The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

Thursday 12 November 2015

Session 4

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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
18th Meeting 2015, Session 4

CONVENER

*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

DEPUTY CONVENER

*Mary Fee (West Scotland) (Lab)

COMMITTEE MEMBERS

*Cameron Buchanan (Lothian) (Con)
*Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab)
*Fiona McLeod (Strathkelvin and Bearsden) (SNP)
*Gil Paterson (Clydebank and Milngavie) (SNP)
Dave Thompson (Skye, Lochaber and Badenoch) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Professor Raj Chari (Trinity College Dublin)
Dr William Dinan (Spinwatch and ALTER EU)
John Downie (Scottish Council for Voluntary Organisations)
Peter Duncan (Association of Professional Political Consultants)
Neil Findlay (Lothian) (Lab)
Steve Goodrich (Transparency International UK)
Richard Maughan (Confederation of British Industry)
Andy Myles (Scottish Environment LINK)
Willie Sullivan (Electoral Reform Society Scotland)

CLERK TO THE COMMITTEE

Gillian Baxendine
Alison Walker

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Thursday 12 November 2015

[The Convener opened the meeting at 09:32]

Interests

The Convener (Stewart Stevenson): I welcome members and our visitors to the 18th meeting in 2015 of the Standards, Procedures and Public Appointments Committee. As usual, I remind everyone present to switch off mobile phones because they affect the broadcasting system.

We have received apologies from Dave Thompson, who cannot be with us.

Item 1 is for Fiona McLeod to declare any relevant interests. I welcome Fiona back to the committee, on which she has previously served. Fiona joins us to replace George Adam. I would like to place on record my thanks to George for his work on the committee.

I invite Fiona to declare any relevant interests.

Fiona McLeod (Strathkelvin and Bearsden) (SNP): Thank you, convener. I have no relevant interests to declare.

Decisions on Taking Business in Private

09:33

The Convener: Item 2 is to decide whether to take items 5 and 6 in private. Item 5 is for members to consider the evidence that was heard at the round table on the Lobbying (Scotland) Bill, which we are about to commence, and item 6 is for members to consider correspondence that has been received from the Presiding Officer.

Do members agree to take those items in private?

Members *indicated agreement.*

The Convener: Item 3 is to decide whether to take the following in private at future meetings: first, consideration of evidence heard, issues papers and a draft stage 1 report on the Lobbying (Scotland) Bill; secondly, changes to the "Code of Conduct for Members of the Scottish Parliament" relating to cross-party groups; and thirdly, code of conduct changes, and changes to the written statement forms, relating to the Interests of Members of the Scottish Parliament (Amendment) Bill.

Do members agree to take those items in private at future meetings?

Members *indicated agreement.*

Lobbying

09:34

The Convener: We come now to the main substance of today's meeting. Item 4 is for the committee to take evidence at stage 1 on the Lobbying (Scotland) Bill. We are operating the session in round-table format, so I will say how I would like us to try to play the session to get the best out of it. As convener, I will try to use as light a touch as possible—I am perfectly content for people to interact with each other over the table. However, let us try to remember that this works best if only one person speaks at a time. I will intervene to ensure that that happens.

I expect that we will hear a number of statements, assertions and claims from people, as is perfectly proper. I hope that, when they do that, people explain to us why they make those statements and claims. If any of us feels that that is not happening, we might invite the person making the claim to do so.

I give this as an example—this is not to single anyone out for any particular reason, but it is simply because I have before me a paper that the Electoral Reform Society has provided us with in relation to the Lobbying (Scotland) Bill. It refers to

"The old way of doing representative democracy ... as being in a 'malaise.'"

That is fair enough, and we might instinctively feel that we could agree with that to some extent, but if we were to say something of that character at this meeting, I would expect to hear some expression of where that has come from. It is perfectly legitimate for such expression to come from the experience of the individual who says it, and for them to explain why they have said it—that is okay—but knowing where something has come from will help us to weigh in the balance what might be conflicting things.

That was a slightly long preamble. With us today are Professor Raj Chari from the department of political science at Trinity College Dublin; Dr William Dinan from Spinwatch; John Downie from the Scottish Council for Voluntary Organisations; Peter Duncan, who I think I can fairly say is representing lobbyists—or who is, at least, a lobbyist in his own right, if not representing them; Neil Findlay, who perhaps set the Parliament on this course some considerable time ago; Steve Goodrich from Transparency International; Steve Maughan, head of campaigns at the Confederation of British Industry—

Richard Maughan (Confederation of British Industry): It is Richard Maughan.

The Convener: I beg your pardon. You are quite correct. It is quite encouraging to be reassured that at least you know who you are.

We also have Andy Myles, who is a well-kent face in these corridors, from Scottish Environment LINK; and Willie Sullivan from the Electoral Reform Society.

We have a number of themes around which we are going to try and structure our inquiry and round-table discussion today, but it is not an exclusive list; if other themes emerge, let us go there. I will share the headings that we have. The first is "Striking the balance", which is about finding out whether the bill strikes the right balance between not making things so burdensome as to discourage small organisations, in particular, from engaging with Parliament and seeking to persuade us to adopt a particular point of view, and capturing enough information to genuinely help the general public and the third sector to see what is actually going on.

The second heading is "Definitions and Exclusions". In the bill, have we captured what lobbying actually is and how it works?

The third heading is "Thresholds or triggers". Do we capture things? Do we leave out some things?

The next two headings ask what is in the register and how the compliance regime works. The last heading, which I suspect may not exercise us too much in this forum, is on whether the bill will give Parliament enough flexibility to change, for example, the contents of the register and the way in which things work. As we learn from experience of using the register, we may find that we need to refine it. Do we have sufficient powers in that regard? I suspect that that may be for all parliamentarians to consider, rather than this particular group.

Having said all that, I am minded to let this discussion last for approximately an hour—although we will not cut you off mid-sentence. Who wants to start? We have not pre-arranged anything.

Andy Myles (Scottish Environment LINK): I speak as "a well-kent face". Perhaps I should say several well-kent faces, as I have been here in different roles. As a former special adviser to Government ministers, I can say that I have been a lobbyist and I have been lobbied in this building, so I can see the issue from both points of view. I do not know whether that makes me a gamekeeper or a poacher—probably a bit of both.

The first thing that I will say on behalf of Scottish Environment LINK is that we still think that there are blind spots in the bill. If I am doing an advocacy training course for our members, one of the first lessons is to sort out what their message

is. What are they trying to lobby for? Secondly, they need to sort out who their target is. Who is going to be making the decision? Whom do they need to talk to? That will often not be an MSP, but a civil servant or special adviser, who will be covered by the "Civil Service Code", which is not mentioned in the policy memorandum or anywhere else. It is as though, when the word "Government" is used, it means only Government ministers, but I beg you to remember that a vast number of decisions are not made by ministers; it would be humanly impossible for ministers to make all the decisions that the Government makes.

There are in the bill blind spots of which I am peculiarly aware with regard to special advisers, for example. On the other side, there is the question of striking a balance in requiring that onerous information be provided, and other such questions.

The first thing that I will say on behalf of the environmental organisations that are members of LINK is that we are completely committed to transparency and openness. We publish our briefings to MSPs and our letters to ministers on our website. We completely understand the need for openness.

However, I am representing civic organisations; I am not representing commercial interests. None of my members is lobbying for commercial interests: they will not gain from lobbying. They are already regulated as charities and so are in a particular position. Will the bill be onerous for my members? They are not commercial lobbyists, but civic organisations, so the answer is that I fear that it might be onerous. I could be—I hope that I will be—reassured by the committee and I hope to hear some reassurance from the Government. However, my fear is that the bill is not taking a proportionate approach to charitable and civic organisations.

The reason why I say that is simple. A LINK member such as RSPB Scotland has paid staff. I was RSPB's head of advocacy and media for eight years and I told all the staff, "Every one of you is a lobbyist: every one of you has a duty to talk to MSPs and to journalists." No member of RSPB staff who is supposed to be protecting birds should think that that can be done that without talking to MSPs. Would all those paid staff in that organisation need to be registered as lobbyists?

