OFFICIAL REPORT
AITHISG OIFIGEIL

Public Audit and Post-legislative Scrutiny Committee

Thursday 5 November 2020

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Thursday 5 November 2020

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PUBLIC AUDIT AND POST-LEGISLATIVE SCRUTINY COMMITTEE
24th Meeting 2020, Session 5

CONVENER

Jenny Marra (North East Scotland) (Lab)
*Anas Sarwar (Glasgow) (Lab) (Acting Convener)

DEPUTY CONVENER

*Graham Simpson (Central Scotland) (Con)

COMMITTEE MEMBERS

*Colin Beattie (Midlothian North and Musselburgh) (SNP)
*Neil Bibby (West Scotland) (Lab)
Bill Bowman (North East Scotland) (Con)
*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)
*Alex Neil (Airdrie and Shotts) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

James Adams (Royal National Institute of Blind People Scotland)
Fergus Boden (Scottish Environment LINK)
Alison Douglas (Alcohol Focus Scotland)
Peter Duncan (Association for Scottish Public Affairs)
Brian Simpson (Law Society of Scotland)
Willie Sullivan (Scottish Alliance for Lobbying Transparency)
Susan Webster (MND Scotland)
Craig Wilson (Scottish Council for Voluntary Organisations)

CLERK TO THE COMMITTEE

Lucy Scharbert

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Public Audit and Post-legislative Scrutiny Committee

Thursday 5 November 2020

[The Convener opened the meeting at 09:00]

Decision on Taking Business in Private

The Acting Convener (Anas Sarwar): Good morning, and welcome to the 24th meeting in 2020 of the Public Audit and Post-legislative Scrutiny Committee. I apologise for the technical difficulties that we have had this morning.

I remind members, witnesses and staff who are present that social distancing measures are in place in committee rooms and across the Holyrood campus. In addition, a face covering must be worn when moving around, exiting and entering the committee room, although it can be removed once people are seated at the table. I also remind everyone to turn their devices to silent, so that they do not disturb the committee's work. We have received apologies from Bill Bowman.

Agenda item 1 is a decision on taking business in private. Do any members object to taking item 3 in private? If Colin Beattie, who joins us remotely, objects, he should raise his hand.

As no member objects, I confirm that we agree to take item 3 in private.

Lobbying (Scotland) Act 2016: Post-legislative Scrutiny

09:02

The Acting Convener: Agenda item 2 is post-legislative scrutiny of the Lobbying (Scotland) Act 2016. The committee will take evidence from two panels of witnesses, all of whom have an interest in the 2016 act. We have about 80 minutes for each panel.

I welcome our first panel of witnesses: Peter Duncan, the convener of the Association for Scottish Public Affairs, who joins us remotely; Gregor Scotland, the principal policy adviser for Confederation of British Industry Scotland, who also joins us remotely; Willie Sullivan, the senior director of campaigns for the Electoral Reform Society Scotland, who is appearing on behalf of the Scottish alliance for lobbying transparency and joins us in person; and Craig Wilson, the public affairs officer for the Scottish Council for Voluntary Organisations, who joins us remotely.

Willie Sullivan should note that, when he speaks, his microphone will be activated automatically, so there is no need to touch it. If he would like to respond to any question, I ask him to raise his hand and make that clear to me or one of the clerks.

If witnesses who are joining us remotely want to respond to a question, they should please raise their hand, too—I should be able to see that on the screen in the committee room—or type R in the chat function, and the clerks will alert me to that. If we lose the connection with any of them at any point, I will come back to them later.

The committee paper suggests focusing on two themes for each panel of witnesses, and I intend to structure the evidence session around those themes. Members will be asking questions, but I encourage witnesses to respond to one another, too, because we want it to be a genuine discussion.

In this session, I would like initially to explore the impact and operation of the 2016 act, before moving on to consider whether—and, if so, what—legislative change is required.

I ask for a general overview from each witness. Do you have any key thoughts on the impact and operation of the 2016 act to date? If you wish, you can say why you care about the legislation and what you consider should happen with it. I ask that Willie Sullivan kicks off.

Willie Sullivan (Scottish Alliance for Lobbying Transparency): I will start by explaining why I care about the 2016 act, and then

I will talk about its impact. Democracy is a process that is built on the trust that the electorate, the ballot and public opinion will hold Government to account so that, when making decisions, it governs in the interests of the people of the nation. Lobbying and the sharing of experience and evidence to make better policy are important parts of good governance, too.

To answer the question of in whose interest lobbying is done, I think that the influencing process must be as clear as a summer's day. If it is not possible to know who is talking to whom in power and why—if the system is in the dark—it is difficult to develop trust. If I were to say, "I'm a lobbyist for the Electoral Reform Society. Trust me", that would not really be enough. Transparency encourages us to be our own best selves and to live up to our own expectations, because we know that the public and media are watching us.

When we lobbied on the details of the bill that became the 2016 act, we wanted the provisions to be much stronger, but we are happy to accept that the act was a first step in the right direction. It said that Scotland should have a lobbying register, as most other liberal democracies have. It also showed that the Parliament was open to the idea of transparency because it knew that it was important for the democratic process that the public could see what was going on and who was talking to whom, so that the question of in whose interest lobbying is done could be answered. The impact of the 2016 act on that principle has been good, because the information is available and people know that it is available.

However, the 2016 act is not nearly enough. There are too many loopholes and ways around it to make it the instrument that gives democratic trust in who is talking to whom and why. There is always the question about what problem the legislation solves. The problem of transparency solves the problem of not enough transparency. That is a fundamental part of the democratic process.

The Acting Convener: Does Peter Duncan have any general thoughts on the impact and operation of the 2016 act?

Peter Duncan (Association for Scottish Public Affairs): Thank you for the invitation to join the committee today. On the question of why the 2016 act is important to me, as part of the Association for Scottish Public Affairs, two things come to mind. We are the default representative body for people across Scotland who engage with the Parliament in various ways. Those people might be consultants or working in-house for a range of charities. That is our day job, which is why the 2016 act is important to us.

The other reason why the 2016 act is important relates to what the minister said when he introduced the bill some years ago. He spoke passionately and clearly about the role that lobbying plays in making a better Parliament and better-informed legislators, and, ultimately, in delivering better legislation. Therefore, it is particularly important that we revisit the 2016 act and consider whether we can help to make it work better.

I will give my reflections on the past couple of years. It is certainly overwhelmingly the case that the transparency on lobbying has not revealed any great scandals, shocks or transgressions. People embarking on lobbying across Scotland have positively engaged with the lobbying registrar and complied with the legislation. As the lobbying registrar makes clear in his report, which was released this week, generally speaking, compliance has been good. There has been no resort to legal sanctions, which is to be welcomed.

