STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

INQUIRY INTO LOBBYING

SUBMISSION RECEIVED FROM SCOTTISH COUNCIL FOR VOLUNTARY ORGANISATION (SCVO)

Summary

- SCVO opposes the creation of a lobbying register as we believe it would be harmful to the positive relationship between the third sector and Scottish Parliament
- SCVO believes that the most proportionate way to increase transparency of decision making would be for Ministers and Members of the Scottish Parliament to publish their diaries
- The people responsible for the integrity of decisions made in Scotland, both in parliament and government, are those that hold the responsibility and office
- The dialogue that takes place between parliamentarians, government officials and the third sector is essential for the creation of good public policy
- To build constructive relationships it is vital that we do not put up barriers which restrict or discourage third sector organisations from participating in policy processes
- A lobbying register would run counter to the founding principles of the Scottish Parliament – '*a participative approach to the development, consideration and scrutiny of policy and legislation*'[i]

Our response

The Need for Change

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

Since the inception of the Scottish Parliament, the third sector's role in the creation of public policy has increased steadily. By developing strong links with parliamentarians and government officials the third sector has formed productive relationships which ensure policy makers are better informed, more knowledgeable and account for a wider variety of views. This ensures that the interests of groups represented by the third sector are an integral part of the development of policy. The diversity of interests now represented at the Scottish Parliament has led to better informed public policy and legislation. This open approach is in line with the founding principles of the Parliament:

'*The Scottish Parliament should be accessible, open, responsive, and develop procedures which make possible a participative approach to the development, consideration and scrutiny of policy and legislation*'[ii]

The third sector has been very successful in its campaigning activity since the creation of the Scottish Parliament. It has played a key role in advocating for

successful policy developments such as the ban on smoking in public places, climate change legislation and minimum pricing for alcohol. This contribution to policy has delivered good outcomes and clear benefits for the public.

There is always room for improvement in the level of interaction between policy makers and the third sector. However, it is vitally important that this dialogue takes place and the opportunities exist for third sector organisations of all types to participate in the democratic process. To build on those constructive relationships it is vital that we do not put up barriers which restrict or discourage third sector organisations from participating in policy processes.

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?

We are unaware of any problem with 'lobbying' in the third sector. The third sector engages with politicians for public benefit rather than for private interests. This activity is fundamentally different in character from corporate lobbying. The third sector in Scotland struggles with the term 'lobbyists' as it often sees itself as championing, advocating or campaigning on issues - not lobbying. Lobbying is also often associated with money and protection of interests which is very different from the campaigning for social change undertaken by the sector.

With low voter turnouts at elections the focus should be on encouraging more people to become involved in politics, not placing obstacles in their way. The third sector in Scotland gives a voice to people and communities who might not otherwise be heard and ensures they are not overlooked in the policy development process. It is an important way for people and communities to act collectively and engage with political processes. This is a key component of a healthy democracy and must be protected.

Third sector organisations that are charities are already open in their work and subject to regulation through the Charity Act. Charity law ensures that charities can't support political parties and are open about their aims, objectives, activities and finances. Generally they publish campaigning material, annual reports and other material online and are accountable to their funders, members and supporters.

Concerns in the third sector about lobbying activity vary depending on the nature of the organisation and the work they undertake. The parts of the sector where corporate lobbying activity works in opposition to their objectives have greater concerns with lobbying activity than those where corporate influence is not such a significant factor. For example, lobbying is particularly concerning for environmental organisations that are in opposition to energy companies and fossil fuel producers who have an extremely well-connected, organised and funded lobbying operation. Increasing transparency of those interactions is extremely important. However, we do not believe that a register is the best way to achieve this.

Burden of transparency

SCVO believes that the most proportionate and cost-effective way to increase transparency of decision making would be to have the Scottish Government and Scottish Parliament publish Ministers and Members of the Scottish Parliament's diaries. These diaries should be made available on the Scottish Government's and the Scottish Parliament's websites where they would be easily accessible and available for all.

To create an entirely new system of bureaucracy to collect data from so-called 'lobbyists' across the public, private and third sector and then collate it in to a searchable, presentable format would be a disproportionate response. Publishing diaries of 129 MSPs and 21 Ministers would be quicker and simpler while still achieving the necessary transparency.

It is our view that this approach would meet the objectives of openness and transparency without placing unnecessary barriers in the path of third sector organisations. It would align well with the Government's approach to Freedom of Information and the increased emphasis being placed on proactive publication:

'The Scottish Government is committed to operating its business transparently and proactively publishing information where possible.'[iii] – Nicola Sturgeon, October 2013

'We will continue to work with both requesters and practitioners, encouraging and enforcing proactive publication, sharing good practice and safeguarding rights.'[iv] - Scottish Information Commissioner, Strategic Plan, August 2013

This would be consistent with our preferred approach to lobbying – transparency through proactive publication.

Register of lobbyists

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

In principle we do not support the creation of a register of lobbyists. In our view this would shift the responsibility of protecting the integrity of Scottish politics from Members of the Scottish Parliament to those who wish to engage with them. It is our view that a register would be of limited value as it would only indicate who had met whom.

It is important that we uphold the greatest integrity of the decisions made by our elected members in Scotland, however requiring those who interact with parliamentarians to register and disclose meetings will not do this. In practice, the people responsible for the integrity of decisions made in Scotland, both in parliament and government, are those that hold the responsibility and office.

Our concern is that a register could disrupt the participative approach taken by the Scottish Parliament and discourage those wishing to engage with the parliamentary process. Having an open parliament where a diverse range of views are heard is

critical for good policy development that accurately meets the needs of the public. Creating a new bureaucracy, that labels those who choose to engage with the parliament as lobbyists, will damage that participative principle and could lead to a more exclusive Parliament.

