

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

INQUIRY INTO LOBBYING

SUBMISSION RECEIVED FROM PUBLIC RELATIONS CONSULTANTS ASSOCIATION (PRCA)

The PRCA is the UK professional body representing the public relations and public affairs industry. Its membership includes consultancies (including around 75% of the 'PRWeek Top 150'), in-house communications teams (from banks to public sector teams to charities), and also individual PRs and lobbyists. A significant number of our members offer lobbying services from the offices in Scotland, including MHP Communications, Grayling and Weber Shandwick.

The PRCA is in favour of a statutory lobbying register in Scotland and Westminster as a means to promoting transparency and public confidence in the Scottish political institutions and the wider lobbying industry. A statutory register is necessary to ensure that all professional lobbyists in Scotland and the UK are registered.

The PRCA believes any lobbying register must be universal in order to capture all who perform the "act of lobbying in a professional capacity". There should be no exemptions.

The PRCA disagrees that lobbying is merely to influence. Lobbyists seek to inform as well as influence policy so that policymakers can make decisions with the best possible understanding of the effect and implications legislation or regulation will have. A transparent lobbying register will help to dispel the myths and stigma that is unhelpfully attached to any debate on lobbying.

The PRCA would like to see more substantive policy proposals for how much the register would cost and who would operate the register. However, the PRCA is unequivocal that the operator must be independent of both the lobbying industry and the Scottish Parliament. Therefore the PRCA has concerns that the disproportionate costs of setting up and maintaining a register could be levied upon a small number of registered lobbyists.

The PRCA Public Affairs Register provides a suitable template for what information should be included in a Scottish register: it is quarterly, retrospective, contains the necessary information to promote transparency, and includes consultancies, in-house public affairs teams, and individual and freelance lobbyists.

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

- + Over the past decade, consultancies conducting lobbying have become much more interdisciplinary and multidisciplinary. The act of lobbying is now more integrated with other services offered by these consultancies;

- + We have seen an increase in the number of lobbyists. Whilst both consultancy and in-house numbers have increase, in-house lobbyists form 80% of the industry;
- + Reflecting this, there has been an increase in lobbying activities from charities, think tanks, law firms, management consultancies, accountancies, trade unions and the public sector;
- + There has been a substantial increase in the number of consultancies voluntarily abiding by a Code of Conduct. Every single member of the PRCA has to abide by our eighteen-point Code of Conduct. Every single member offering lobbying services must – as part of this Code of Conduct – join the PRCA Public Affairs Register. There are currently 82 agencies and in-house members, along with a number of individual members, on this Register and there are a number of organisations on the register who offer lobbying services in Scotland;
- + Established channels of lobbying are now supplemented by new means unique to the Scottish Parliament, for example Cross Party Groups and the Scottish Politician of the Year Awards;
- + There has been a shift in the actual aims of lobbying. The notion of “personal communications (oral or written)” with Ministers and Permanent Secretaries that forms the basis of the UK Government’s proposed legislation on lobbying is not reflective of how the industry operates. Lobbying is increasingly part of a multi-faceted communications plan.

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 PRCA has a detailed and structured disciplinary and complaints mechanism to enforce its Code of Conduct. We have not seen any disciplinary action against any of our members who conduct lobbying in Scotland;
- + We therefore do not believe there is a real or perceived problem with lobbying in Scotland;
- + The PRCA however does believe that a register of lobbyists would increase the transparency of the industry;
- + The PRCA is in favour in principle of the introduction of a statutory register of lobbyists and our members are committed to transparency. We believe that lobbying should be open and transparent. A proper statutory register would allow anyone to properly views the offices that offer lobbying, the employees conducting lobbying and the clients on whose behalf this lobbying takes place;
- + Any discussion of lobbying in the UK must recognise that the Westminster “lobbying scandals” that have received significant media coverage in the past few years have not involved a single lobbyist.

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

The PRCA believes that well-developed legislation is necessary and appropriate for achieving transparency. The primary reason for legislation is that it provides a statutory mechanism that requires all lobbyists to register.

Scotland remains unaffected by any ethical issues around lobbying. In recognising this, however, it must be noted that in the past year none of the Westminster “lobbying scandals” have involved professional lobbyists. A register therefore will not address these any of these issues as they have never involved any lobbyists.

To whom should such a register apply? Should it be voluntary or compulsory? How should it be maintained and who should maintain it?

In its earlier response to the UK Government’s consultation into a proposed statutory register, the PRCA’s definition was deliberately broad to capture all “professional lobbyists” – as opposed to just “commercial lobbyists” suggested in the consultation: *“Lobbying is the professional practice of deliberately and intentionally informing and influencing the decisions made by policy-makers involved in the public policy process. It is the “process of seeking to shape the public policy agenda in order to influence government (and its institutions) and the legislative programme”. In terms of registrable activity on a statutory register, lobbying refers to contact and/or communication with those working for and/or representing the institutions of government, as well as assisting lobbying through the provision of professional advice, strategy or counsel.”*

Therefore a lobbyist was defined as follows: *“(A) lobbyist is a professional who performs the practice of deliberately and intentionally informing and influencing the decisions made by policy-makers to reflect the interests of the lobbyist, or the interests of a party the lobbyist represents, in the public policy process. This includes contact and/or communication as well as assisting lobbying through the provision of professional advice, strategy or counsel.”*

Therefore a lobbyist is not defined by any specific profession of the person lobbying, but by the “act of lobbying in a professional capacity” itself.