Of course, the paid staff are not the only people to consider. RSPB Scotlan also has volunteers who might represent the organisation when talking to MSPs. Furthermore, RSPB representatives could be on an Environment LINK task force and could lobby on behalf of LINK—my organisation. However, they would not be paid by LINK, but by their own organisation. Would they be paid lobbyists or unpaid lobbyists? Would they have to have an active or an inactive registration? That question has been weighing on my mind since I read the policy memorandum in particular.

There are other issues that will perhaps come out during the course of the discussion, but to start with I just say that there are blind spots in the bill and there are some real questions to be answered for civic organisations. My fear is that the complexity of the registration process may have the same effect as the Westminster act—the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014—which undoubtedly has had the effect in civic society of making people shy away from the participation that is recognised by this committee and this Parliament and is a valuable and important part of Scottish political life.

09:45

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): You mentioned that there are blind spots in the bill and that special advisers are possibly in that category. Do you have other people in mind? The Electoral Reform Society's briefing paper—which I have not the chance to read properly because we got it only this morning—suggests senior civil servants as an example. Are they the kind of people you are thinking of?

Andy Myles: We mentioned senior civil servants in our earlier written submissions on lobbying. I have mentioned special advisers. I would add to those categories—if we did not mention them—senior officials inside Government agencies. Frequently, I might advise a LINK member not to bother a member of the Rural Affairs, Climate Change and Environment Committee with an issue, but instead to speak to a particular official in Scottish Natural Heritage or the Scottish Environment Protection Agency.

Peter Duncan (Association of Professional Political Consultants): I accept much of what Andy Myles has said.

I was introduced as representing the lobbyists. I will push back slightly and say that, around this table, we are probably all lobbyists. I recall making the point last year that we are all part of the same game, in that we are all looking to put forward a point of view; MSPs, for example, will put forward points of view to one another in their group meetings. I say—with respect to what Andy Myles has said—that voluntary groups and charities also seek to put forward points of view, which are as valid as points of view that people have paid to have put forward.

Andy Myles: They certainly are.

Peter Duncan: In answer to the convener's initial question about whether the bill strikes a balance, the APPC takes the view that it does. We started from a position of not seeing an overwhelming public case for legislation in this area; there is not an overwhelming public problem, but we accept that the case has been made. If there is to be legislation, what the bill proposes is a decent and balanced starting point.

Like Andy Myles, however, I think that there are some illogical exclusions. For example, it does not make sense to say that, just because a meeting has been initiated by an MSP that makes it different from a meeting that has been initiated by someone else. I concur with the view that it would be logical for senior civil servants and special advisers to be included.

If there is to be legislation, it needs to be sustainable and sensible. If it is not, an overwhelming public demand will be created. We did not think that there was a problem to address, but given that we are going to address it, let us get it right and let us not create a problem that was not there in the first place.

The Convener: A number of people have caught my eye: currently, I have on my list Willie Sullivan, Neil Findlay, Steve Goodrich and John Downie. I will take Willie Sullivan first.

Willie Sullivan (Electoral Reform Society Scotland): I want to begin by addressing the idea of proportionality. Someone described the bill as being a sledgehammer to crack a nut, so I think that we should have a look at the size and strength of the nut.

In his introduction, the convener mentioned the concept of democratic "malaise". That is not the ERS's concept; it is one that is well known in political science, and which is being discussed as a big problem: I have provided election turnout figures. I did some focus groups with Ipsos MORI last year. All sorts of studies—*The Economist*'s democracy index is just one—say that there is a real problem with people's view of representative democracy and their trust in it. On the other side, we have the rise of populism, which is a reaction to that. What people say in surveys is that they feel that the influence of big wealthy and powerful interests can often trump the power of the voter. That concept is called political inequality. Whether or not it is true, it is people's perception, and that is a real worry.

David Runciman, who is a political science professor at Cambridge, published a book last year called "The Confidence Trap: A History of Democracy in Crisis from World War I to the Present". His premise is that democracy is very flexible and takes a lot of hits, but might at some point stop doing that, which is a trap that we might fall into. We cannot just rely on democracy to sort itself out all the time—we have to do something about it.

Transparency is vital to that: people must be able to see who is talking to whom and in whose interests. That is the nut that we are trying to crack, so the sledgehammer needs to be pretty big. I do not think that the bill gives us enough transparency.

The key point is what will trigger registration. Would it be just a face-to-face meeting, or would it include email exchanges and other forms of digital communication, which we know are important in this day and age? It is quite possible to include that aspect in the bill. A person would not necessarily have to record every single email or every other form of electronic communication over the period; the important point concerns the persons who are to be lobbied. If we can define clearly who those people are—we suggest politicians, senior civil servants and spads—any contact with them in any way over the period might go in the register. It does not matter whether that includes 10 emails or one email as long as the person is recorded. The number of face-to-face meetings should be recorded. If there are five face-to-face meetings, or one meeting, that should be recorded on the day. With regard to electronic communications, if it would be too onerous to record every single email, just the fact that contact was made with the person in question could be recorded and that would be enough.

The Convener: I think that it is fair to say, in looking at how we might extend the bill, that we would probably be more concerned if the number of registrations had to rise, because that could get out of hand in terms of being able to run the register. I do not think that committee has yet persuaded itself that it would be an issue if the amount of information that needs to be put in the lobbying register for an individual registrant rose, as it would do if we included a wide range of communication.

Willie Sullivan: Okay.

The Convener: I say that just to give you a little context in respect of our current thinking. We will come back to you—people are not getting just one shot at speaking. Neil Findlay will now come in.

Neil Findlay (Lothian) (Lab): Thank you for the invitation to come along today, convener. From the outset, it has been clear—and I made it clear in introducing my member's bill on the subject—that lobbying is a very important part of the democratic process, and nobody would suggest otherwise. It informs Parliament and our debates, and I find it very helpful in the work that I do.

There is no evidence of wrongdoing—that is not to suggest that there might not be wrongdoing, but

there is no evidence of it. However, the whole thrust of Government over the past while has been related to preventative action, such as preventative spend, and I see a lobbying bill as a preventative measure.

We have—I hope—ensured that there is no scandal in our Parliament, and I want it to remain that way. As more powers come to this Parliament, there will be more lobbying; that is inevitable. Before the Parliament was here, there was almost no lobbying going on in Scotland. As powers have increased, the line on the graph has gone up significantly and will continue to do so. A lobbying bill should be a preventative measure that we put in place to prevent any scandal or wrongdoing emerging. That is the whole purpose behind it.

I actually think that the bill before us is a bit of a travesty of the bill that I introduced. Much of it bears little resemblance to what the Government agreed to take on. There are some glaring examples. The bill appears to be based in the 18th and 19th centuries, with no acknowledgment that the telephone and computer have been invented and that we have conference calls and the like. There is a whole range of modern communications other than people turning up in top hat and tails to speak to one another face to face over tea and crumpets. We have moved on significantly since that was the way in which people lobbied politicians, and the bill must recognise that. At present, it very much does not.

I fear that we might be in the process of releasing another shoal of red herrings with the talk of how hellishly onerous the register is going to be. I am sure that people find it a grind to fill in their expenses form every month, but they manage it, and the proposals are not much more than that. We have seen how other countries operate a register and what information needs to be put on it. Most of the information will already be populated. People will not need to put in their address and company number every month because those will already be on the form; they will simply have to fill in the detail.

Andy Myles said that the bill would stop people in the voluntary sector participating and would be hellishly onerous for them. He said that everyone in the charitable sector is there to do good. In their opinion, they are there to do good but, in other people's opinion, they are not necessarily there to do good. For example, in the debate over same-sex marriage, on one side of the argument we had charitable organisations saying, "We are doing good and promoting same-sex marriage," and on the other side people were saying, "We are doing good and opposing same-sex marriage." It is not as simple as saying that the voluntary sector is a force for good because it is a force for good in the eyes of the person who looks at it. Therefore, it is essential that voluntary organisations, trade unions and others are covered by the bill.