Although we were sceptical at the start, we accept that the will of the Parliament is to regulate lobbying and to have a lobbying register. We want to help to make the system better, and we have suggestions about how that might be done. We also have opinions about which directions of travel might prove fruitless in the overall scheme of things.

I am not sure that the man on the street has recognised any great revolution in transparency, and I am not sure that there is any great suggestion that there is now some great revelation that was not apparent previously. However, we accept that there is a will to see such information. We provide it willingly, and we will engage positively with ideas about how the system might be made better.

The Acting Convener: Thank you. We will explore some of those suggestions in the next part of our conversation. I put the same question to Gregor Scotland.

Gregor Scotland (Confederation of British Industry Scotland): Good morning. CBI Scotland has an interest in the 2016 act because our organisation has to comply with it; we also represent businesses of all shapes and sizes and members who must do so, too.

Since the 2016 act came into force, we have made more than 100 entries of regulated lobbying to date. I would like to place on record our thanks to the registrar and his team for their engagement both before and since the register became operational, through which they have helped us to raise understanding and awareness of the 2016 act among the business community.

I want to pick up on Peter Duncan's point. We are proud of having that level of political

engagement. Lobbying plays a crucial role in the development of policy and legislation. We should be encouraging the widest possible interaction between our parliamentarians and external stakeholders. We hope that the review can be seen through that prism.

As for our own operations, the introduction of the 2016 act certainly has not changed how we carry out our lobbying activity; we still do things in exactly the same way as we did before it came into force.

In the process of preparing for the review, we consulted a variety of organisations, of all shapes and sizes, about their experiences of the 2016 act. Although there is a genuinely shared commitment to achieving transparency, what came out of the conversations was that a lot of the practical challenges that come from complying with the 2016 act—from the process of making data entries to the need for clarity on exemptions—have made us realise that many of its aspects could be improved. Consequently, our written submission to the committee called for there to be a focus on basic improvements that might make the 2016 act easier to use and clearer to interpret, rather than for an expansion of its scope.

The Acting Convener: We will now hear from Craig Wilson.

Craig Wilson (Scottish Council for Voluntary Organisations): Convener, I will respond first to your question about why SCVO cares about the 2016 act. If I reflect on what Gregor Scotland has just said, our organisation must comply with the lobbying registrar's requirements, so we have a personal interest, but we also represent 2,000-plus voluntary sector organisations in Scotland that must do the same.

If I might rewind back in time a little bit, in 2016, SCVO was sceptical about the concept of a lobbying register. We were concerned that having one in Scotland would have a chilling effect on the ability of our voluntary organisations to work with the Scottish Parliament in the way that they had been doing up until that point. We recently published a book that looks back at the 20 years of positive engagement that the third sector has had with the Parliament, which we cherish. We were concerned that the 2016 act would put up an unnecessary barrier to such engagement continuing.

I am pleased to say that, since then, we have probably softened our approach substantially. The organisations that we have spoken to continue to carry out the work that we want them to do and which they are keen to do. We understand that, as Willie Sullivan suggested, there is a strong temptation to increase the need for transparency and the communications that the 2016 act covers, but we have to consider how we might strike a balance between ensuring transparency and achieving a level of involvement with the Parliament that is not overly cumbersome.

As you pointed out, convener, we will perhaps go on to discuss our suggestions later in the meeting.

The Acting Convener: We turn to a question from Colin Beattie.

Colin Beattie (Midlothian North and Musselburgh) (SNP): I would like to ask about the perceived administrative burden that the 2016 act places on companies and businesses. Do the witnesses think that the register and the lobbying returns are a proportionate way of capturing information on certain types of lobbying?

The Acting Convener: Willie Sullivan, could you kick that one off for us?

Colin Beattie: Peter Duncan is on the screen, so perhaps he would like to comment.

The Acting Convener: Mr Sullivan is in front of me here in the committee room, and he has indicated that he would like to speak. I will go to Peter Duncan after that.

Colin Beattie: Okay.

09:15

Willie Sullivan: Everybody thinks—we certainly think—that how the data is collected and input could be improved. There is a way to increase the transparency and the amount of information that is available while decreasing the burden, if data collection and input were organised differently. For example, if campaign activity, meetings and, we would advocate, the budget against campaigns, were logged, that would decrease the burden of time spent filling in the return. Another suggestion that would save a lot of time is collecting an organisation's information once, and not every time that there is a meeting. There is a way of organising the data that means that you can increase transparency while reducing the bureaucratic burden.

Colin Beattie: I will ask a question off the back of that. Have people needed to take on additional staff in order to cope? Has it added not only to the administrative burden, but to the costs?

Willie Sullivan: People can speak for their own organisations. We provide a six-monthly return that probably takes about an hour of staff time—that is the level of burden on us to capture the required information. We are quite active politically—we are the Electoral Reform Society Scotland, so our whole job is democracy and politics. I do not know about other organisations,

but neither we nor any members of SALT have needed extra people.

The Acting Convener: Before Colin Beattie comes back in, I will allow Peter Duncan and Craig Wilson to respond to those two questions.

Peter Duncan: Although it is fair to say that the number of registrations in the lobbying register is at the top end of what was expected when the legislation was introduced, it is also fair to say that those registering would reflect that the administrative burden has been at the upper end of what they expected when we embarked down this route. In response to Willie Sullivan's point that registering takes simply an hour every six months for his organisation, I think that that depends on the type of organisation and on the number of times that it is having registrable conversations with ministers, MSPs, special advisers and so on.

Fundamentally, members who passed on their views to us have reflected that the user interface is almost 19th rather than 21st century. That needs work. We are disappointed that, for those at the lower end who lobby less frequently, there is not an app through which registering can be done easily, straightforwardly and quickly, and that, for those at the top end who do a lot of lobbying, there is not a bulk upload facility through which they can collate the information locally and upload it in one go. We can do some things to reduce the administrative burden.

Fundamentally, organisations that embark on lobbying are like every other business, charity and organisation in Scotland: they are under pressure to do more with less time, and every incremental increase in burden is difficult to cope with and places additional stress on already stressed organisations.

The Acting Convener: I invite people simply to nod if they agree with this, as I saw Willie Sullivan nodding at Peter Duncan's comment about the interface and its ease of use for registering. Is there general agreement that the interface needs to be improved and brought into the 21st century, perhaps through its being app based? I can see people nodding, so there is agreement. Excellent.

Craig Wilson, do you have any comment from the perspective of an umbrella body such as yours, or any reflections from your members, on Colin Beattie's question about the need for extra staff or there being increased costs?

Craig Wilson: We have tried our best to come to the committee with something tangible about that. Through surveys, we found that 70 per cent of organisations had dedicated staff who manage submissions. I suggest that most of those organisations have not had the luxury of employing an extra member of staff; nor would that be needed. From the surveys, we reckon that organisations are spending about three hours a month uploading submissions to the register. That is not bad; it is not overly burdensome in the way that we perhaps feared that it would be.