The PRCA, APPC and CIPR worked together with a Parliamentary draftsman to produce this definition of lobbying for the UK Government in 2012 to use for its proposed Statutory Register of Lobbyists. All lobbyists that fall under the broad definition should be included on a lobbying register in Scotland. There should be no exceptions. A register should not just be for the minority of “commercial lobbyists” that work in consultancies but for the majority of lobbyists that work in organisations’ in-house communications teams.

The UK Government’s consultation asked if Charities, Trade Unions, and Think Tanks should be included in a statutory register. The PRCA pointed out that they are no different from other organisations that employ in-house communications professionals and lobbyists and this remains true in Scotland. Furthermore: law firms, management consultancies, NGOs, business groups, and trade associations

such as the PRCA (which places four of its staff on its own register); all have the capacity to employ in-house lobbyists, and should be placed on a register. A statutory register's success will be determined by its ability to encompass all professional lobbyists.

Any register should be run independently of the Scottish Government and of the lobbying industry. This ensures that the public can trust the register. The PRCA believes that any registration should be paid for by those being registered: the industry.

What level of information should be on it?

Any register should record the offices that are conducting lobbying activities, the best point of contact for any lobbying queries, employees conducting lobbying services and clients who provide lobbying services. Registrants should clearly state on their entry: Local Authority Councillors by placing "(Councillor)" after their name; passholders and the relevant institute by placing "(Passholder – Institution)"; Clients that receive pro-bono services with "(Pro-bono)"; current holders of an elected role in a political party at constituency chairman or vice-chairman level or higher by placing "(Party – Role)" after their name. This information should all be submitted quarterly and retrospectively in a single submission and before a certain date. Registrants should be able to submit additional information on top of this should they wish, but whether or not including this enhances the Register should be decided by the Registrant.

Should thresholds be set for registration? If so what should they be? What are the likely cost implications of registration for groups that lobby?

Thresholds – whether financial or based on the amount of time spent on activities – would result in a change in behaviour among those conducting lobbying and their clients. They reduce openness and transparency by reducing the number captured by a register. They are difficult to calculate and are often entirely unverifiable. Returning to the stated position of the PRCA, any register must be based on the act of lobbying and that must be the sole threshold. There should be no exemptions for any organisations/individuals that conduct the "professional act of lobbying".

However, any discussion of this cost must address any unintended consequences such as a high cost creating a disincentive to register. From our own experience operating the quarterly retrospective PRCA Public Affairs Register, we might reasonably expect the cost implications of registration would be minimal.

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?

In the first place, guidance must make it clear who should be required to register. The PRCA does not wish to see a Registrar take a unilateral decision to punish certain organisations which have not complied to register due to not being properly informed. In particular, this could lead to unfair "offences" and corresponding sanctions.

For the register to be credible it must have statutory powers to penalise individuals and organisations for non-compliance. The PRCA views the system of sanctions in The Companies Act 2006 to be reasonable, as it agrees that there is a similarity in these duties and the duties proposed for the register. Following the Companies Act sections 451-453: small offences such as late filing and inaccurate information should face a warning notification period followed by civil penalties such as fines of up to no more than the registration fee for continued non-compliance. More serious offences, including failure to submit to the register and the provision of deliberately inaccurate or misleading information, should face larger civil fines and/or criminal proceedings.

Whilst the act of registration is ultimately the responsibility of the lobbyists and their organisation itself; the threat of statutory sanctions, criminal proceedings, combined with the vigilance of the media, public and other lobbyists and politicians will be a strong enough incentive to lobbyists to provide timely, accurate register entries.

What, if any, changes should be made to Section 5 of the Code of Conduct for Members of the Scottish Parliament?

The Code should be amended to replace all existing references to “commercial lobbyist” with “lobbyist”. This phrase implies a false distinction between different forms of lobbying or types of employee. It also suggests that in-house lobbyists – which form a majority of the industry – are exempt from the Code.

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

The PRCA, along with the other trade bodies, operates its own specific public affairs Code of Conduct. The code applies to all members including individuals and freelancers and in-house public affairs practitioners. The PRCA believes that a Code of Conduct is “a matter for the industry itself, not for the operator of a register”, as stated in the 2012 Westminster consultation on a statutory register. There should be an option on the register to indicate if a registrant is signed up to a trade body’s Code of Conduct. This will likely create no additional costs to operation and registration and will increase transparency as the public and politicians will be able to recognise which organisations and individuals are regulated by an ethical code.

PRCA also supports the guiding principles for public affairs practitioners established by the CIPR, ASPA and APPC in 2007.

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**PRCA
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