The Convener: It might be worth saying that, from the informal discussions that the committee has had, it seems that the bill is unlikely to survive in its present form in applying only to oral communications. We have not come to a formal position on that, so that does not carry the weight of our having made a decision, but I hope that that will be the case. I think that the Government has already had a warning on that and is aware of it. We will see where that takes us.

Steve Goodrich (Transparency International UK): I will give a quick bit of context by setting out my background. Transparency International is a global charity of more than 100 chapters and 20 years' experience of fighting corruption. I am a gamekeeper turned poacher, because I used to work at the Electoral Commission as a senior policy adviser, so I have significant experience in dealing with similar types of regulation and engaging with Scottish charities and organisations throughout the United Kingdom on things such as regulatory burdens and the scope of legislation. I hope that I have some expertise to bring to bear here.

Fundamentally, Transparency International thinks that lobbying and transparency are key pillars of the democratic process, as has been said. We need people to engage with MSPs and ministers but also civil servants to bring to bear expertise from civil society and business to ensure that the laws that are passed are fit for purpose and work well in practice. Similarly, it is essential that the transparency relates to not only that kind of activity but the way in which our policies work. That is why members have to declare their pecuniary interests, why ministers make public their diaries and why a whole load of things, including the minutes of this meeting, are made public. Therefore, we are not asking for something new; we are asking for something that complements the arrangements that are already in place.

Why are we doing this? What is the issue that we are trying to solve? There are at least three parts to that, and they are not necessarily just to do with scandal.

The first part is about making politics accountable. That is not just about accountability for those who make the decisions; it is about accountability for those who are engaged in lobbying practices. It is a two-way street and it takes two to tango. It is a question of citizens being able to hold representatives, public officials and lobbyists to account.

Secondly, the aim is not only to identify instances of corruption but to reduce the likelihood of it. Sunlight is the best disinfectant for that kind of thing. If there is more transparency about how our politics work, there will be less opportunity for corrupt incidents to happen. Last year, we did a piece of research that identified that proactively disclosing information not only helps to detect and deter corruption but can help to widen understanding about how the democratic process works.

Thirdly, the bill is about ensuring that there is equal access to participation. For example, if a business is lobbying a certain individual, without a register charities or other organisations that have a different point of view might not realise that they have not had an opportunity to make their voices heard.

A more comprehensive register could provide those three public goods, so it is not just about tackling corruption.

10:00

It is good that the definition includes interactions with MSPs within the scope. As you know, the United Kingdom register does not include interactions with MPs. It is also good to see that the Scottish Government and the Scottish Parliament have realised that there is a need to include in-house lobbyists. Recent research that we did shows that the UK register covers only a fraction of those who engage with public bodies and institutions. I want to echo what has been said about the need to cover civil servants and special advisers and a wider range of communications, such as telephone conversations and emails.

On the issue of regulatory burdens, as a lobbyist I can say that we are becoming increasingly adept at recording our interactions with public officials. To be an intelligent lobbyist, you need to know who you have spoken to and what you have said to them. That is why things like contact management systems exist. We are a relatively small charity, but we are able to do that. I want to hear from others today what the issues realistically are.

It is important to think about how you can mitigate the regulatory burdens so that you do not place unreasonable burdens on people. You can introduce thresholds, so that people have to register only if they spend over a certain amount on lobbying. That kind of measure has been applied in other circumstances, such as election campaigns. Although there are some problems with it, it has certainly worked to reduce undue regulatory burdens on campaigners.

Mary Fee (West Scotland) (Lab): It might be just the way that my mind works, but do you think that introducing a threshold might create a loophole that would enable people who are clever about what they do and how they do it to stay under the radar?

Steve Goodrich: There is a potential for that; it depends on how the provisions are drafted.

From my time working on thresholds for campaigning at elections, I know that there were certain anti-evasion measures that stopped people from working together as a unit in a way that would evade the thresholds. Those measures worked relatively well. They applied during the Scottish independence referendum, and my former colleagues who worked on that did quite a good job of engaging with people and getting them to understand how those provisions work.

You need to be mindful of the fact that there will always be people who try to evade regulatory burdens, so the devil is in the detail. However, in principle, a threshold is something that is worth considering.

The Convener: When I have reached the end of the names of the people on my list, it will mean that all of our witnesses will have contributed in a structured way. We can make our discussion less structured once we have heard people's initial comments. The next person on the list is John Downie. Andy Myles is the first person to bid to come back in, so I will take him at the end of the list, unless he really wants to come back in the middle. Andy, do you want to immediately respond to something that has been said?

Andy Myles: I have a couple of points that I want to make, but I can do so later.

John Downie (Scottish Council for Voluntary Organisations): It is interesting to listen to different perspectives.

At the moment, SCVO is considering this issue in the context of the war on charities that is being driven by the UK Government. The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 is part of that, as were the attacks on Oxfam and other large charities last year and the fundraising review by the UK Government in the summer.

Frankly, large UK charities are running scared of campaigning at all. If I were a conspiracy theorist, I would say that it was all about £12 billion-worth of welfare cuts coming down the line and the UK Government wanting to mute the sector and stop it speaking up and campaigning about the cuts. I say that not because we are opposed to the register but because it is important to see it in context.

We have done some research that we are about to publish, and which we will no doubt submit to the committee, about the impact of the 2014 act

on our members. It might be a question of perception, but they are concerned about that legislation and how it affects them. It is important to bear that in mind.

Our view has always been that the burden of transparency in relation to lobbying should be on those who are being lobbied. We have talked about MSPs and, in our submission, we say that spads and senior civil servants to a certain level—certainly those at a deputy director level, but you could consider how far down you would want to go—should be covered by the provisions.

For us, it is a question of proportionality. An organisation such as SCVO can cope with the approach—as Andy Myles said in relation to LINK, we are not worried about ourselves. Last night I had a conversation with the director of quite a large Scottish charity, which is part of a UK organisation, and I said to him that he could live with what is proposed, even if email communication was included. His response was, "Well, why should we?"

We have to find a balance, because some of our members want a stronger bill and a lot are totally opposed to that. We believe that the third sector should be included, because we are one of the strongest lobbies in Scotland—that should not be forgotten; we might not be quite as good as higher education sometimes, but we are certainly up there.

For us, the issue has always been about the core principles of what we are trying to achieve. What is the solution? What are we trying to do? How do we make the approach proportionate? I do not agree with Willie Sullivan about there being a democratic malaise, but trust is important, especially for the third sector and its engagement with Government.

Andy Myles was right to say that a lot of lobbying is directed at not just MSPs and committees but officials. I will give the committee a good example. I think that it was on 2 July that we ran a whole day on potential new employability and social security powers, which was attended by 35 grass-roots members, about 10 medium-sized organisations and probably 15 or 16 officials. It was a working day to help people to understand the complexities of the new powers. The "Creating A Fairer Scotland: Social Security—The story so far ... and the next steps" document on welfare powers, which the Cabinet Secretary for Social Justice, Communities and Pensioners' Rights published the other week, included a table from that meeting, which set out the principles for a social security system for Scotland.

We could probably say that that was a lobbying success, but the point that relates to the bill is that I would not want the 35 grass-roots organisations who attended the meeting to have to register if they do not generally engage with MSPs. We should be able to do that on their behalf, because it was an SCVO-convened meeting—a bit like the meetings at which Andy Myles brings together a group of LINK members.

At that meeting, we worked with officials on how to do things better in Scotland, as Andy Myles does in his meetings. A lot of that type of engagement involves intermediaries and membership organisations bringing members together to talk to cabinet secretaries, the First Minister or officials. We convene and facilitate such meetings to ensure that there is engagement.

In the case that I am talking about, we wrote to all those grass-roots organisations to tell them that the day that they had spent with officials had not been wasted. I do not want the burden of any lobbying register to fall on such organisations; I would be happier if it fell on us. We need to think about how we manage that type of situation under the bill.

In general, what is proposed in the bill strikes a balance, although we will have to get to grips with some points about communication and who comes under the bill's scope.

As we and many of our members have always said, the issue of MSPs' diaries—or public engagements—must be addressed, because transparency must work both ways and we want more transparency from the people who are being lobbied. I know that I am repeating myself, but the committee needs to think seriously about strengthening that aspect of the bill.

