

# STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

## INQUIRY INTO LOBBYING

### SUBMISSION RECEIVED FROM MARK WHITTET

Please find appended below my response to your consultation on Lobbying.

I have no objection to my submission being published along with my name. I do not wish to have my addresses (postal or electronic) published.

As former Director and Chief Executive of Holyrood Strategy Ltd, and as a founding, and former, member of the Association for Scottish Public Affairs, I would be willing to discuss/ answer any queries you may have.

I also have professional lobbying experience in the charitable/ voluntary secretary as Director and Deputy Convenor of the Scottish Legal Action Group ([www.scolag.org](http://www.scolag.org) - a registered charity) over the past decade since 2004-13. In this role, I directly lobbied MPs in Holyrood, civil servants and Justice Minister Kenny MacAskill, MP over a host of law and legal affairs issues - all on a pro-bono, un-paid basis - even though my 'job description' did not include the word 'lobbyist' as a part-qualified Solicitor. Issues which I lobbied on behalf of the Scottish Legal Action Group included, for example; -

- The Gill Review of Civil Justice - which will begin to be enacted by parliament this year
- Complaints against solicitors, which resulted in the creation of the Scottish Legal Complaints Commission
- The Legal Profession Act 2007
- Campaigned against 'Carloway's Law' to abolish corroboration in criminal trials, and
- Index-linking of the civil legal aid threshold

#### *The Need for Change*

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

**NO.**

**The process has not changed. Lobbyists ( a generic term which covers all paid, unpaid, voluntary, charity, individual, corporate communications, deeds (writings ) and words/ actions/ meetings intended to have legislative consequences in terms of influencing legislation) remains the same throughout the ages.**

**The means of non-personal lobbying (technology) has changed. The process has not.**

• *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 only problem, or perceived problem, with lobbying in Scotland is in the minds of too many uninformed MPs in Holyrood and Westminster.**

**There is no problem, in fact, in Scotland, with lobbying. \*\***

**Moreover, there is no evidence of any problem in Scotland with lobbying.**

**If, and it is repeated – IF – there is a PERCEIVED problem with lobbying, it is because uninformed members of parliament make decisions/ speeches/ Pqs, etc, NOT based on facts or evidence.**

**There is occasional – and much regrettable – malpractice and corruption in Westminster by members of the House of Commons and House of Lords. This is outwith the jurisdiction of the Scottish Parliament.**

**Put simply, the position in principle is that it takes two parties for there to be 'a problem' with lobbying.**

**If the lobbyee (eg Mps) acts fully and ethically (by not touting for bribes – already illegal; or procuring some preferment for one party or another – also already illegal) there can be no illegality or 'problem' with lobbying, or at least certainly not one caused by the lobby-er/ lobbyist.**

Put logically, it is ineffectual and wasteful use of resources to prohibit men from paying for sex for women when even the Bible accepts that paid-for sex (however morally bad or undesirable some sections of society think it is) like taxes, will always be with us.

By the same analogy, it is ineffectual and wasteful use of (expensive, taxpayer-funded) resources to create an entirely unnecessary enforcement / regulatory regime which applies only to lobbyists (a comprehensive term which logic requires be widely interpreted to include *any and all* 'communications with MPs intended to have legislative effect, whether done collectively, corporately, private, individually, for remuneration, or not, and for payment/ benefit in kind, or not) if the rules apply to only one party (the 'lobbyist') in the 'transaction' or 'political intercourse'.

When the question is put the other way round, a proposed 'ban' or register on, or off, 'lobbyists' becomes clearly farcical, eg;

“Why does any one type of normal, everyday, political interest/ communications with MPs intended to have legislative effect have to be 'authorised' or 'controlled' or 'regulated' in a (nominally, at least) 'free democracy'?”

In terms of democracy – which inherently includes the basic concept of freedom of speech' (even though this is constrained by libel laws, etc and, unlike in the United States is not a founding freedom of the independent constitution – any such

proposed 'lobbying ban' or 'lobbying/ist register' is an attack on democracy and free speech.

The only question MPs in Holyrood / Westminster need to ask themselves is this: *"Is there any evidence, or any special over-riding circumstances, which justify such a draconian restriction on free speech (ie communications with my constituents <who themselves take part in 'lobbying' if their communications are intended to have legislative effect> or any other business, professional, private, public, trade union, charitable, not-for-profit, commercial or voluntary group?"*

**There can only be one answer; NO.**

Moreover: -

Publication of a Lobbying Log by MPs is the clear, simple, logical and transparent solution

Government ministers in both Holyrood and Westminster are marching resolutely over a logic cliff by ramming through their plans to introduce compulsory registers of lobbyists in both parliaments.