I agree with other comments that the user experience is the issue. The process could be streamlined and made more user friendly. Of the organisations that had made submissions, we found that 65 per cent had had submissions returned because they had not filled them out in the right way, or because there was a fundamental misunderstanding about what constitutes lobbying, which, I am sure, we could talk about all day. There are areas where the user experience could be improved, so that it is easier and slicker.

The bulk submissions idea is great. You will have seen the number of organisations that have a display at the bottom of the lifts in the Holyrood campus. They are speaking to 120-odd MSPs about a single issue and, instead of submitting a return for that one event, they will be asked to submit 120-odd individual responses. There is certainly room to improve the user experience, in order to reduce the burden that we all fear.

The Acting Convener: Those seem like two sensible and easy approaches—or, at least, they sound easy.

Does Colin Beattie have any follow-up questions?

Colin Beattie: Is there evidence that the need to submit the information returns has changed how your organisation operates or how its members lobby? For example, are you avoiding face-to-face communications in favour of emails and letters?

The Acting Convener: Gregor Scotland wanted to comment on the previous question. He can also answer that one on behalf of CBI Scotland.

Gregor Scotland: Thank you. I will pick up on both questions. With regard to Mr Beattie's second question about changing how we lobby, I will pick up on two things. Our perspective is that the legislation has not changed CBI Scotland's approach to lobbying activity; we do things exactly as we did before.

From the conversations that we have had with a range of businesses over the past two and a half years, we know that they are always centred on how they make sure that they are compliant with the legislation. I have had so many of those conversations that I cannot remember them all. I have not had a single one about how businesses could change what they are doing to ensure that their lobbying is not captured on the lobbying register. There is a genuine commitment to transparency and to complying with the existing legislation.

I will not take up too much time, but I will pick up Mr Beattie's previous question about the administrative burden. Time and again, we have heard that the process is onerous and time consuming and involves a lot of unnecessary repetition. The single biggest improvement would be bulk upload of returns from a spreadsheet. I know that a bulk upload function already exists, but I do not think that it allows us to do it from a spreadsheet. Most of the organisations that we have spoken to collate their lobbying as they go in the form of a spreadsheet, so being able to upload all returns at the same time, rather than individually, would be a big time saver.

Peter Duncan: I will comment on the administrative burden. The committee could usefully throw some light on the matter of events—in particular, events that happen at the margins. That gets to the heart of Mr Beattie's question about whether activity is not happening that would have happened had the regulations not been in place. By definition, at the margin, some conversations that would otherwise have happened in person must be happening by telephone. That is not widely reported to me and I do not notice it. If there is movement at the margins, it will be a movement away from face-to-face contact.

Similarly, in relation to activity that might be significantly at the margins, quite small charities have concerns when they run events in, for example, the Parliament's garden lobby—back in the dim and distant happy days when we had face-to-face events in the garden lobby. Very significant numbers of people might attend such events, and very significant numbers of conversations might take place. In relation to regulated persons, not all MSPs are as well known as the members on this committee; similarly, special advisers are not always well known.

There is a fear among some small organisations that run events that they are failing to capture some lobbying, which might make them shy away from running events. There must be a better way of capturing lobbying at single big events at which the same basic message is communicated to the whole Parliament, not just to the nine, 19 or 49 MSPs who happen to attend the event.

Willie Sullivan: Peter Duncan has made a good point about events. On whether people move to different forms of communication, I think that, if anybody who is lobbying gets the chance to speak face to face to the person whom they want to influence or talk to, they will probably take that chance. It is more about the fact that, always, a lot of activity has not been face to face; it might have been through emails or telephone calls. If we were not sure whether the Skype camera was on or off, for example, would that be captured by the provisions, because that might be a face-to-face video call?

There is a need to bring the provisions into line with those for the rest of the United Kingdom. In most other states that have lobbying registers, phone calls and emails are captured on the register, because that transparency is needed.

The Acting Convener: Are more phone calls and emails happening because of the 2016 act?

Willie Sullivan: No, I do not think so. As I said, when people get the chance to speak face to face to the person to whom they want to talk, they will take that opportunity. However, the point that I am making is that a body of communication and influencing is going on that is not on the register and is not seen.

At the beginning, a lot of the administrative burden related to returns, with people saying that something that was going on the register was not really lobbying. That was partly because in Scotland our definition of lobbying is so narrow. Something has to be asked for in the meeting.

Relationship building is a huge part of lobbying. Finding out who is doing what and getting information goes two ways. We should change the definition so that it is about Government or parliamentary business, as is the case for the rest of the UK, and in Canada and Ireland. We think that meetings for the purpose of relationship building should be included, too.

I think that I said previously that if information about registered lobbyists, themes and so on could be dealt with every six to 12 months, that would cut out repetition and would definitely ease the administrative burden. There are lots of ways to ease the administrative burden without reducing transparency; in fact, we suggest that we could increase transparency with a lesser administrative burden.

Craig Wilson: On whether there has been a negative impact, we found in our survey—in keeping with what others have said—that 90 per cent of organisations said that the 2016 act has had no negative impact on how they lobby. However, as Peter Duncan said, there are organisations at the margins; that 10 per cent of organisations is a sizable number. There are 40,000 voluntary organisations in Scotland, so if 10 per cent of them feel uncomfortable about the lobbying activity that they would otherwise have done, that it worthy of note.

SCVO has to be cognisant of which staff attend events and to whom they speak. Quite often, we bring along to parliamentary events our digital engagement team or people in our employability services, who are not so familiar with the requirements of the 2016 act. It gets slightly

frantic, because you have to try to keep an eye on who is speaking to whom.

We tend to try to work our way around that by ensuring that everything is registered. We ask people afterwards whom they spoke to—but, as Peter Duncan said, organisations might not know that someone has spoken to an MSP, so there is a genuine risk that an organisation could be accidentally non-compliant with the 2016 act.

09:30

Some organisations will not take the risk of being accidentally non-compliant and will choose not to bring to events members of staff who could offer a fuller understanding of what the organisation does.

Graham Simpson (Central Scotland) (Con): I completely agree with those thoughts about events—if we ever get back to having events. I can see the problem for organisations, and that there could be the ability to make some sort of overarching submission. That is a good idea.

My understanding of the act is that any lobbyist who approaches me must make a submission, but if I approach them they do not have to do so, although we could have exactly the same conversation. Is that right? Should it change?

Willie Sullivan: There is a concern that ministers are inviting people to come in to see them and those meetings are not on the register. The example that was cited to me was about fish farming, in respect of which a lot of lobbying has been going on following groups being invited in by the minister. It is an area of concern. If the public knows that that loophole exists, they will ask why it has been done in that manner. That should be considered.

Graham Simpson: Does anyone else want to comment on that? There appears to be a loophole, in that we are not picking up every meeting if meetings that an MSP instigates are not registered.