The Convener: Willie Sullivan has signalled that he wants to come back on something that you said. It is proper to bring him in, because he is an objective observer of what goes on.

Willie Sullivan: I want to say something about the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014. People can decide for themselves whether they think that the Government deliberately linked issues to cause confusion and fear, but the third sector is genuinely concerned about the 2014 act's provisions on third-party campaigning in general elections—or any elections. Steve Goodrich might want to say something about that. Some people have suggested that the provisions were deliberately included with the bit about controlling a register of lobbying to cause confusion and to get the provisions through.

There needs to be clarity about what the third sector is concerned about. Is it concerned about the controls on third-party campaigning, or does it want there to be no duty or responsibility in the

lobbying part of the act? I do not know what Steve Goodrich thinks about that.

Steve Goodrich: There was certainly a lot of confusion among campaigners. I tried to get people to differentiate in their minds between lobbying—that is, trying to influence public officials and politicians—and trying to influence the electorate. The two are fundamentally different things and they relate to two different audiences, but it was extremely difficult to get people to understand that, because the Government put them together in the bill.

The pace at which the legislation was rushed through Parliament was also very unfortunate and it led to a large amount of confusion. It was extremely challenging when we tried, in the run-up to the bill hitting the Houses of Parliament, to engage campaigners, who had not really dealt with the non-party campaigner aspect—the electioneering aspect—at all. It was probably the first time that they had heard about the provision, so it was very challenging.

Luckily, in the Scottish Parliament, I think that this is the third time that there has been pre-legislative scrutiny of this part of the Lobbying (Scotland) Bill, which is novel considering that there was almost none for some aspects of the Westminster bill. I think that there has been enough time to discuss, debate and understand the difference. I certainly think that the confusion caused by the UK Government appeared to be intentional.

The Convener: At the risk of stating the obvious, I say that it is of value for us to know what is going on in relation to the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 down south, but I suspect that you should not look to this committee's activities to remedy the perceived defects in that act, because you may be disappointed.

Andy Myles wants to comment. Is it a narrow point on this specific issue? I want to bring in others who have not yet spoken.

Andy Myles: It is a very narrow point about the Westminster act. In my mind, there is a clear distinction between the fears at Westminster about non-party-political campaigners intervening in elections and the day-to-day lobbying that I do all the time and should be registered for if there is a register. I say to Neil Findlay that I am quite happy to register for that.

The fact is that a lot of the 2014 act was driven by some fear that American habits of non-party-political organisations campaigning against candidates at elections would come about. I am fairly sure from the committee's discussions that you will not allow yourselves to be distracted by that shimmerra—or however you pronounce "chimera".

The Convener: It is pronounced shim-erra.

Andy Myles: So it is shim-erra—or kye-merra.

The Convener: No, it is shim-erra.

Andy Myles: I hope that we will not be distracted by the issue of non-party campaigning. There are lessons to learn from the 2014 act, because it impacts on the civic sector, but that is not about the business of non-party campaigning.

The Convener: The business of political action committees—PACs—and super PACs looks fascinating, but I cannot afford to spend too much time on it.

Richard Maughan: The Confederation of British Industry is an employers organisation that speaks for businesses, including sectors and trade associations across the UK and—of course—in Scotland, where our members cover about half a million employees, which is about a quarter of the private sector workforce.

Our starting point on the issue is—as I am sure it is for most committee members—that lobbying is an essential part of the political process that contributes to better public policy outcomes. We also think that it should be conducted openly and transparently. Transparency is a good thing, but one of the key issues is that transparency is not a settled term and it probably means different things to different people in the room. We have to find a shared framework for looking at any new regulation that might be brought forward on the subject.

We approach the issue from a regulatory affairs standpoint. We look at it from our members' perspective in considering the costs and burdens that might be imposed. We are looking at how the proposals might work in practice and at what might be realistic and proportionate. The bill as drafted seems to strike a decent balance when it comes to proportionality.

We have looked at the proposals and at the bill over the summer and before that. From the regulatory affairs standpoint, we are not sure that the bill quite meets the Scottish Government's principles of better regulation. There is a lack of evidence that a problem exists. I appreciate that the proposals are a preventative measure, but we also have to appreciate that they impose costs from the time spent dealing with the register. That might seem incidental but, when we look across all those that will be affected, the cumulative impact will be large.

10:15

There is also an opportunity cost as a result of organisations not doing certain things because they need to focus on the proposals. Moreover, anything that includes criminal sanctions—as the bill does—has a legal dimension, with legal fees and costs that organisations will need to bear. Costs might differ according to the types of organisations that might be affected, but we cannot put that issue aside.

The Government has sought to strike the right balance in the bill, and we welcome some of the things that it covers and which were proposed in the summer. For example, we welcome the focus on organisations instead of individuals, which makes more sense, and on face-to-face contact. We need to think about what a proportionate system would look like, and this provides an effective starting point. We also welcome the fact that financial information will not be included, which would have opened up a tranche of other considerations for organisations and added to the regulatory burden.

However, I will throw a couple of practical questions into the mix. How will we deal with, say, the incidental contacts that members of staff might have with politicians? What if during the kind of site visit that MSPs make regularly in their constituencies—for example, to a supermarket—an MSP had a conversation with a member of staff on the shop floor? I am sure that capturing that kind of interaction is not the bill's intention, but how do we deal with it? Moreover, what about the sensitive commercial information that is discussed at meetings with ministers or MSPs? We need to ensure that any information that is recorded is at the right level.

To come back to criminal sanctions, I appreciate that the explanatory notes set out a phased process for dealing with minor infractions rather than more serious, deliberate infractions but, as the bill goes through the parliamentary process, it must be made clear that we do not want criminal sanctions for someone getting something wrong on a form.

Does the bill strike the right balance? In the circumstances, we would probably say yes, but we would consistently question the evidence base for having the legislation.

The Convener: I know that Steve Goodrich wants to respond to your comments but, before I let him in, I want to tease you slightly. Like several hundred organisations that are registered under the companies acts, the CBI operates under royal charter rather than the articles of association that other companies operate under. Where has the CBI's royal charter been published? I cannot find it.

Richard Maughan: I believe that the royal charter is available on our website.

The Convener: Neither I nor the parliamentary researchers in the Scottish Parliament information centre can find it.

Richard Maughan: I am happy to write to you on that following this meeting.

The Convener: I am gently teasing you, but I think that that illustrates the more general point that there appears to be no statutory requirement at all for companies that are registered with an RC code to provide that sort of thing. I am pretty confident that many of them, either by neglect or—perhaps—by design, simply do not have it available. I would be happy to receive that information outwith the meeting.

I believe that Steve Goodrich wishes to come back on a specific point.

Steve Goodrich: I point out that criminal sanctions are available only for instances of non-compliance. To go back to my former stamping ground, I know that the Electoral Commission has a range of sanctions available, which are used as a last resort. When I was there, everything had to be what we called front loaded in advice and guidance to ensure that people had the knowledge and skills to comply with the rules. It was then a case of having on-going discussions with campaigners to ensure that they were able to comply. If they did not do so, whether that was because of—dare I say it—consistent incompetence, wilful negligence or evasion, the commission could use a range of civil sanctions, such as a range of fines that could be increased or decreased according to the type of non-compliance.

If there are only criminal sanctions, the danger is that there will be persistent non-compliance with, for example, reporting requirements that it might not be in the public interest to pursue via criminal prosecution, and there will be no other means of redress or deterring future non-compliance. That would result in an enforcement gap whereby there is non-compliance but no means of getting people to start to comply.

The Convener: We need to discuss compliance, which is one of the headings in our papers. However, I am trying to get through everybody, and you are opening up a new topic. I have made a note to come back to the issue a bit later, because I really want to hear from William Dinan and Raj Chari.

