

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

INQUIRY INTO LOBBYING

SUBMISSION RECEIVED FROM COMMISSIONER FOR ETHICAL STANDARDS IN PUBLIC LIFE IN SCOTLAND

I refer to the invitation to submit my written views to the inquiry by the Standards, Procedures and Public Appointments Committee into Lobbying.

Background

I have noted the background to this matter as set out in the invitation to comment and have considered the terms of the remit of the inquiry which is to consider whether or not there is a problem (either actual or perceived); the desirability of having a register; the extent of the registration requirements and its administration and, in addition, the consideration of any other steps which might be needed to improve transparency in this area. (The invitation poses a number of questions around these issues.)

Lobbying - the democratic process

As a starting point it has to be stated that Lobbying is a legitimate and recognised part of the democratic process. Any individual, organisation or group can seek to lobby their elected representative. Problems and concerns do however emerge in situations where this results in undue influence being involved or perceived to be involved as a result of such activity. I would confirm that I am not aware of any significant changes in the way that Lobbying has been carried out during my period of office.

Lobbying – the Code of Conduct

On the question of whether or not there is an actual problem in Scotland related to Lobbying, the Committee will no doubt be receiving a spectrum of views on this critical point. For the purposes of my jurisdiction in this matter in relation to the existing Code obligations on MSPs, I thought, it would useful to note the relevant complaint statistics alleging Lobbying during my period of office which are:

2008-2009: 0 complaints
2009-2010: 2 complaints*
2010-2011: 0 complaints
2011-2012: 0 complaints
2012-2103: 0 complaints
2013- date: 0 complaints

(* These complaints were dealt with as 2 cases; they involved complaints from 3 separate complainers about two MSPs (on the same issue). I concluded that there had been no breach of the Code in either case.)

Perception of a Lobbying problem

On the question of a perception of there being a Lobbying problem in Scotland, again the Committee will be receiving a variety of views on this point too. I do recognise that there is indeed in other quarters an ongoing concern that this is the case. It can perhaps be argued that this is based on high profile lobbying issues which have arisen elsewhere.

I have been following the progress of the UK Parliament's Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill which is currently being scrutinised. Members will be aware that this Bill has been introduced following on a number of specific instances of alleged misconduct (4 cases involving three peers and one MP) as well as public concern as to perceived effects on Government decisions of MPs and their close advisers being themselves lobbyists. I have noted the provisions of the Bill. I consider that the envisaged registration and administration arrangements can be stated to be complex.

Paid Advocacy

For the purposes of the Committee's inquiry into Lobbying, it is also of direct relevance to note that the MSP Code of Conduct at section 4 deals with the linked activity of Paid Advocacy and sets out the obligations of an MSP in that regard. The matter does not only rest on the Code alone. The Scottish Parliament has already passed legislation – the Interests of Members of the Scottish Parliament Act 2006 - prohibiting paid advocacy by MSPs and making it a criminal offence in addition to other sanctions that Parliament itself may impose. (I would also mention that the only complaints received during my period in office alleging paid advocacy occurred in 2009/10 when there were 4 complaints on the same issue in respect of 1 MSP. I concluded that there had been no breach of the Code.)

Conduct of “professional” Lobbyists

The other aspect of this matter is, of course, the issue of the conduct of Lobbyists in their dealings with MSPs. Members will be aware that the Bribery Act 2010 reformed the criminal law of bribery to provide for a consolidated scheme of bribery offences in Scotland and across the rest of the United Kingdom. Accordingly, in relevant instances, criminal sanctions are in place to deal with such offences.

The Way Forward – Further Considerations

If the totality of the evidence submitted results in the Committee concluding additional safeguards are required to deal with public perceptions, I have no doubt that the Committee will be mindful of the need for proportionality in designing final proposals. The system envisaged in the UK Bill might appear to be overly bureaucratic in a Scottish context having regard to the lack of evidence of actual instances of misconduct either by professional lobbyists or by MSPs.

Consideration could perhaps be given, in the first instance, to a voluntary register of commercial lobbyists, backed up by a voluntary Lobbyists' Code of Conduct for an initial trial period. The views of the Lobbying Associations will be of particular

importance to inform the Committee's deliberations on this point. After the initial registration, an annual return on lobbying activity for the preceding year might be considered appropriate. The Register could be maintained by the Parliamentary staff dealing with the Registration of Members' Interests or by my office.

In the event of the Committee being of the view that some statutory framework is required, there would be merit in taking the matter forward in parallel with the further consideration that will be given relating to the prospective Members' Interests Bill.

In reaching its conclusions on the way forward involving any additional regulatory arrangements, the Committee will need to address issues on

- the definition of "professional" lobbyists
- the definition of lobbying activities covered
- the information to be provided by lobbyists
- the exemptions involved and
- the cost implications (including the business impact) of administering any new arrangements,

all of which require detailed and further consideration.

I am grateful for the opportunity to make a contribution to this matter.

**D STUART ALLAN
COMMISSIONER
COMMISSIONER FOR ETHICAL STANDARDS IN PUBLIC LIFE IN SCOTLAND
10 JANUARY 2014**