Craig Wilson: I expect that everyone has an example of a potential loophole—the act is a rabbit warren of loopholes. There are so many interesting and strange ways in which the act works. For example, if I were to speak to a member about all the great things that SCVO does, but did not ask anything of that MSP or minister, that would not count as regulated lobbying. If I were to email them the next day and say, “Further to our conversation, would you mind doing X, Y and Z,” that would also not be counted as regulated lobbying. It is quite strange how some of the provisions work.

This is about striking a balance between how big an additional burden is placed on organisations through the requirements on them to catalogue all their conversations, and on transparency. It is a strange one.

Graham Simpson: Some witnesses have mentioned the interface, meaning how the register works for organisations that are lobbying, but I want to look at how it works for members of the public who are trying to find out who has met whom. Someone could click on my name and see that I met Willie Sullivan on such and such a date—although I have not actually met or been lobbied by any of you. The person could click on that and see, broadly, what we discussed. However, if that person then wanted to look at the rest of my meetings, they would have to go back to square 1. It is very difficult and time consuming, given that it is all supposed to be about transparency. Do you have any thoughts on that?

Willie Sullivan: The public gets information about how its Government and politics work through the media. A couple of journalists have said to me that they want to make greater use of the information, but it is really difficult to query it and to find and bring stuff together. You are right to say that if it is a question of transparency, that must mean not only how we interface with the register, but how the public can look at the data and make sense of the information.

Peter Duncan: I have a comment to make on the previous point about meetings at the request of ministers or members. ASPA’s view is that an improvement can be made to the regulations. Conversations very rarely remain contained: if an organisation is asked in to discuss blue coffee cups, in reality, the conversation will develop and go outwith the blue coffee cups sphere. The easiest way to straighten out that loophole is to make all such conversations registrable, regardless of who initiated them.

On Mr Simpson’s second point, I am sorry, but my mind has gone blank, so I had better come back to you.

The Acting Convener: No problem. We are tight for time and we are straying into the second theme, anyway. I want to ask just one question on this theme, in conclusion. I see that Gregor Scotland wants to come in, as well.

Has the act increased transparency? Do we have full transparency or shades of transparency? Has it increased trust in politics and politicians, which was the purpose of the act?

Gregor Scotland: I will pick up on your question first, convener, and then, if there is time, I will return to Graham Simpson’s questions.

The sheer volume of data that is now available means that we could make a case to suggest that there is now more transparency: there are more than 12,200 entries—if you can find them. As others have already touched on, what is less clear is the value that has been added and what collection of the data has achieved. I have seen no evidence on who accesses the information, whether there is demand from the public to see it, what the level of demand from the media has been and whether that is at the level that was expected.

It is difficult to assess the act's wider impact because it is not clear what problem it was intended to solve in the first place. Whether there was a fundamental problem that needed addressing is up for debate; that might not have been the case.

I want to pick up on the point that Mr Simpson made about the exemption if someone is invited by an MSP or a minister to give evidence or offer their views. That is an area that needs, at the very least, further clarity. I can give the committee an example to highlight that.

CBI Scotland is regularly invited by Government ministers to meetings to give its business views and priorities on a broad range of issues. Most people, including us, regard that as an opportunity to lobby, which is why we tend to register such meetings, despite the fact that we were invited by a minister or member. However, we have heard from other trade associations in similar situations that an entry to the register was rejected because they had been invited by the minister to give evidence. It would be helpful to have more clarity on that.

Craig Wilson: On the question of shades of transparency, as Gregor Scotland said, there is additional information available, which is generally a good thing. One of the things that SCVO has been most pleased about is that the register shows the level of engagement of the voluntary sector: 40 per cent of all returns are from voluntary or charity organisations. We suspected that all along, but I was interested to see that detailed.

I agree with the point about public trust. I do not know who is really engaging with the information, and some of the press pick-up has been somewhat predictable and skewed. I am unsure whether people are engaging with the relevant information and data. However, the fact that we can see that the voluntary sector is the most engaged sector might improve trust in politics. I think that people would be pleased to see that.

Willie Sullivan: It is good to make the point that that shows that Scottish civil society is strong and engages with the political process. That is positive. We argue, as others have, that information being available and there being transparency are important—people know that such discussions are registered and available.

This is the beginning, rather than the end, of a journey towards a much more transparent system. Until there is enough meaningful and complete data and it is searchable, can be questioned and can be grouped, it will not have the impact on transparency that it could have.

Peter Duncan: On the point about trust in politicians, I do not know that there has been significant change in that regard, and it would certainly be impossible to suggest whether the regulations have contributed greatly to any change.

We are at a legitimate point for the committee and Parliament to consider the value of the increased information. I do not get the sense that there has been public clamour for the information.

On the point about the practical difficulty in downloading information from the register, I suspect that members of the public are not phoning the register regularly to make observations about how difficult that is, because they are simply not challenged to do that. If transparency means more information being available then, yes—by that definition, we are more transparent than we were two years ago.

I just question the purpose. Information is always a good thing, but it does not come without cost, and it does not come without a compliance burden on those who must provide it. Therefore, a balance must be struck in regulation: let us retain the focus on the type of lobbying that Parliament quite clearly decided, the first time around, was most influential—face-to-face contact—and let us try to make it as easy as possible for people to comply with the system. That strikes me as being the best approach. From ASPA's perspective, that is how we should consider the review.

The Acting Convener: I will probably have a supplementary question on that, Peter, but I will hold back so that we can conclude the theme and begin theme 2. Alex Neil has a supplementary.

Alex Neil (Airdrie and Shotts) (SNP): I will follow on from what Peter and others have said. The Lobbying (Scotland) Act 2016 originally had two purposes. One was to increase transparency, and the second, which was the reason for increasing transparency, was to ensure that lobbyists do not have undue influence over the decisions of legislators, the Government and the Parliament.

Therefore, the real question and the real measure is not just whether we have more transparency—blatantly, we have more transparency, although there is a fair question about whether we need more. It is whether the

additional transparency has been evaluated to establish whether lobbyists for vested interests, commercial and otherwise, have undue influence over the decisions that are made by the people who are being lobbied. Is there evidence one way or the other about lobbying influencing decision making at Government or parliamentary level?

Willie Sullivan: We do not have enough information to make that judgment, but I would say that lobbying is a multimillion-pound industry—worldwide, it is a multibillion-pound industry. I do not think that those people are spending all that money but thinking that they will not influence public policy. We are pretty sure that they think they will.

Alex Neil: We would all agree that the act has achieved objective number 1: there is blatantly more transparency, although there is a subsidiary question whether there is a need for more.

However, to get to the guts of the matter, is it not the case that the measure of the success or otherwise of the act in achieving its objectives is how much decisions in the Parliament building—as one might think they would be in, say, the American Congress—are unduly influenced by lobbying by vested interests? If we do not know the answer to that, we cannot properly assess whether the act has achieved the second objective.