Dr William Dinan (Spinwatch and ALTER EU): A broad observation on the contributions so far is that there is quite a lot of consistency and consensus on some of the flaws of the bill as it is drafted. I completely echo the concern that the

bill's drafting suggests that senior civil servants and special advisers are excluded, which does not make any sense. It flies in the face of the evidence that the committee has taken, in which people have been open about their lobbying strategies and tactics and have said that those are not all focused on MSPs. That is no shock to members, but it is surprising that the bill wants to focus just on MSPs and ministers.

The exclusion of electronic communication, including emails, does not make sense. To be frank, that is ludicrous. Email is among the easier things that people have access to. There is little compliance burden in having to disclose the fact of an email contact but not necessarily the content. That is one thing that puzzles me about the bill.

I have two broad observations on the bill. First, it almost stands in isolation from freedom of information and other transparency measures. Implementing the bill will cost a lot of money, and there is almost inefficiency in not thinking about things. Let us imagine that a journalist starts to trawl with FOI requests when a contact is disclosed. If we know that there has been communication, they do not have to waste civil servants' time by going through a list of FOI requests before they get to yet another round of FOI requests to force the information into the public domain. It is much easier to have the fact of the communication already in a register. People can then make a more informed judgment about whether that is worth pursuing or whether more transparency is needed.

Another broad observation is that there is a bit of a tension in the bill between the trigger for registration being whether people are paid to lobby and the rest of the bill being completely silent about the question and magnitude of payment. We probably differ from the CBI a bit on that. In a lot of the more mature and transparent disclosure systems, it has been recognised that the issue of payment cannot be fudged. Some kind of financial disclosure is wanted. That seems to have been off the table for quite a long time in our discussions, but the bill almost recognises that a tension is there.

The metric that would probably be meaningful for the public, when looking in on the whole influence game in politics, involves the amount of resources that are devoted to influencing decision making, but we get no sense of that with the current proposals. As a push-back on the matter, the public may be slightly dismayed by that. How much extra transparency will the bill bring to the process for the public who are not following the detail of activity at Holyrood? I am a bit concerned about that.

My final point is about whether such regulation will put people off interacting with the political system. That claim has been made repeatedly in the evidence at meetings and in submissions. I understand the concern that is behind that, but I go back to the research that I did a long time ago, when the issue was first debated in Holyrood in 2001. We contacted people who ran registers in North America and they said quite the reverse. The fact that there are registers begins to explain the system to people a bit more, and they understand how they can interact. It is possible to create a more ambitious register that, with proper guidance, can inform people about where the responsibilities lie.

The example in Ireland is quite striking. Obviously, Raj Chari can tell members more about that. The register there is much more comprehensive, but the guidance is incredibly simple. I looked at that recently. It is easy for a member of the public or someone who is involved in a charity that does not campaign a lot to see where they have to register and what they have to disclose.

The Convener: There is one person who has not yet spoken. We are on the brink of getting more interactive, but I want to hear from Raj Chari, although that will worry John Downie, because Raj is an academic. [*Laughter*.]

John Downie: I was thinking about Scotland.

The Convener: And Raj Chari is from Dublin.

Professor Raj Chari (Trinity College Dublin): I am from Dublin, so that is fine.

Good comments have been made already and I do not want to go over them, but it might be good to put them in an international comparative context. Our research group works on and examines lobbying laws in countries throughout the world. I am Canadian but, as William Dinan correctly said, I was involved with the Irish legislation. I am proud to say that I think that it is very comprehensive.

As I see it, there are some good things about the bill. It is easy to criticise it, but it is also important to say what is good about it. The fact that the bill explicitly says that individuals who are lobbying and not being paid do not have to register is a very good thing. That happens and was a reason why the UK for years did not have a lobbying law, after the Nolan committee report. I am glad that that is addressed explicitly.

In contrast to the UK legislation, the bill includes in-house lobbyists, as everyone knows—

The Convener: Forgive me for interrupting, but you said that it is a good thing that people who are not paid are excluded. Would you like to explain that? I could explain it, but I would like to hear your explanation.

Professor Chari: I really meant to say that, if individual constituents want to talk to their MSPs, they will not have to register. I am sorry if I was not clear on that. That was the only thing that I was trying to say.

The Convener: That is helpful.

Professor Chari: The fact that the information will be available free online for public consumption is good. It relates to William Dinan's point that the whole reason for having the information is to foster transparency and accountability, although I wish that the words "online" and "free" were explicitly in the bill—they are in the policy memorandum but not the bill.

When it comes to capturing oral and in-person communication as regulated lobbying, I have to admit that when I saw that in the bill I thought that I had never seen that in any other bill that we have looked at. I find it striking that the bill does not include telephone calls and, more important, written communications. I had never seen such wording before. It pains me to say that even the UK recognises that lobbying takes place by way of written communication.

Civil servants are not included, either. A model to look at might come from what Ireland and Canada have done by using the term "designated public office holder", which would include the people Andy Myles mentioned, such as advisers and high-level senior civil servants. That might be something to consider.

To go beyond the conversation that we have had about registering, I find the bill a little inconsistent with point h) of recommendation 9 in the committee's report from February 2015 on its lobbying inquiry, because it says that a lobbyist has to state simply

"the purpose of the lobbying."

That is vague; it does not get to the spirit of giving details of what is being lobbied about, who is being lobbied and exactly what the lobbyist's intended outcome is. Under the Irish legislation, when a lobbyist is registering they have to include the subject matter, the name of the bill to be influenced—if there is a bill—and the results that the lobbyist intends to secure.

A point that we have not yet touched on concerns cooling-off or revolving-door provisions, which are found in the legislation of a lot of countries. Given the number of countries that have such provisions, it is remarkable that they are absent from the bill. They relate to the idea that a public actor has to cool off and cannot go straight into the world of lobbying without a delay. That creates a level playing field and avoids the use of insider information, which someone might have if they worked as a lobbyist right after leaving government.

I know that Richard Maughan has some issues on financial disclosure and is thankful that that is not included in the bill. The other perspective is to ask why it is not included. The joint transparency register for the European Union includes some forms of financial disclosure—[*Interruption*]—well, it does for in-house corporates. The legislation on that is not considered to be particularly robust on transparency and accountability.

It is unclear why those elements are absent from the bill. It would not necessarily be easy for lobbyists to spend the time on that but, if the end objective is accountability and in particular transparency, Scottish citizens might want to see that information.

My final point is on the exemption whereby, if a minister calls a lobbyist in, the lobbyist does not have to register. That is going down the wrong path. The Canadian legislation is a good example here. In its first iteration in the late 1980s and 1990s, the Canadian legislation provided that, if a minister called a lobbyist in, the person did not have to register as a lobbyist. That was a big loophole. The Canadian Government realised that it was a loophole and as a result amended the legislation later. My advice would be not to start with something that will probably go bad. You can learn from other jurisdictions and start with something that will not need to be amended.

10:30

The Convener: A number of people want to speak. Because I cut him off earlier, I go back to Richard Maughan, who had a very specific early point that he wanted to raise, followed by Peter Duncan, Andy Myles and John Downie. That may not be the complete picture.

Richard Maughan: Thank you, convener. I wanted to come back on the point about financial disclosure. There are two questions here—one is about the desired outcome and the other is about practicality. Those things are not simple and, once one scratches the surface of an issue such as financial disclosure, a number of other questions are thrown up.

There is a practical issue of what financial information is included. When it comes to factoring in overheads and salaries, a much more complex picture is painted. That adds to the compliance burden. There is a question about the commercial sensitivity of information such as fees paid for consultancy services and the like, or salaries paid to members of staff.

There is a risk that, while on the face of it financial information might seem a good thing, it

can be a blunt instrument and it is not clear what we learn from it. It does not reveal anything about the quality of the lobbying or the influence that is achieved. There are different costs for a large business compared to a charity. Not all lobbying is equal.

On the international comparison, it would be a stretch to say that the European transparency register and registers in Washington DC and the United States are perfect when it comes to financial disclosure. Big assumptions are made, and we should not hold them up as examples to follow.

The Convener: I see that Neil Findlay wants to speak.

Neil Findlay: It is on that point.

The Convener: Come on, then.

Neil Findlay: When I did the consultation, we listened to those arguments on financial disclosure. People are interested in the scale of the lobbying operation. They are interested in whether a lobbyist spends a fiver or £500,000.