The Public Petitions Committee provides an effective route into Parliament for the public and organisations that have an issue they feel should be considered. If a lobbying register were in place, would they also have to register as a lobbyist if they meet MSPs or attend Committee meetings? This would place an additional barrier to participation and discourage people from becoming involved with a parliament that may already be regarded by some as 'not for them'.

The 'Not by the people'[v] report found that those appointed to public bodies, government reviews and giving evidence to parliamentary committees were overwhelmingly professionals. The study also found that the 60 percent of the population that earn less than the average wage was represented by only three percent of those engaging in the ways outlined above. A lobbying register could further professionalise those engaging with parliament and deepen this inequality by discouraging people who might not normally become involved with the parliament. Consideration of community and grassroots views is a key component of policy development and must not be disrupted by unnecessary bureaucracy.

The impact on MSPs visiting third sector organisation is also a concern for us. It is vital that MSPs are able to visit third sector projects in their constituencies to understand their role and function in the community. It would be farcical if an MSP had to phone an organisation to say: 'I'd like to visit your project to see I the excellent work you do, but I can only come if you register as a lobbyist'. The burden for responsibility of transparency must be with politicians, not those who that wish to engage with the parliament.

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?

We are opposed to the creation of a register for the reasons outlined above. If a lobbying register was introduced, it could introduce a two tiered system of democratic engagement in Scotland. It will benefit those with money and the ability to work within the register. It will favour large companies who can:

- Deal with the administrative burden
- Have the skills to interpret and comply with the register

What it won't do is empower the most disadvantaged across Scotland. It will create a Scottish Parliament that is neither fair nor accessible for groups of citizens who are often forgotten in debates and marginalised in society.

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?

Lessons should be learned from the legislation being proposed in the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill. As it stands that Bill will fail to address the issue of corporate lobbying while placing unnecessary and undemocratic restrictions on the ability of the third sector to campaign in the run up to elections. The first part of this bill which proposes a register will only cover 'consultant lobbyists' which will not tackle the problems of corporate lobbying. It is our view that the Scottish Parliament should take a more progressive approach to lobbying which places the burden of transparency on parliamentarians and government officials.

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

Many organisations in the third sector could be nervous of signing up as a 'lobbyist'. This could create an impression amongst their members or other stakeholders that their campaigning is corporate in nature rather than issue-focussed and user/member-led. Smaller organisations running on volunteer time alone could be put off from engaging with public officials by the additional bureaucracy involved. The process of registration could place added strain on the valuable time and resources of community organisations.

MSPs, Ministers and civil servants could easily publish their diaries and compile a list of organisations they have met. Conservative MEP Malcolm Harbour already compiles a lobbying contact report,[vi] so we see no good reason why other officials could not do the same.

Other measures

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?

The committee should look into whether the Code of Conduct can be amended to bring about the proactive publication of MSP diaries in line with our recommendation above.

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

We would not support a statutory Code of Conduct for lobbyists. As outlined above this is unnecessary and would disrupt the positive interactions which take place between third sector organisations and public officials.

Conclusion

Any proposals for new regulation of the third sector must be proportionate and weighed up in terms of benefits delivered against the burdens imposed. It is our view

that a lobbying register would have a profoundly negative effect on the free flow of information and ideas between the sector, parliamentarians and government officials. This would be damaging to the influence of the third sector and would also have a detrimental effect on the quality of public policy. A simpler and fairer system which is consistent with the principles of openness and transparency would place the burden of accountability on those who hold public office. This could be accomplished by requiring MSPs and Ministers to publish their diaries online in a searchable database. This would achieve accountability without additional burden on those legitimately engaging with the democratic process.

FELIX SPITTAL
SCOTTISH COUNCIL FOR VOLUNTARY ORGANISATIONS
10 JANUARY 2014

About us

The Scottish Council for Voluntary Organisations (SCVO) is the national body representing the third sector. There are over 45,000 voluntary organisations in Scotland involving around 138,000 paid staff and approximately 1.2 million volunteers. The sector manages an income of £4.5 billion.

SCVO works in partnership with the third sector in Scotland to advance our shared values and interests. We have over 1400 members who range from individuals and grassroots groups, to Scotland-wide organisations and intermediary bodies.

As the only inclusive representative umbrella organisation for the sector SCVO:
  ▪ has the largest Scotland-wide membership from the sector – our 1400 members include charities, community groups, social enterprises and voluntary organisations of all shapes and sizes
  ▪ our governance and membership structures are democratic and accountable - with an elected board and policy committee from the sector, we are managed by the sector, for the sector
  ▪ brings together organisations and networks connecting across the whole of Scotland

SCVO works to support people to take voluntary action to help themselves and others, and to bring about social change. Our policy is determined by a policy committee elected by our members.[1]

---

[i] http://www.scottish.parliament.uk/PublicInformationdocuments/Report_of_the_Consultative_Steering_Group.pdf
[ii] http://www.scottish.parliament.uk/PublicInformationdocuments/Report_of_the_Consultative_Steering_Group.pdf
[iii] http://www.scotland.gov.uk/Publications/2013/11/3938/6
[iv] http://www.itspublicknowledge.info/UploadedFiles/StrategicPlan2013to2017.pdf
[v] http://reidfoundation.org/wp-content/uploads/2013/02/Not-By-the-People.pdf
[vi] http://torymeps.com/people/malcolm-harbour

---

[1] SCVO's Policy Committee has 24 members elected by SCVO's member organisations who then co-opt up to eight more members primarily to reflect fields of interest which are not otherwise represented. It also includes two ex officio members, the SCVO Convener and Vice Convener.