

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

INQUIRY INTO LOBBYING

SUBMISSION RECEIVED FROM FRIENDS OF CRAIGHOUSE

We are happy for this document to be made public.

In this submission, we examine the issue of lobbying, where it is going wrong and what changes need to be brought in to restore public trust and create a fairer system in terms of access, transparency and democracy.

As a community group we have direct experience of dealing with one commercial lobbyist which we talk about for reference. Ours is just one case and we are one of the few groups that are brave enough to speak out on these issues. We note that the number of submissions received by your committee from community groups is small, whereas most of the submissions received are from organizations such as commercial lobbyists, trade groups and charities that are engaged in lobbying on a day to day basis.

We would ask the committee to reflect on this in relation to a lot of what we write about here. One of the biggest problems with lobbying is the inequality it produces in terms of access and the kinds of voices being heard. Our experience is that some lobbyists may also be quick to threaten individuals and community groups, leaving many intimidated about speaking freely about such issues.

The main question we would like the committee to reflect on is: if their constituents were threatened by lobbyists who want rules altered or ignored to suit their clients' commercial interests and against the interests of the public, how could their communities defend themselves? Our community is a mixed community of people from a wide spectrum of backgrounds and income levels enabling us to draw on a huge range of skills. Some communities are not so lucky. If our group finds fighting lobbyists challenging and frightening, how can a smaller or poorer community defend themselves?

Lobbying: Understanding the problem

Lobbying at its best helps politicians understand the needs of the commercial and voluntary sectors by providing professional representation to businesses, industries, charities and groups so they can effectively represent their views. At its worst, lobbying separates the democratic process from the public and enables lobbyists and their clients to profit at the expense of communities, the public and individuals who have less access and representation within the system.

Lobbying isn't just about the abstract principles of government policies and different political ideologies. It is also circumventing or changing the rules for particular private interests.

One of the most visible impacts of lobbyists is through the planning system, where protections for wildlife, public space, amenity or heritage are routinely overruled in favour of private economic interests through developers and individuals employing commercial lobbyists. Often this is done in the name of promises of jobs and growth that do not materialise. One high-profile example that has shocked the general public is very much a Scottish story, seen by cinema audiences around the world, challenging the claim by several submissions to the lobbying committee that Scotland has not had the scandals of the Westminster parliament. Such cases diminish the public trust that the system is working in the public interest.

Lobbying gone wrong destroys the public's faith in their elected representatives. It is too easy for a lobbyist to promise huge public benefits for their clients' projects, but only if some rule is overturned. How many times have these promises failed disastrously? Overturning rules for private gain justified by unchallenged promises of economic gain and public wealth is often a disaster for the country and local communities.

One of the worst effects of bad commercial lobbying is the silencing of political debate by letting lobbyists make claims behind closed doors that are not subject to public scrutiny or debate. This is most extreme when communities are locked out of the decision making processes - allowing commercial lobbyists to make claims unchallenged. The public can be locked out of debate by lobbyists with more money than communities to buy access at party conferences, spending large sums on marketing or relying on legal threats to stifle opposition.

The activities of lobbyists that operate against the public interest are largely hidden from public scrutiny. But what we, Friends of Craighouse can do, is describe what it has been like for us, as a community group, to be faced with a private investment fund and their lobbyist demanding that the normal planning rules should not apply to them.

MSPs should not only consider how lobbyists make representations to the Scottish Parliament, but also how they deal with officials, Councillors, private-sector consultants contracted to the public sector as well as their interactions with the public. These should also be subject to the lobbying bill.

Why is there a problem?

Let's consider our campaign, Craighouse, as that is our area of experience. We are a community group seeking to preserve a highly protected site that contains Category A- listed buildings and their setting, protected wildlife, protected landscape, public space and one of Edinburgh's famous seven hills. The current protections on the site effectively limit any development project on the site (in purely financial terms) to no more than about £40m. The site was bought by an off-shore investment fund who are requesting that planning regulations be set aside in their case to allow a £96m development. If we look at this purely financially, this is a difference of approx £56m, if this developer can convince the Councillors and Scottish Government to ignore numerous protections and planning considerations.