We were aware that people had raised the issue of commercial sensitivity and that was why we introduced a banding to allow the return to indicate that the financial element was between two figures. The exact figure would not need to be given—concern about that is understandable when firms are bidding for contracts—but there would be an idea of the scale.

That is the way to get over the issue. Giving the financial information is key, because it reveals the extent of the lobbying.

Willie Sullivan: May I say something on that?

The Convener: I will take a slight pause, because I recognise that my committee colleagues have been comparatively silent—that is unusual for politicians, but there we are—and I want to make sure that I am not missing anyone who wants to come in. Patricia Ferguson does—or perhaps not. I beg your pardon.

Patricia Ferguson: I was just listening intently.

The Convener: I saw what was merely a passing expression.

Does Willie Sullivan want to speak directly on this point? Peter Duncan is becoming quite impatient, so I will definitely come to him next.

Willie Sullivan: The Political Parties, Elections and Referendums Act 2000 is a good example of how financial information on such activities can be measured. I have been a responsible person under that act, and I know that it is sometimes difficult to allocate office space and staff time. However, if you asked the public what they would want to know about the level of activity, they would want to know how much was spent on it.

The Convener: Does that tell you anything about the activity?

John Downie: No.

Willie Sullivan: I think that it does. It tells you how important it is to the people who are lobbying—

The Convener: Ah. So it is a measure of how important it is to the lobbyist; it is not about the lobbying itself. Sorry—I am being deliberately provocative, not trying to take a position.

Willie Sullivan: It tells you how much staff time is being spent on the activity. It tells you the power of that side of the argument.

The Convener: Okay.

Willie Sullivan: And the powers that are massed behind it.

The Convener: I will let Peter Duncan in, finally.

Peter Duncan: I contend that it tells you absolutely nothing of interest. The issue with financial disclosure—as some of the elected representatives round the table know—is that some of the most effective representations are received from people such as the old lady up the garden lane or the individual at the bus stop who says, "Do you know what? I'm going to write to that committee convener in the Scottish Parliament and tell them exactly what I think."

Such representations are authentic and handwritten, and it is obvious that the writer has put in a lot of thought. That is what gives them credibility. The fact that an organisation is willing to spend £100, £5,000, £23 or whatever tells us nothing about the effectiveness of the representation. I regret to say, from my industry perspective, that a lot of money is spent on some very ineffective lobbying. That is just how it is.

William Dinan brought up the concept of paid lobbying, and used that to get into the argument on financial disclosure. I would look at it from the other perspective. There are people who are not paid to lobby who are extremely effective lobbyists.

A good friend of mine—and yours, I suspect—is Gordon Aikman. He is not paid to make the case that he makes, but he has been hugely effective in the way that he has made it. With the resulting money, he will have made a difference and decisions will be taken on the basis of what he has said. It is not as straightforward as—

Dr Dinan: Can I come back on that?

Peter Duncan: Absolutely.

Andy Myles: Gordon Aikman is very effective in his lobbying, but unless he registered voluntarily he would not be captured in a lobbying register.

Peter Duncan: Absolutely—that is my point. You need to look at the definition of the term "paid lobbying", because it excludes some very effective influence that is exerted by volunteers and enthusiasts, who want to take a case across Scotland and make a difference. Very often they make a difference, but they would not be captured by the bill.

Another point, which arises from the contributions from William Dinan and Raj Chari, is that it would be useful to set yourselves and Parliament a hurdle regarding the legislation. We have all agreed that lobbying is a good thing and that the Parliament must be accessible. In the way in which it has set itself up, Holyrood has been admirable in its openness. I have been in another Parliament that has a different culture and has not taken progressive steps in that regard.

However, a useful hurdle to set is that, if the bill that is passed results in conversations that are perfectly legitimate not happening in the way that they would have happened before, it will have failed. If it results—with respect to some of the submissions in favour of extending the scope—in emails not being sent that would otherwise have been sent, it will have failed. That is my worry about extending the scope—it is mission creep, if you like.

My view, which I conveyed earlier, is that the bill is proportionate. If it becomes disproportionate, it will result in the Parliament receiving less communication from the outside world. That would be a bad thing, and would run counter to the principles on which the Parliament was set up.

Neil Findlay: It depends on what those details and conversations are about.

Peter Duncan: Of course, and on the basis that they are perfectly legitimate conversations and emails.

The Convener: Anyway, I declare that I am the honorary president of the Scottish Association for Public Transport and that my hero is Madge Elliott, who for 50 years championed the cause of Borders rail and was eventually successful. I suspect that she bought a few dozen postage stamps, and that was probably it.

Andy Myles is next on my list. John Downie and Steve Goodrich will be next. On you go, Andy.

Andy Myles: Thank you. There are several points that I want to come back on. Steve Goodrich raised the issue of equal access. My colleagues in Friends of the Earth England, Wales and Northern Ireland—Friends of the Earth Scotland is separate—made freedom of information requests to find out how many meetings had been held prior to the new tax arrangements being set up for fracking companies. They found that there were 19 meetings between senior officials or ministers and the fracking companies to set up their tax arrangements, but only one meeting—I think—attended by a campaigning group.

Equal access depends to a very large extent on resources in terms of what a paid lobbyist is. I think that the public are very interested in finding out such facts. If the register will allow that, that is a good thing. However, I am not sure that the register will actually do that.

The Convener: You are saying that the test of success in this regard is that we can see that there were 19 meetings with interests from one side of the argument but one meeting with those from the other side of the argument, rather than finding out, say, that £3 million was spent on getting the 19 meetings and thruppence ha'penny to get the one.

Andy Myles: That is completely correct. In fact, as we all know, the one meeting may have been brilliant and run effectively while the 19 meetings may have involved a load of dunderheids who made no difference whatsoever. That cannot really be measured. I am always being asked to give key performance indicators, but that can be a bit difficult.

I share Peter Duncan's fear about the use of the term "paid lobbyist". I am paid not very much, but I am paid and I am a lobbyist. However, the majority of my work is not lobbying; I lobby only part of the time. I try to darken the doors of Holyrood as little as possible. As an advocacy strategist, I try to get our members to come and talk to you; I try to get the right members—the people who have expertise—to do that. They may be paid by their individual organisations, or they may be like the formidable campaigners from the Scottish Allotments and Gardens Society, who did a brilliant job recently and changed the law on allotments through their work on the Community Empowerment (Scotland) Bill. They are a classic example of completely unpaid people doing campaigning work.

Those campaigners would have registered only voluntarily. I read the Lobbying (Scotland) Bill's policy memorandum again last night, but I cannot work out what advice I would give to SAGS on registration. I would probably advise its members to register as voluntary in the spirit of openness. Again, I stress that we are very much interested in open government and transparency, so I think that they would probably be best to be registered, but I do not know.

I return to the question of paid lobbyists. The warden of the Woodland Trust's Glen Finglas

reserve may well speak to several MSPs in a year through arranged meetings and will undoubtedly lobby, including on financial subjects. That might take a few hours of that person's time, but they would still be a part-time paid lobbyist. The registration process would be for the Woodland Trust, but my fear is that it would try to narrow down the number of its people who would speak to MSPs because of the paid lobbyist category and the questions of who is paid and who is a lobbyist. It would be tremendously disadvantageous to the Parliament and to Scotland if that led to professionalisation of the people from civic Scotland who come to this building.

10:45

I try to stay out of Holyrood. I try to get real people, with experience and knowledge, to come here to talk to MSPs about real issues. If I come along, I am just another political hack—people can see that sometimes on the faces of those whom they are speaking to. As Parliament shapes the register, it is important that it ensures that it includes the trigger of the lobbyist being paid, in order to reflect the fact that, as Richard Maughan said, not all lobbying is equal.

I am constantly aware that the turnover of the entire environment movement in Scotland—LINK and all its 36 or 37 members—is probably less than the turnover of one large supermarket. Our ability to mount lobbying campaigns, and spend millions or billions or whatever, is tiny in comparison with that of the average corporate entity. Not all lobbying is equal. However, the real equality that counts is the equality of the arguments that are brought before Parliament.