To the best of my knowledge, nobody has looked at that matter systematically; there has been no research on it. Perhaps we should consider commissioning such research, convener. Do the witnesses think that there is any evidence from the operation of the2016 act on whether there is undue influence on legislators' decision making as a result of lobbying by charities, commercial interests or whatever on their vested interests?

09:45

The Acting Convener: I want to move on to the next theme, but that is quite a broad question. I think that the point that Mr Sullivan was making—I will not go back and repeat it all—is that they must have been lobbying for a reason.

Alex Neil: Exactly.

The Acting Convener: Clearly they have influence then. If thousands of people are lobbying, they are clearly doing it for a reason. I will go to all three remote witnesses for a brief comment then go on to the next theme.

Peter Duncan: I go back to the contribution that I made right at the start reflecting on the minister's statement that he made during the passage of the bill that lobbying is "a good thing" because it informs the legislative process. One man's vested interest is another man's person with a genuine opinion. There is a sort of nudge-nudge, wink-wink suggestion that lobbying is some sort of dark art, but there have been some very admirable lobbying exercises in recent times, whether on patients' rights or by charitable interests, cancer charities looking for greater investment in their sector, or by Marcus Rashford, although that is in Westminster rather than Holyrood. It is suggested that people have been influenced by lobbying, but lobbying happens in all sorts of ways; it happens when a constituent comes to your surgery and when someone who has a point of view that informs your decision makes that point to you in a reasoned and professional way, and ASPA stoutly defends that as something that informs policymakers and delivers better legislation.

Alex Neil: The issue is not just lobbying; it is undue, unfair and, arguably in some cases, illegal lobbying. If somebody came to lobby me about a Government contract, for example, I would regard that as completely out of order. Does the 2016 act tell us any more than we knew before it about whether undue, unfair or illicit lobbying is taking place, or have we driven that underground?

The Acting Convener: I want to avoid us going down a rabbit hole of a conversation and move on to the next theme. Can Peter Duncan respond to that quickly? Then I will go to Gregor Scotland and Craig Wilson for brief comments so that we can move on.

Peter Duncan: I will answer quickly. I cannot see any evidence in all the information returns that have been published of illegal activities going on. As far as unfair or undue influence is concerned, frankly that is a judgment for policymakers to make, but it is part of the principle of an open Parliament that people who have a point of view and want to inform policymakers are able to make that point of view known and impart that information to an open and modern Parliament.

Gregor Scotland: Peter stole my thunder there, so I will be brief. It is important to make the distinction between undue influence and influence, because lobbying should influence our parliamentarians; that is how we get well-informed and well-scrutinised public policy and legislation. In short, I have not seen any evidence from the lobbying register or otherwise of examples of undue influence being exercised. I echo Peter's thought that MSPs or Government ministers are in a better position to answer that, but I certainly have not seen any evidence to suggest that undue influence is being exercised.

Craig Wilson: That is an extremely important distinction. I perhaps misunderstood Mr Neil's question. If he was asking whether lobbying has worked, that is a service that we would pay for, because we would love to know the impact of the

ideas and suggestions that we make. However, that ultimately comes back to the question whether MSPs should be able to add to the lobbying register if they feel they have been influenced or, as Mr Neil puts it, "unduly influenced". That might not be reportable, but if they wish to put on record that they met an organisation and what they discussed in tandem with voluntary and business organisations to add a layer of transparency, that should at least be made an option for MSPs, ministers and civil servants.

The Acting Convener: Thank you. I deliberately let that run on a little bit, as we ventured into theme 2 in the first part of our conversation. However, to formally kick-off theme 2 on the status quo or legislative reform, I hand over to Willie Coffey.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): We touched on this area a moment ago, but this is a good opportunity for our witnesses to get something on the record.

As part of theme 2, we are looking at whether we should have the status quo or legislative reform. The committee's section 50 review specifically looks at two matters. The first concerns the communication methods that are used. As we know, the act covers face-to-face lobbying. Should that be opened up to include other communication methods? The second matter concerns the people who are deemed to be subject to regulated lobbying. At the moment, that group includes MSPs, members of the Government, law officers, junior ministers, special advisers and permanent secretaries. Should the group be widened to include others? It would be useful to hear the views of all our witnesses on that, so that we can get their thoughts clearly on the record.

Gregor Scotland: In its current form, the act covers the right group of people—the key decision makers. I am not clear about what the benefit would be of extending that group to include more people, and I think that it would significantly affect the administrative burden that organisations and, potentially, the registrar's team face.

There are a couple of practical considerations to take into account in any conversation about extending the act to cover more civil servants. First, as a number of organisations raised in their written submissions, people's knowledge of the grade structure in the civil service is limited. Therefore, extending the act to include more civil servants would run the risk of putting organisations off engaging with Government officials for fear of falling foul of the act by accident. It could risk politicising civil service roles that are currently apolitical. I can give you an example of that from our experience of speaking to a number of businesses that have a lot of day-to-day contact with Government officials. In the energy and infrastructure sector, such contact involves operational matters and resilience, and anything that could be seen as a barrier to that kind of communication would not be particularly helpful.

On the range of communications that are covered, we recognise that a legitimate question is being asked about whether phone calls, for example, should be included. We need to remember the importance of striking the right balance between transparency and protecting the accessibility of Holyrood for all stakeholders without incurring unnecessary or excessive burdens.

Again, I come back to the issue of the specific problem that we are trying to solve. Is there evidence that something needs to be addressed? The range of communications that is covered was debated at length when the legislation went through Parliament the first time, and face-to-face communication was deemed to be the most influential and effective form of communication. I do not think that that has changed in the past two-and-a-half years.

What has changed, obviously, is that coronavirus restrictions have been introduced, and that has had an impact on the way that organisations work. The biggest difference in our own organisation, for example, is that there has been a real uptick in the use of video calls and videoconferencing, which are covered by the act. That is another area where you could focus on some practical changes to the guidance to improve things. For example, it is a bit unclear what happens if some people have their video on and some people have their video off, or if someone has their video on for part of the meeting and then turns it off. Putting in place some clarity around videoconferencing would be one practical way of addressing some of the challenges that we face as a result of the way that things have changed due to coronavirus.

On emails, I know the sheer volume of emails that MSPs and politicians in general get. Registering all of the communication that floods in from organisations would be a huge task. I know that many emails do not get read, not even by the MSP's staff, let alone the MSP. It is difficult to quantify what, if any, impact an email has. That sort of communication is very different from face-to-face communication, and I do not think that there is a great case for expanding the legislation to cover it.

Peter Duncan: Convener, I think that I can help with the timeline. ASPA's view concurs almost exactly with Gregor Scotland's view in that respect. In our view, it would be a mistake to extend the scope of the act beyond the current

group of individuals with whom regulated lobbying takes place to other civil servants. The lines are not clearly defined; for example, it is not clear who would be a grade 6 civil servant. We would find that extension difficult to accept.