Therefore, the financial benefits of lobbying in this case are up to £56m.

There are no rules to deal with the problem of lobbying in planning. Community consultation is undertaken by lobbyists with no rules governing the veracity or quality of the information given to the public or how that public is presented by lobbyists to officials or decision-makers. Similarly, by the same measure there is nothing to deal with how these officials are presented to the public - with planning authorities misrepresented to the communities affected.

There is nothing to create equality of access, which is key when it comes to controlling information. In our case, the investment fund have employed a commercial lobbyist who has arranged numerous meetings with Councillors, introduced their clients to top politicians at party conferences and managed to achieve meetings with top ministers to talk specifically about Craighouse. The community, however, have been denied meetings with ministers, cannot get to meet top politicians at party conferences and have little to no access to the higher end of the system.

This imbalance of access at the top levels is not consistent with the stated aims of the Scottish Parliament through the MSPs Code of Conduct.

In considering the issue of the regulation of lobbying, it is important to consider what the costs are to the lobbyist of breaking rules and whether they outweigh a gain of up to £50m. How can a community challenge a lobbying campaign that might lead to a £50m financial gain for private individuals?

What can we talk about?

We, like many campaigns, have received a number of legal threats: lawyers' letters as well as emails (including with local MSPs CC'd). None have gone to court. But it does mean that we need to ensure that we maintain very good written evidence for the statements we make. This limits what we can say, so we will concentrate on only those issues we believe we can defend in court.

In considering our submission, we would like the committee to consider also those community groups and individuals that do not have the skills, time or resources to collect written material and risk having to defend themselves against legal threats. There is an inherent inequality in a system which allows lobbyists to make untrue claims to officials and politicians with impunity while communities do not have the resources to defend themselves against the threat of legal action.

What are lobbyists saying?

One way to separate communities from politicians and officials is to portray community groups as extremists, unreasonable, or political opponents. In our case, the lobbyist sought to portray us as people who had no interest in preserving the A listed buildings at Craighouse. Usually, lobbyists do this behind closed doors with no opportunities to challenge what has been said to politicians and officials privately. In the case of Craighouse, we have been able to bring some of these discussions out into the open.

One good example of the ways lobbyists can portray community groups as unreasonable is through minutes of meetings. We had a meeting with one of the developers at Craighouse and the lobbyist for the scheme. At the end of the meeting we agreed we would exchange notes and we would write up the minutes which we would agree with the other side. However, after we sent our notes the discussion got very difficult and challenging - with the lobbyist failing to agree our notes - and failing to send their notes also, or any correction of our notes they wanted to make. After many weeks of this, we put our notes on our website as we had to report to our members, but explained that the developers and lobbyist had not agreed the notes with us. Then, the developer and lobbyist put *their* version of the minutes on their website (without explaining that their version was not agreed) and what it showed is very revealing of how lobbyists portray communities.

'WGM asked if RB would confirm the comment she made at their first meeting that she had "no real interest in the listed buildings and would prefer to see the site go back to nature". RB said that she had no recollection of saying this and that she would not discuss it as it was not on the agenda.'

Not only is the developer ('WGM') making a claim about us as campaigners (in this case, 'RB') having no interest in preserving the listed buildings, but also our denial is being written in a way that makes us look unsure and indecisive. This is not what happened and our notes of the meeting are clear this is not what was said. This incident is a rare public demonstration of how a lot of lobbying works behind the scenes: by portraying communities as unreasonable and unable to engage in reasoned debate. How can communities challenge these types of claims by lobbyists if lobbyists get much greater access than communities and if so much lobbying takes place behind closed doors?

In the case of Craighouse, the development consortium argues that their plan is the only financially sustainable way of saving the listed buildings. In support of their case, they sent letters to thousands of houses in the area, saying that their figures *"had been independently audited by both City of Edinburgh Council and Knight Frank to ensure minimum development consistent with an assured future for the site"*. This statement was stated very clearly and strongly and was repeated in public meetings. It was therefore a shock to the community when planning officials denied that they had approved those figures at all.