The Convener: I said earlier that the session would last for an hour but clearly we are not finished, so we will continue for another 30 minutes or so. A bit of discipline will be needed—arguments and points of view will need to be expressed quite concisely.

Andy Myles focused on what the access point should be for what ends up in the lobbying register and what does not. It would be helpful to the committee if contributors were able to identify what tests would be needed that are different from the tests that are in the bill. We would be quite content to hear from you later, in writing or whatever, if that is the right way to do it. However, it is important to focus on that.

I sort of shut down the debate about compliance, which, if I recall correctly, was raised by Steve Goodrich. If we can, I want to have a chat about how compliance works in order to test what is in the bill. Informally, we as a committee think that there is one difficulty in there.

John Downie: I will make some general points, and we will probably come back to the committee on the detail.

I would probably think of financial disclosure as an issue of scale. If we were to say how many people are involved in our public affairs activity, that would give you an idea of the scale. We have our public affairs officers, our policy and public affairs manager and me, as director. Obviously, our senior staff are also involved in that activity. There is the issue of how we allocate their time.

Funnily enough, we are about to hire two new public affairs officers. I was trying to judge how much time one of them would spend dealing with parliamentarians and he would probably focus on parliamentary activity for less than 20 per cent of his time, because he would also be dealing with officials and other stuff.

We would rather be able to give the scale of our activity. That would be more helpful for our members, particularly those who may have a staff of, say, 15 but have only two or three people who deal with policy work and work that could be described as "campaigning". That would be their whole job. You could look at the scale, look at the level that that person is at and understand.

On email communication, we would need a very precise scale for what is meant by that. We had John Swinney and Alex Neil in our office last night to meet a delegational member to talk about the shape of the budget and we received three emails from officials about car parking spaces. You need to think about what subjects would be covered by a provision on email and where it would stop.

The committee could bring in third sector organisations such as Shelter Scotland and Inclusion Scotland and perhaps some of Andy Myles's member organisations and ask them what the bill would mean to them in a practical sense, to get an idea of how it might work for them. Inclusion Scotland, for example, has 12 members of staff and is a brilliant organisation that does a lot of campaigning and policy work. What would the bill mean for it? I have no idea. If you spoke to the organisations that would have to implement the provisions, that would give you a better understanding.

As Steve Goodrich said, the issue of compliance needs to be addressed. We have been thinking about that, because we carried out a fundraising review over the summer. OSCR regulates charities in Scotland, and there are 900 cross-border charities in Scotland. OSCR lets the Charity Commission be the lead regulator for them while it acts as the secondary regulator, so there is co-regulation. However, OSCR has limited regulatory powers over fundraising. We could

extend its powers, but I am not sure that there is a need for that.

There are regulatory gaps in all areas, and we need to think carefully about what compliance would look like. We cannot go from zero to criminal acts right away; we need a scale that tells charities what it means if they are not compliant with the register. It is about proportionality. How the register is kept up to date and who checks what people are saying will be really important.

For us, the fact that the register will be free is critical. This week, John Major said that there should be a levy on charities in England to pay for the Charity Commission, and that is going to happen with fundraising down south as well. We do not want to see a cost burden, particularly on the organisations that we want to register and engage. It is about proportionality.

We will get back to you on some of the detail.

The Convener: That would be helpful.

Professor Chari: I have a quick question—maybe it is an observation—on the whole debate around compliance and oversight. If I understand it correctly, the bill provides for the register to be kept and maintained by the parliamentary clerk. The explanatory notes talk about the registrar of the Scottish Parliamentary Corporate Body—the term is not found in the bill, but the explanatory notes use it—who will oversee and manage the administration of the register on behalf of the clerk.

The Convener: That is the answer.

Professor Chari: However, if you want independent investigations to be done when there is a failure to provide accurate information, which is what you were getting at, that would be done by the Commissioner for Ethical Standards in Public Life in Scotland. For the oversight mechanism, it seems that you have two actors involved. The first is the registrar, who reports to the clerk. Then, if inaccuracies are found or if there is some investigation to be done, the matter is pursued by a different office, the commissioner. Is my understanding correct? My question is this: why would you split that function between two different bodies? Generally, when there is independent regulation—in Canada, for example, or in the case of the commissioner that we now have in Ireland—that is done by one person who monitors, investigates and then reports to Parliament through yearly or six-monthly reports.

The Convener: Without seeking to justify it, I can advise you that there is an explanation, which is that it parallels what happens in the members' interests regime. The clerks perform the administrative functions of recording and of advising and encouraging those who have to provide information, but the investigative skills, which are quasi-legal, are thought to lie elsewhere. That is why there is that separation. I say that not to justify it but merely to explain.

Peter Duncan is indicating that he wants to make a point. We are beginning to run out of time, so it really needs to be short.

Peter Duncan: It is a 20-second point. The initial feedback from the Office of the Registrar of Consultant Lobbyists at Westminster is that it is quite a big administrative task to ensure that the quality of the information is correct. The initial feedback from the registrar there is that the quality of the first-round registration is awful.

I have one little point—I think that the bill should try to get the registration dates in sync. Rather than having that random six-monthly requirement, where everyone will have different return dates, we should have one date. I also think that it should be synchronous with the Westminster registrations regime. Let us try to get as few deadlines as possible, so that it is all immediately apparent.

The Convener: The clerks have written that down.

Dr Dinan: That specific point is what I want to talk about. I totally agree about the random six-monthly requirement. I would be asking, "When am I reporting on this, that or the other?" A census date would be helpful. The requirement in the bill is for people to submit information every six months; in the Irish system, it is every four months and other places have an even briefer period. The Canadian system for communication requires the information every month.

Professor Chari: If you have made contact.

Dr Dinan: Yes—if you have made contact, you register that. However, a shorter period helps you to keep in mind the need to comply with the regulation. People might think that a shorter period is more burdensome than submitting information once a year. However, if you think about some of the tasks that you have to do just once a year, they can take more time. I am on the transparency register in Brussels and, when I come round to that deadline, I think, "What have I done in Brussels this year? How do I comply with that requirement?" I have to dig through diaries and back records, which I think takes much more time. If I was to update the information monthly, like the other tasks that I have to do monthly, it would be much more familiar to me, and it might be easier to comply with the requirement if I had to do it more often and if the system was designed well.

I completely agree with the point about having a census date or something like that rather than it being about individuals making a judgment about when contact first happened and then reporting that every six months. Everyone would then know

that a census date was coming up. That would also increase awareness in the public affairs community that that needs to be done.

Steve Goodrich: Again, I support harmonisation of reporting requirements, especially with the UK register, as it simplifies the process for those who are working across borders and arguably reduces the potential for confusion. I support Raj Chari in questioning why there are two different bodies, doing two different functions, for what is essentially one purpose. Having worked for a regulator, I think that it is clear that having the compliance staff, the advice and guidance staff and the enforcement staff in one body helps to ensure that there is co-ordination and an understanding of how those different pieces fit together.

I am not saying that the current arrangement that the Scottish Parliament has in place for members' interests does not work. However, in my experience, having everything within one organisation is critical.

Also, I wondered why the Commissioner for Ethical Standards in Public Life in Scotland has an investigatory role when the available sanctions are criminal. Moreover, the investigations that will be undertaken by the commissioner could have an impact on any subsequent criminal prosecution. We always took that issue into account as a civil regulator when I worked for the Electoral Commission and there was a large amount of co-ordination between the Electoral Commission and either the Crown Office and Procurator Fiscal Service—for example, during the referendum—or the Crown Prosecution Service about who had responsibility for an investigation because we did not want to trample over a COPFS or CPS investigation. My question is about how those things would link together, which again supports the need to introduce some sort of civil element.

The Convener: We are almost in our last 15 minutes. Willie Sullivan is next.

Willie Sullivan: On the point about who is captured, I think that in all our evidence on the proposed lobbying transparency bill, having some sort of threshold seemed reasonable. There are problems with that and people who are influencing policy might not get captured, but the trade-off is that you allow easier access and a better flow of information into the Parliament by setting some sort of threshold to decide who is captured, whether it is a half post or a financial limit. That is important.