With regard to the type of communications that should fall within regulated lobbying, I fall back to the original view of the Parliament, which was to focus on those particularly persuasive conversations. If I or one of my clients is looking to convince or inform an MSP of a particular case, the most powerful way to do that is to have a face-to-face meeting, so it was right that the Parliament chose to focus on that area.

The administrative burdens of widening the scope would quickly go out of control. It would be really difficult to verify who reads an email or whether it has been read by a member of the MSP's staff. Parliament is at risk of going down a route that makes it difficult to determine whether the information that is being reported is remotely accurate, never mind meaningful.

The Acting Convener: There is agreement between ASPA and CBI Scotland on that. Before the next member, I will take comments from SCVO or SALT only if they disagree with that. Do you agree with that?

Willie Sullivan: We disagree. That is why these guys are such good lobbyists—[*Laughter*.]

On the scope of regulated communication, the current definition is so narrow that it is almost meaningless, particularly in an era of social distancing. It is also confusing that the registrar is still not able to clarify whether cameras should be turned off or whether turning off a camera makes a call unregulated.

Scotland is out of step with other major democracies. The registers in Ireland and Canada cover all forms of communication with decision makers, however it is made. Even countries with less comprehensive lobbying legislation, such as the US and the UK, include oral and written communications in their definitions of lobbying. To meet best practice and international standards, that major loophole needs to be closed, because it avoids transparency. We need to update the definition of regulated lobbying to include all forms of oral and written communications.

On the coverage of public officials, when we were debating that and arguing for it last time, the argument was made that civil servants were not decision makers and should not be included. However, the answers of respondents to the committee's calls for evidence highlight that civil servants are a key target area for lobbying. They rank higher than groups such as MSPs' researchers and political party staff, and members of the Scottish Government. At the moment, a key route for influencing policy is not being captured by the register. The inclusion of civil servants should depend on their level of accountability. Those who, as part of their job description, are accountable to the Government and permanent secretary should be considered as being at an appropriate level to be included. Those changes would not bring a disproportionate burden when compared with other major democracies. For example, Ireland requires coverage to extend to groups such as councillors. The coverage of the legislation should therefore be extended to include at least directors general, those who run directorates and senior civil servants in categories SCS 1 and SCS 2.

The Acting Convener: That is with regard to people who are covered. With regard to the range of communications, are you suggesting that everything should be covered?

Willie Sullivan: We are saying that oral and written communication should be covered.

The Acting Convener: Phone calls and emails?

Willie Sullivan: Yes. That is standard across most countries that have registers, even those that are not as comprehensive as ours. In the US, people have to register all those communications.

Craig Wilson: It is a mixed bag, and we would probably want to do a lot more work with the sector before we came down on one side of the debate or the other. I think that 70 per cent of the organisations that we spoke to said that they would be open to the idea of more communication being covered, but they were very conscious of the fact that that would be an additional burden and—like us—they would be careful to strike a balance between good democracy and transparency.

10:00

Some people would not mind doing a little bit extra if they could see that it was contributing to transparency. The burden that we spoke about earlier could be reduced, perhaps by accepting lobbying returns at face value. If I had lobbied an MSP and submitted a return, I think that that should be accepted, but 70 per cent of organisations are getting stuff bounced back because they did not lobby in quite the right way. If there was going to be discussion about expanding the communication reach, there would need to be a conversation about reducing the burden at the same time, to establish some sort of equilibrium.

Willie Coffey: Thanks very much for expressing your views so clearly.

Neil Bibby (West Scotland) (Lab): It appears that telephone calls are a pretty big loophole. The

panel said earlier that face-to-face meetings are the most effective way of influencing decisions, but would you accept that, after that, it would be telephone conversations?

Gregor Scotland: I do not think that there is any doubt about the value of a telephone conversation. However, I know from experience that if we are keen to engage with a parliamentarian, a Government minister or a senior official, we would always, in the first instance, try to do that face to face. Obviously, in the Covid era, that cannot be done in a normal meeting; in the current climate, it would be done through a video call, which has already been covered.

As I said in my earlier remarks about that, I appreciate that there is a debate to be had here, but in the context of this discussion it is important that we strike a balance. We want transparency, and there is a commitment to transparency and to ensuring that the system is still open and accessible for all organisations and individuals to inform the process without any unintended or unnecessary burdens on top of those that already exist.

Peter Duncan: Gregor Scotland has covered my point, but just to reinforce it, the other difficulty is that the more you extend the scope of the regulations, the more questions you raise. For example, is a telephone conversation with the chief of staff of an MSP who is about to prepare a contribution to a debate just as influential as speaking directly to the MSP? I go back to my earlier point. Parliament has already visited this issue and taken the view that face-to-face conversations were the most influential, and the industry—those who embark upon lobbying exercises, both in-house and as a consultant—would concur. As Gregor Scotland said, that is the route that you would want to secure—if you want to convince someone of your case, you like to have a meeting. That is the usual objective.

The Acting Convener: I would suggest that the only MSPs who have chiefs of staff are those who watch too much “The West Wing”.

Willie Sullivan: It is also about volume of contact and tracing a narrative. If you want to be transparent and say, “Did this level of lobbying have any influence?”, the number of phone calls that have been made is quite important. You might start off with a face to face and finish with a face to face, but there might be a lot of communication in between. We have to look at why all those countries include phone calls and written stuff in their submissions and we do not.

On the position of the Parliament that Peter Duncan raised, we are having this review because Parliament decided that, after two years, we would look at how the act was working. It was decided that we would start at a very low level and that there might be a need to incrementally increase it.

Of course, there is lots of great lobbying and good lobbying and it is really important that lobbying takes place. There is also some bad lobbying. Lobbying is not good or bad per se. We can look at the history of the tobacco industry, the pharmaceutical industry, the alcohol industry, the carbon-based industries and the financial sector.

These are political calls that MSPs and the public have to make, but when people are trying to influence public policy, they have to be able to make the decision about whether it is in those people’s interests or in their interests and the public interest, or whether it is not in the public interest; that information has to be available. That is why having transparency on things such as phone calls and emails so that we can look at the volume of communication is very important.

Neil Bibby: There have been calls for the expansion of communications to cover emails and other correspondence. I think that the CBI mentioned in its evidence, as have other organisations, that freedom of information requests are being used to get information about contact. Obviously, that applies to the Scottish Government and to ministers.

We have seen concerns recently about ministers taking decisions about which meetings are minuted and which meetings are not minuted and about basic FOI requests being refused on cost grounds. I do not want to open up a debate about FOI requests on their own but do the witnesses accept that there are weaknesses in how FOI is operating and that we cannot just rely on that in terms of full transparency around contact, particularly in relation to Government ministers?

