How should it be maintained and who should maintain it?

Since a primary aim of the register would be to help enable MSPs to indicate that they are behaving in a manner in the best interests of the electorate, the ECS believes that responsibility for and maintenance of the register should rest with the Scottish Parliament.

What level of information should be on it?

The ECS suggests that any lobbying register should capture the names of lobbyists, the clients or interest groups represented and whether the lobbyist has previously held political office.

The ECS believes that capturing lobbying *activity* on a register would be problematic due to the difficulty in defining where information-sharing ends and lobbying begins. For example, charities are in a particular position to understand and evidence the impact of public policy on those it affects and many third sector organisations have an important role in sharing information with the government – most often at politicians' request. Does this contact constitute 'lobbying'? Charity representatives have the right to consult/approach an MSP if they are constituents – does an MSP surgery meeting therefore become 'lobbying'?

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

The ECS would suggest 'in-house' lobbyists employed to spend 50% or more time of their time on what is defined as lobbying, and professional consultant lobbyists. However we recognise that time-defined thresholds would be difficult to work in practice.

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

The ECS echoes the viewpoints already articulated by SCVO around this issue, specifically that:

- It would be undemocratic to require individuals to pay for access to elected members and officials.
- It could lead to an inequality of access, granting access to private/corporate lobbyists who can afford affiliation and restrict access to small, third sector organisations who do not have the resources to sign up to the register.

5. 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 difficulties around defining lobbying would suggest that monitoring compliance of such a register would be challenging. At what point does it become a condition of meeting an MSP that the individual is on a lobbying register? Also, failure of organisations to register in-house lobbyists may be an employment issue. The ECS believes that any sanctions should:

- follow a transparent process
- follow a pattern of escalation, including warnings
- aim to support the organisation to comply with the register.

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

a) There is a resource implication for the Parliament if it is to create, maintain and 'police' the register.

b & d) MSPs, Ministers and Civil Servants will be able to check if the person they are meeting with is a registered lobbyist and whose interests they represent.

c) There would be a financial and administrative impact on organisations that lobby, which could potentially promote an inequality of access and participation by voluntary organisations and in particular those with low skill-levels around political engagement.

7. 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?

Ministerial, MSP, and civil servant codes of conduct make clear directives on relations with lobbyists. There is no obligation upon MSPs to record contacts with lobbyists and no obligation upon Ministers to record the nature of their meetings. In lieu of, or addition to, legislating, it would therefore seem appropriate in the first instance to toughen the respective codes of conduct on this matter. The ECS suggests strengthening [section 5.1.5 of the Code](#) of Conduct for MSPs to make keeping a record of all contacts with lobbyists mandatory. Publishing MSPs diaries and the Scottish Parliament MSP visitor logs are other ways in which transparency could be improved with little administrative or financial burden.

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

The ECS agrees that there should be a Code of Conduct for lobbyists, to help improve industry standards and benchmark good practice. We feel any Code should be statutory and developed in communication with stakeholders, however point out that at least two voluntary Codes exist, (Association for Scottish Public Affairs and the Association of Professional Political Consultants Scotland) which could be used as a starting point.

**EPILEPSY CONSORTIUM SCOTLAND
10 JANUARY 2014**