I will return to the question of money. Would we then go back and say that, under PPERA, political parties should not publish how much they spend on their campaigns because they might spend it badly and not have enough influence? The question is whether the public wants to know this. I think that the answer is probably yes. A lot of it is about public confidence in what is going on.

John Downie: We are talking a lot about public confidence and public trust. It might be interesting if the committee did some work on that—that issue is bandied about and certainly we are doing an Ipsos MORI poll at the moment about public trust in charities. Given all the stuff that has happened in fundraising, you would naturally assume that we would be looking at that.

11:00

We can bandy about the point that the public want to know, but are they actually interested in this? Some might be and some might not, but I have not seen a lot of evidence that they are. I certainly believe that we need to make the whole system much more transparent. This week, when the Scottish Information Commissioner said that 80 per cent of the public support an extension of FOI legislation to cover housing associations, I thought to myself, "Really?" It depends on what question was posed to the public.

To go back to the core principles, we need to be clear about what we are trying to achieve and why we are doing this. That would be helpful, but it is not in the bill at present. It would be extremely helpful for people to understand why there is a register, particularly those in small and medium-sized organisations who, as Andy Myles said, would want to sign up voluntarily because they engage with parliamentarians and officials in different ways.

To go back to the point about Gordon Aikman and unpaid lobbyists, he headed up a very successful campaign that raised a lot of money for MND Scotland and got the First Minister to commit to more nurses for MND and stuff like that. Gordon was totally unpaid, but the organisation also did a great job in that campaign. It was a fantastic campaign with a very small amount of resources.

Neil Findlay: John Downie asked whether the public are interested in lobbying. To an extent, I hope that they are not, because the whole purpose of bringing in the system is so that we do not end up with issues that the public have huge interest in and which create headlines, with the result that we all end up in the firing line. However, the public probably are interested in some lobbying issues. I have just received a response to a freedom of information request that tells us that INEOS met the Scottish ministers 13 times before the moratorium on fracking was announced. I think that the public would be really interested in that.

The Convener: So that was a failed lobbying attempt.

Neil Findlay: Well—

The Convener: I am only teasing, Mr Findlay.

Neil Findlay: I think that time will tell that that was an unwise statement, convener.

The Convener: Oh no it won't.

Neil Findlay: Anyway, that is an issue on which huge lobbying is going on and I think that the public would be interested in that.

The bigger point is that I hope that, because there is nothing to report, the public will not become fascinated with this stuff. That will be achieved through the preventative actions that we take.

The Convener: In essence, you are saying that the public will want to use the system once in a lifetime but they will always want to know that they can use it.

Neil Findlay: Yes.

Professor Chari: That is an important point because, if there is a mechanism for transparency that allows people to see who is lobbying who about what, the public can get engaged. In our research, we found that the biggest consumers of such registers are actually other lobbyists who are trying to see how their competitors are trying to influence others. A register is a very good professional tool for lobbyists, as it allows them to see what they need to do to try to influence Government.

When we talked to officials from the Canadian Cancer Society, they said that they now do not need to make big reports every year to tell their members and the people who give the society money about what they are doing. Instead, they tell those people to go to the register to see who the society has tried to influence and on what with regard to health policy. The register has become a very clever tool for the society to make known its political activity.

Registers are not just about the public—others can get engaged and get useful information from them.

Andy Myles: Raj Chari raises an important point about who might make complaints under the legislation. It is valuable to look at international experience, but there is experience closer to home that the committee might also want to look at. I suspect that, if we looked at the complaints that are made to the Office of the Scottish Charity Regulator and its equivalent south of the border, we would find that they tend to involve competing groups making complaints against one another, rather than members of the public.

The Convener: Can you give us an example of that?

Andy Myles: The RSPB has been targeted by complaints to the Charity Commission about whether it fulfils its charitable status obligations in certain regards. The RSPB has been completely cleared each time a complaint has been made, but that has been a distraction and a great deal of effort has gone into clearing its name. The same has happened to the Royal Society for the Prevention of Cruelty to Animals, which does not really operate in Scotland—it is the Scottish Society for the Prevention of Cruelty to Animals that operates here. There has been that experience across the border with charities registration.

The other example, strangely enough, is from the Republic of Ireland, where everyone argued against equal rights of appeal in planning cases on the basis that everyone would run to the courts willy-nilly, but I believe that, in fact, 90 per cent of the court cases are brought by other developers rather than by members of the public. It would be very interesting to hear from Raj Chari and others about who the complainants are in relation to registers.

Steve Goodrich: I can provide another example of the fact that it is not necessarily the public who are looking at registers. Members will know that, after they have contested an election, they have to submit a candidate spending return. Lots of people—notably, your opponents—end up spending a lot of time looking at that. There is also scrutiny at the national level. To a certain extent, there are interested individuals and members of the public, but it is often political parties, agents and party officials who undertake that scrutiny. That process keeps everyone honest. It is a case of so-and-so reported such-and-such a leaflet or such-and-such a donation.

We could have a situation in which lobbyists were keeping one another honest, if I can put it that way. I am a lobbyist, and I think that we would be interested to find out what other people are doing. That sort of self-regulatory mechanism seems to have worked very effectively in the political sphere, and I think that it can work with lobbying as well.

The Convener: I sense that we are almost there. Are there any matters that committee colleagues feel that we have not touched on to the extent that we could have done?

Cameron Buchanan (Lothian) (Con): A point that I wanted to raise relates to the issue of who initiates the meetings, which I think is quite important. How easy would it be to show who initiated a meeting? What would the consequences be?

John Downie: Peter Duncan made a point about this earlier. We get calls from MSPs,

officials and ministers, and, obviously, we call them. It just depends on what the issue is and what our workload is. MSPs and ministers often want to talk to some of our members about specific issues. As Peter Duncan said, that should be captured.

As I think we have said in previous evidence, it is time to look at the MSPs' code of conduct and the ministerial code in this context, because I do not think that they have been reviewed for a while. When we wrote a response to the Scottish Government's consultation, ministerial diaries had not been updated since about June 2014. The bigger picture here is that the Scottish Government is now saying that it is very strongly for the open government agenda, which used to be driven by the UK Government. The Scottish Government now seems to be putting resources into being much more transparent, and it sees legislation on lobbying as one of the action points. We need to look at the bill in the wider context of how it relates to the issue of greater transparency across Government. The committee might need to look at some of the other actions that are being taken in that context.

Peter Duncan: I think that John Downie made the point that I was going to make. Our view would be that it does not matter who initiates the meeting. The spirit of the legislation is about the fact that a meeting has taken place. To take Neil Findlay's example about the 13 meetings with INEOS, that might not have been declared because six of them were initiated by the Government. It might be particularly unhelpful to know that, but I do not think that it would be. Whoever initiates a meeting, it should be declared.

Much of our drift is about ensuring that we have a completely level playing field. Let us make sure that everyone, regardless of whether they are paid and regardless of whether the discussion is initiated by elected representatives, is treated identically. If we do that, I think that we will avoid many of the pitfalls of the Westminster legislation, which the convener did not want us to stray into critiquing.

The Convener: Thank you all very much indeed. Sitting in the chair, I found that interesting, and we covered a lot of ground. We revisited matters that are probably beyond our process purpose, which is to make a recommendation as to whether we should accept the general principles of the bill before us. That is the next stage, and I suspect that we will find ourselves able to do that, but we will have a discussion on that.

Following that, there will be stage 2, when the bill will be subject to detailed amendment. The report that we produce presents us with an opportunity to indicate our early thinking to ministers about some of the changes that they should make at stage 2. I think that we have some in our minds already.

If, following this meeting, there are specific points in that regard that anyone here or beyond here wishes to make to us, we would be happy to hear them. Our duty now is to focus very precisely on the detail. The committee can lodge its own amendments—there is no requirement for that to be done only by people outside the committee—although that is an unusual process—and we would certainly do so if it appeared that amendments were not coming from elsewhere and we thought that they were justified and required.

11:11

Meeting continued in private until 11:22.

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