The Acting Convener: In addition to that, is there a role for more proactive reporting from ministers rather than waiting for FOI requests or lobbying registers? That in itself would seem like greater transparency. Does anyone want to kick off on Mr Bibby’s question?

Gregor Scotland: It is an interesting point and there are probably a lot of legitimate questions around FOI requests and minuting meetings and so on.

However, that is not necessarily a problem for the lobbying register to solve; that is a problem that relates to the FOI legislation and it is for that process to solve and I would hope that these things complement each other. I would beware of any angle that suggests that we could expand the scope of the 2016 act to cover other areas of transparency-based legislation that are not working as we hoped they would. I think that we

should continue to focus on the specific problems that we know exist with the 2016 act around some of the practical challenges that this review could help to address.

The Acting Convener: Willie Sullivan, do you think that the Freedom of Information Act 2000 and the 2016 act complement each other?

Willie Sullivan: I think that they should as much as possible and they probably do to an extent. However, it comes back to Graham Simpson's point. You can put information and data out there but it is about how to understand it and make sense of it. This is probably being idealistic but maybe we could all think about that as a starting point. It is about gathering information and then about how to make it accessible and understandable and not putting lots of barriers in the way of the public being able to access it, which goes back to the founding principles of the Parliament, which were about openness and accountability.

Neil Bibby: I have some questions about reporting. Currently, the 2016 act does not require any information on the amount that organisations spend on lobbying activity, although that information is required in other jurisdictions. I think that Willie Sullivan called for that in his evidence. How would that increase transparency? Do the other witnesses think that there is a need for such information to be required? Should there be a threshold on the amount that is spent on lobbying?

Willie Sullivan: If we are trying to give the public information about the interests that influence public policy and how they influence it, so that the public can make a judgment about whether that is in the public interest, how much money a campaign spends on that lobbying is a crucial piece of information.

If I were to spend, say, a couple of hundred quid on a campaign to improve the 2016 act, that would be a different matter from spending hundreds of thousands on it, through public information campaigns or lobbying activity.

We all know that information on how much an organisation budgets for particular campaigns is probably pretty accessible—for example, how much a client would spend on a public affairs company to do its influencing for it is easily findable. Therefore, the argument that it is difficult to find such a sum and express it does not hold up.

There should be a lower limit, for sure. If people are spending under a few thousand pounds on lobbying activity, that might not be of great interest. However, if they are spending tens or hundreds of thousands on trying to influence public policy, that information should be publicly available.

Peter Duncan: ASPA represents public affairs professionals who work in-house, membership organisations and consultants. Across those groups, there is a unanimity of view that it would be really impractical and administratively difficult—if not impossible—to deliver what Mr Sullivan is looking for. I stress that lobbying is only one element of the integrated communications campaigns that organisations, whether they are charities or commercial organisations, undertake. Splitting out the cost of lobbying would be really difficult administratively, because the same people undertake both exercises.

Furthermore, if, for example, a value were to be attributed to undertaking a campaign that resulted in two face-to-face meetings with different members of the Scottish Parliament, and that value was then communicated to the lobbying registrar, how would the registrar then verify that information? If that would be difficult and would require judgment calls to be made and decisions to be taken by the person reporting it, how would the registrar be able to verify that such information was accurate? In complex organisations, the administrative burden of splitting the amount of management time that is attributable to individual campaigns would be disproportionate. More importantly, we do not see any evidence that it would deliver increased effectiveness in determining what gets to the heart of lobbying.

As I am sure committee members will know, free lobbying is often the most effective approach. For example, an individual handwritten letter from a wee old lady who contacts every MSP across Scotland would cut through, get to the heart of the issue and make an impression. The fact that £1,000 rather than £100 is spent on a lobbying exercise does not necessarily mean that it is 10 times more effective—very often, quite the reverse is true.

Gregor Scotland: I will make two points in response to the question on costs.

First, on a practical level, I take a different view from Willie Sullivan, in that working out exact—or even rough—amounts of money spent on preparing and carrying out any regulated lobbying would be extremely difficult and time consuming. I do not know where you would start or stop that process, as it would have to cover everything from writing a briefing to booking a room or arranging transport. I agree that it would be difficult to come up with a figure that could be verified in any way by the registrar's team.

Secondly, I come back to the question that I raised earlier: is there evidence of a problem that needs to be solved? All the evidence suggests that the Scottish Parliament has a very good record on ensuring that there is equal opportunity for everyone to access MSPs and the

parliamentary process in general. I do not think that there is any evidence that such access is dependent on spend.

10:15

A couple of statistics from the registrar's annual report show who has engaged at Holyrood over the past couple of years. The disability, health and social care sector is top of the list of registrants by volume, accounting for 14 per cent of all registered accounts. That sector also accounts for 20 per cent of information returns, which is the highest figure for any sector. In second place in both those categories are equality and social issues. If we look at the number of information returns by type of organisation, we see that by far and away the most returns are made by charities—about 41 per cent of the total number of returns come from charities.

I do not think that there is any evidence of a problem in relation to money and access at Holyrood that we need to address, but lots of areas of the 2016 act need to be addressed. We should focus on trying to improve those areas.

The Acting Convener: We have only 10 minutes left, so I encourage brevity in comments and questions, because we want to cover another couple of areas.

Neil Bibby: I want to ask about reporting timescales. The Law Society of Scotland and others have pointed to a potential weakness, in that the timescales do not allow for the greatest public scrutiny. If we want to improve transparency, we should perhaps look at those timescales.

The public might not know for six months about the contact and lobbying that having been going on. In those six months, legislation might have been and gone and decisions might well have been made months before that information becomes available. Would the witnesses support a shortening of the six-month reporting period to a quarterly reporting period, which is what Ireland has?

The Acting Convener: I ask anyone who wants to answer that question to say yes or no and what they think the time period should be.

Willie Sullivan: Yes. As I said, when the provisions were introduced, the idea was to take things gently and to allow people to get used to them, so a six-month reporting period was probably okay at that time, but I think that we should now go to a quarterly reporting period.

Peter Duncan: No, we do not think that shortening the period would necessarily be a meaningful improvement. There is a balance to be struck. We should bear in mind that some conversations are particularly sensitive—there might be commercial sensitivities and so on—so the six-month period allows for flexibility in dealing with such issues.

That period allows registrants to comply with the 2016 act in a way that is most administratively straightforward for them, in order to minimise the administrative burden. The choice to report on a quarterly or six-monthly basis allows registrants to minimise that burden.

I go back to the key point that there is no evidence so far that the regulations have unearthed a problem. As the registrar's report that was published this week makes clear, there is high compliance with the rules, so why make them more difficult and complex, and why make it more likely that people will miss deadlines by default? I do not think that that would add anything to the regulations.

The Acting Convener: Again, I note that I am conscious of time.