How can a community challenge untrue or misleading information delivered to thousands of households, the press and also to politicians behind the scenes? The council did not deliver a denial to all those households: they just put up a letter on their planning "portal" on their website. How can politicians and the public make informed choices in an environment that allows untrue information to be delivered unchallenged like this?

Access by lobbyists

Lobbyists currently have disproportionately higher access to politicians than communities do. In our case, lobbyists were able to gain meetings with at least one senior Scottish government minister as well as unminuted meetings with Scottish

Government planners to discuss a live planning application and also with a senior Historic Scotland official. Our requests to meet MSPs, Historic Scotland officials and ministers have been refused. It was extremely hard for us to find out that these meetings had occurred as our FOI request was delayed for over 4 months and required considerable political pressure to get the information released. We currently have another FOI asking about meetings that has been ignored for months by the Scottish Government, despite their legal obligation to release the information in 20 days.

How can communities challenge information provided to Scottish ministers and officials if communities don't even know that the meetings are happening? This disproportionate access for lobbyists that are already known to be providing false information in support of their planning application creates a huge inequality in the decision-making process and badly erodes trust in the system.

Politicians and officials may argue that they are not swayed by one side or another, but instead make informed choices after hearing both sides of the debate. But the reality, in many cases, is that politicians and officials are only hearing *one* side of the debate.

Sections 5 of the Code of Conduct for Members of the Scottish Parliament sets out rules governing access by lobbyists to MSPs and ministers.

“The public must be assured that no person or organisation will gain better access to, or treatment by, any member as a result of employing a commercial lobbyist either as a representative or to provide strategic advice. In particular, a member should not offer or accord preferential access or treatment to commercial lobbyists or their employers. Nor should commercial lobbyists or their employers be given to understand that preferential access or treatment might be forthcoming from another MSP or group or person within or connected with the Parliament.”

It also says:

“Members may participate in events for which others are charged a fee to attend. Participation, for example, in a conference or seminar for which delegates are charged a fee may be a useful means of a member gathering a range of views on a topic. There could be some concern, however, that events falling into this category could be a means of “buying” access to MSPs. It is important that there should be no grounds for such a perception. No preferential treatment should, therefore, be offered or accorded any person or organisation as a result of having made initial contact with a member at such an event.”

In addition, members should:

- *“consider whether a meeting with one group which is making representations on an issue should be balanced by offering another group with different views an opportunity to make representations;*

- *consider keeping a record of all contacts with lobbyists;*
- *consider arranging for an assistant or researcher to take notes at any meetings with lobbyists.”*

However, there is no doubt that commercial lobbyists *do* help gain access to MSPs and that meetings are frequently not balanced by meeting those with different views.

Commercial lobbyists pay for exhibition space, meeting rooms, sponsorship of debates and meals with politicians. This has become a major part of the lobbying process as well as a major part of the ability of parties to fund themselves and their conferences. The Electoral Commission maintains a list of donations to political parties, but sponsorship is not normally recorded. This means that despite commercial lobbyists paying parties for meetings and putting their message in front of politicians, there is little to no public record of these payments and activities. Yet individuals making altruistic donations to parties purely to support the democratic process do have their payments recorded.

The current level of regulation of lobbying activity

We have read the submission from the Commissioner for Ethical Standards in Public Life in Scotland to this committee. We think that the commissioner’s office is not seriously considering the damage to the democratic process of the issue of paid access to politicians, despite it being specifically listed in the code of conduct for MSPs. The commissioner clearly believes that MSPs should not be themselves paid for advocacy, but then seems to think it just doesn’t happen in Scotland.

For example, on the issue of lack of trust in the lobbying system in Scotland, the commissioner’s submission states: *“It can perhaps be argued that this is based on high profile lobbying issues which have arisen elsewhere.”* There have been a number of political scandals in Scotland involving private sector interests getting access to politicians. The Trump golf course is one of the most high-profile cases in the UK, while the lobbyist on the Craighouse scheme has had their own share of local scandals too. How involved were lobbyists in Scotland’s political scandals? We can’t know, because the information is not normally publicly available. That is the matter that the committee is being asked to consider: should the public know what lobbyists are doing and saying behind the scenes in Scottish politics?