But not only are they looking at the problem from the wrong end of the telescope, they simply need to look 'n learn from the examples of Tory Euro MP Malcolm Harbour.

Twice a year, Harbour publishes his 'Lobbying Log' – a list of every meeting with lobbying and vested interest groups, and special sector pleaders, and constituency groups (aka 'voters'). This is also known as 'just doing his job'.

But the brilliance of Harbour's lobbying log is that it kills stone dead – and rightly so – the idea that 'lobbyists' have to be registered when the main honeypot is the MPs in Holyrood, Westminster and Brussels. Because they have the opportunity to make laws and influence people (aka 'doing their job') it is they who attract the interest and attention of lobbyists, NIMBYs, vested interests, special interest-pleaders and er... voters, in the first place.

So the most logical, fair and practical solution is not to 'register lobbyists' but simply to compel every MP to publish their own 'Lobbying Log' every six months – thus injecting a heavy dose of transparency and common sense into the solution.

**Mark R Whittet (LLB, BA, DipLP)(Former) Director and Chief Executive, Holyrood Strategy Ltd Founding Former Member – Association for Scottish Public Affairs (ASPA)**

Ps. The late Lord (Peter) Fraser, QC, a former Lord Advocate who I recruited as my non-exec chairman at Holy-Strat, famously said;

***"You can't ban lobbying. Lobbying is an everyday part of the democratic process".***

Pps

**Chic Brodie**, a former Liberal Councillor and now an **SNP MP in Holyrood**, is also a (former) **Director of Holyrood Strategy Ltd.**

## *Register of lobbyists*

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

**NONE.**

If the lobbyee (eg Holyrood / Westminster MPs / civil servants/ Lords) decide – on their own account – to break existing laws against fraud, corruption, misrepresentation – the existence (or not) of any such proposed 'ban' or 'register' will be as helpful as a chocolate tea-pot.

- *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?*

**The case for a 'ban' or 'register' has not been made. PERIOD.**

**Consequently, there is no need to needlessly and wastefully spend scarce taxpayers' money to build a regulatory chocolate tea-pot.**

**It is also logically impossible, and highly undesirable, to try to create artificial and entirely spurious categories of 'good' (eg 'charity) lobbyists and 'bad' (eg paid consultants, agents, lawyers) lobbyists when, as stated above, private citizens/ voters/ constituents take part in 'lobbying' every time they contact/ communicate with an MP.**

## **PAID-FOR POLITICAL ADVERTISING IS 'LOBBYING'**

**There is also the vexed question of 'paid-for advertising which is intended to have legislative effect', such as the many expensive advertisements paid for in *Holyrood Magazine* (a private sector, entirely for-profit publication that is now owned by a company based in England) by the many Scots public sector quangoes, NDPB, councils, colleges and universities.**

**It is entirely logical to include all these public sector bodies/ quangoes, etc as 'lobbyists' because, by their advertising in *Holyrood Magazine*, they are intending to influence Holyrood MPs and, thereby, to have legislative effective for, or against, any given particular policy.**

**In England, this problem has been addressed (in part) by the Local Government Minister, Eric Pickles, banning local authorities for using paid-for private sector lobbyists. It is important to note that he has NOT banned lobbyists - rather, telling local authorities that if they need to speak to him (aka 'lobby' him') his 'door is always open'.**

- *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?*

**NONE - the case for establishing a register has not been established and there is no empirical, probative evidence to support this (half-baked) suggestion.**

The proposed lobbying 'ban' or 'register' is conceptually flawed. It is knee-jerk MP over-reaction and is looking at the issue from the entirely wrong end of the telescope.

'Registering' or 'banning' lobbyists will not stop lobbying. It is akin to requiring a Register of Bees to be set up before they can go hunting for nectar.

The 'nectar' in this metaphor are 'MPs'. They are, and always will be the honeypot that attracts lobbying (no matter whether the 'lobby-ist' is voter, constituent, *business, professional, private, public, trade union, charitable, not-for-profit, commercial or voluntary group, local authority, quango, colleges, universities, ..*

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

**a) More public ridicule for illogical, ill-thought-out rules not based on either common sense or any probative evidence.**

**b) Ditto**

**c. None**

**d) Ministers/ civil servants have existing codes in these areas. However, all these codes, rules, guidelines, etc – in Holyrood and Westminster – should ideally be unified into one simple, inexpensive and effective solution; Requirement to Publish a Lobbying Log.**

*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?*

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

**There are already existing professional / ethical codes of conducts for professional lobbyists. There is no need to re-invent this wheel with parliament/ legislative 'knobs -on'.**