In considering the issue of the conduct of professional lobbyists, the commissioner solely refers to bribery. If the commissioner considers that the dangers of lobbying and its impact on politicians is only confined to bribery (something which is a matter for the police, not the commissioner) then we think that the commissioner should be given much clearer guidelines on what should be considered acceptable behaviour in Scottish politics. We should expect more from our politicians than just that they don’t take bribes.

The commissioner makes no reference to section 5 of the code of conduct for MSPs, which is the section that actually deals with the issue being put before the committee: should there be regulation of lobbyists and their access to politicians.

The real issue is the ability of lobbyists to drown out the views of the public and exclude communities from the decisions that affect them.

We believe that it is reasonable to call into question whether the current rules on lobbying in the Scottish Parliament are being adhered to and enforced. Commercial lobbyists clearly do have greater access. It is hard to see who to complain to if the limited rules that do exist are broken. It is very hard to find out if rules are broken so the public could know to complain.

Lobbyists who are councillors

Although it is against the code of conduct for MSPs to be lobbyists at the same time, this is not true of councillors. In our case, a councillor on the planning committee at the time when the Craighouse issue was first brought to the planning committee also worked for the lobbyist representing the developer. He was voted out before the planning application was put in.

It comes as a shock to most people to find out that it is considered acceptable for a lobbyist to also be an elected councillor, especially on the committee making the decisions about planning applications the lobbyist has put forwards. Clearly such a councillor would have to remove themselves from decisions on their own lobbyists' proposals, but is that enough of a restriction? There have been cases in England where lobbyists appear to have packed out Councils - meaning that Councillors cannot do what they are employed to do and represent their communities.

We think it is unacceptable for a Councillor making decisions on important committees to simultaneously work as a commercial lobbyist for private clients in that same field and that this is a clear conflict of interest.

One of the problems of the political system is the revolving door nature of lobbyists and Councillors - many of the latter dependent on acting as the former when out of office - therefore creating a permanent mutual interest and strong ties between these two groups. This makes it even more important to ensure that community groups are given equal access at all levels of the system and that full transparency is in operation.

Legal threats and the silencing of communities

It is far too easy for lobbyists to use legal threats to silence community voices. We have direct experience of this.

The libel laws prevent campaigners from making allegations about lobbyists which are damaging to those lobbyists without evidence. But what if the lobbyists behave in a way that when made public is bound to be damaging? The libel laws are defending bad behaviour backed by money against communities that can't afford to defend themselves (or don't know how to).

But in the case of the lobbyist involved in Craighouse, it appears that legal threats were even used to persuade the House of Commons to refuse to release untrue claims made by the lobbyist in a letter to the Speaker of the House of Commons. If

even the House of Commons can be too afraid to follow its own laws on transparency in this country by legal threats from a lobbyist, how can a community defend itself and have their voices properly heard?

The director of the lobbyist representing the Craighouse scheme had written to the Speaker of the House of Commons defending his lobbying practices by making claims such as his company “does not allow employees or consultants to hold elected or appointed public office”. This conflicted with what we already knew about the councillor who worked for the lobbyist, so we requested the letter itself under Freedom of Information legislation.

We have the written advice that the House of Commons received in deciding whether to release the letter. It states: *“the person who supplied it has made it clear, though his solicitor, that he would regard any disclosure of the letter as a breach of confidence. It is not necessary to show that an action for breach of confidence would succeed in order to apply this exemption, only that such an action could be brought”*. This clearly shows that the risk of legal action discouraged the House of Commons from releasing information that should have been released under FOI legislation.

What is even more surprising is that when we asked the Information Commissioner to intervene, the House of Commons even refused to release the letter to the ICO. The ICO was forced to issue an “information notice”, which they describe as being for *“rare circumstances when a public authority persistently refuses to co-operate with us”*. This shows that legal threats are not just about silencing campaign groups: they even threaten the normal process of transparency of government.

Declaring clients

Currently, in Scotland, it is voluntary for a lobbyist to declare their clients. We asked the lobbyist in the Craighouse scheme who is client(s) is/are. The answer he gave is that “my client is the Craighouse Partnership and you can reach them via the CP website where there are publicly available contact details”. But the Craighouse Partnership is not a legal entity and the website is registered to an individual whose name is listed on the lobbyist’s website, but it is not clear what her connection is to the lobbyist.

This causes a number of problems. One is a legal unfairness in that lobbyists clearly think they can sue community groups, but we don’t have a legal entity to counter-sue. If the website or the lobbyist makes defamatory claims about us, who do we sue? Who do we complain about? Can we publicly complain if we can’t actually say who made untrue statements or threats? Who are we, the public dealing with? Can companies use a lobbyist to make statements or actions that they would not want to be associated with themselves? What is the connection between the different clients and their lobbyist? Can a large company with a good reputation do or say something via an intermediary lobbyist which would cause too much reputational harm for them to do themselves? Can public bodies who are subject to stringent rules bypass these rules by employing a commercial lobbyist?

These issues are specific issues for commercial lobbyists that represent clients. It is reasonable to create regulations that only impact on commercial lobbyists that work

for hire as there are special ethical issues in those cases. This doesn't mean that commercial lobbyists available for hire are the only lobbyists that need regulation. It is equally essential that in-house lobbyists cannot deny or hide that they are acting on behalf of their employer.

Complaints process

The lobbyist in our campaign has a complaints procedure outlined on their website.

“Should you wish to contact us about any aspect of your experience with [...], you are invited to contact our Director using the following details”

We asked the director about his complaints procedure and got this reply (CC'd to his lawyer):

“If you wish you are also welcome to exercise your right to complain about me via [our] complaints procedure which is on our website. However I would advise you to seek reasonable grounds for making a complaint before you make further allegations that may well be deemed to be defamatory if published.”

So, you can see that the only complaints procedure available to a community group faced with the kinds of lobbying that community groups might wish to complain about is to complain directly to the lobbyist themselves. What if your complaint is about the lobbyist themselves? As you can see from the above response, there is an implicit legal threat for a community even making a complaint.

The public need to have a route to complain about what they may find to be aggressive or dishonest lobbying.

Conclusions

The submissions to this committee from lobbyists and officials all seem to agree that there is nothing wrong with the current system and there have been no scandals in Scotland. This is not the view of the public, who have seen a number of major scandals in planning, public purchasing for buildings and infrastructure investment. Many of these scandals have not been specifically attached to the issue of lobbying, but if the system of lobbying is as secretive as we have found it to be, then how can the public know how much commercial lobbying was involved? The complacency of those within the system to the problems facing the Scottish parliament and local councils today is greatly disappointing.

Perhaps surprisingly, it is some of the lobbyists and lobbying organizations that are most enthusiastic about regulation in the submissions to the committee. They understand that the issue of trust is important for their industry and that regulation would help good lobbyists to gain trust and bad lobbyists to be dealt with appropriately.

The questions that the committee should be asking of proposals to regulate lobbying are:

1. How can we ensure that councillors, MSPs and officials are making decisions based on accurate information from all the sides in a debate and not just the side with the most money to spend?
2. How can we ensure a more equitable system in terms of access, decision-making and the voices being heard?
3. How will these proposals empower communities in the democratic process?
4. How may a normal Scottish community defend itself against lobbyists that act badly, are threatening or dishonest?

The new lobbying law from Westminster delivers very little of the above, whilst placing a high burden on campaigners and no burden on in-house commercial lobbyists. That law failed to enhance trust in the political process.

This should not be allowed to happen in Scotland. There is no reason why the Scottish Parliament can't introduce a law that is better than Westminster's lobbying law to enhance trust and empower communities.

Our proposals would be:

1. A formal independent complaints process to allow communities to make complaints about commercial lobbying activity. Such processes already apply to politicians, public officials and charities.
2. A proper record of political donations *and sponsorship*.
3. A register of commercial lobbyists where lobbyists name their clients.
4. A record of meetings between elected representatives, officials and commercial lobbyists, so that communities can demand the right to equal access as promised by the Scottish parliament's code of conduct.

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