Craig Wilson: We mentioned in our evidence the hypothetical scenario in which, if people use the six-month period routinely, it is feasible that an organisation could influence a member of Parliament but that that influence is not known about until long after legislation is passed. That is a valid point. Our evidence shows that the amount of time that is spent on reporting is relatively low, so I do not foresee any issue with organisations having to report on a quarterly timescale. I certainly think that that would be manageable.

On Peter Duncan's point about unnecessarily introducing rules that people might fall foul of, I think that the presumption of innocence and good faith should continue. If people have made a mistake or have not submitted something, the registrar's team has been excellent in assuming that that has been done in error. As long as that approach is maintained, I do not see the change being a huge issue.

Graham Simpson: I am aware of the time, but I want to go back to something that Peter Duncan said right at the start of the meeting. He said that no great scandal has been unearthed by the lobbying register. I suggest that no great scandal will ever be unearthed by the lobbying register, because, if there was anything dodgy about a meeting with an MSP or a Government minister, it is unlikely that that meeting would ever appear on the register—nobody would register it. No scandal is ever going to come up on the register. That ties in with what Alex Neil said earlier about undue influence.

I want to discuss compliance and penalties. Are the checks and balances around compliance strong enough? Are the penalties strong enough if someone does not comply?

I put you on the spot, Peter, so you might want to come back to me.

Peter Duncan: I take the point. If you are talking about major scandal, it would probably be about avoidance of the regulations rather than the recording of information.

The first two years have not shown us any great surprises. A lot of the information that is being recorded is what we expected. The vast majority of conversations that take place are happening in the sectors where we expected them to happen—often the charitable and environmental sectors. All I see is evidence of a healthy dialogue between the outside world and parliamentarians, which creates a better-informed Parliament.

You asked whether we could make any improvements. Our statement makes clear that we have engaged healthily with the process. We think that the balance in the legislation is just about right.

Willie Sullivan: This is not about big scandals; it is about people having the information to make judgments. Different people will have different views about undue influence and what it is. If we have more information that shows that there is a healthy dialogue between different parts of society and the Government, that is a good thing. That is part of the process of instilling confidence. Rumour, myth and distrust form in the dark, where things are opaque. The point is not to expose scandal but to give confidence.

The Acting Convener: What about sanctions?

Willie Sullivan: I think that the sanctions are fine. I advocate making people more compliant where that is necessary, but that is a resource issue. We would support that if it was possible.

Gregor Scotland: On compliance and sanctions, the fact that we have full compliance with the register shows that the sanctions are sufficient. For most organisations, the issue is the reputational damage caused by non-compliance, not the threat of financial penalty.

That level of compliance also validates the commonsense approach that the registrar and his team have taken. If something is not quite right, there is an assumption that that may have been done by mistake rather than deliberately, and that can be quickly cleared up by an exchange of information. The registrar's approach to that is very helpful.

Peter Duncan: I realise that I did not reply to Graham Simpson's point about sanctions. I agree with Gregor Scotland. The sanctions that are in place are reasonable. The evidence of the first two years shows that the people who are having regulated conversations are willing to comply with the 2016 act. The positive way in which the registrar's team has engaged with the sector has been very helpful in creating that culture of compliance.

Sanctions are not seen as being particularly relevant—people want to comply. The sanctions were appropriate at the time and they remain so, but I do not envisage them being deployed.

The Acting Convener: Thank you. We are in our final couple of minutes, but I will give the witnesses the opportunity to make brief comments on our third theme, which is non-legislative changes. We have already had one suggestion around the change of the interface, but if anyone has any suggestions on non-legislative changes that could be brought in, please share them with us.

Gregor Scotland: We have covered the issue already, but there are areas where change would be helpful. As I touched on, clarity around the exemption for somebody who is invited to give evidence would be helpful, as would clarity around the constituency exemption, because that causes some organisations a lot of difficulties. The definition in the guidance of

"a place where the person's business is ordinarily carried on"

has value and I know that it was introduced for a reason, but it is not always clear how it applies to an organisation that operates predominantly online, an energy company that operates in just about every postcode, or a supermarket that has a store in every constituency or region. Some clarity around those exemptions would be helpful for organisations that are trying to comply.

I have a small final point. I think that the six-month nil return could be removed. If an organisation has not carried out any regulated lobbying, I do not see the need to submit an information return to the register. That seems an unnecessary burden with no obvious benefit. In the interests of time, I will pause there.

Willie Sullivan: I support those comments. Also, a change to the way that the data is handled, around the ordering of the information on campaigns, would be good.

Peter Duncan: In case you think that we do not have any view on changes that could be made, I reinforce the user experience point. If we can reduce the burden by getting a better way of reporting events, that would restore a lot of confidence among people who are concerned about inadvertently transgressing the regulations.

Craig Wilson: In general, I agree with those comments. It is much more about reducing the burden of the user experience. It is hard to know what would require legislative change and what would not. One of the things that was not

mentioned is the misunderstanding of what lobbying is. We submit returns that we believe to be lobbying and they are rejected because there was no concrete or specific ask. If that could be clarified or the returns taken at face value—as long as everything else was correctly filled out—that would reduce the administrative burden on organisations.

The Acting Convener: Excellent. I thank Peter Duncan, Gregor Scotland, Willie Sullivan and Craig Wilson for their evidence this morning.

10:27

Meeting suspended.

10:30

On resuming—

The Acting Convener: I welcome our second panel of witnesses, who are also giving evidence as part of the committee's post-legislative scrutiny of the Lobbying (Scotland) Act 2016. I welcome James Adams, who is director of the Royal National Institute of Blind People Scotland and joins us remotely; Fergus Boden, who is parliamentary officer for Friends of the Earth Scotland and is participating on behalf of Scottish Environment LINK, and who joins us in person; Alison Douglas, who is chief executive of Alcohol Focus Scotland and joins us remotely; Brian Simpson, who is regulation policy executive for the Law Society of Scotland and joins us remotely; and Susan Webster, who is head of policy and campaigns for MND Scotland and also joins us remotely.

Fergus Boden, if you wish to speak, please indicate to me by raising your hand—you do not need to touch your microphone, as it will be activated automatically. I ask the witnesses who are joining us remotely to raise their hands, as I can see them on the screen in front of me, or type R in their chat function, and I will bring them in at the earliest opportunity. If we lose connection with you, I will come back to you later in the meeting.

I understand that all our witnesses were following the first evidence session and will therefore be aware of the issues that have arisen and the comments that have been made so far. Members will ask questions, but I encourage witnesses to respond to one another's points too.

The witnesses will have noted that the committee paper suggests focusing on themes 2 and 3 in this session. First, however, I ask witnesses whether they would like to make any brief comments on theme 1, which is the impact of the act to date.

I will start with Fergus Boden, seeing as he is in front of me, and then I will go to Susan Webster.

Fergus Boden (Scottish Environment LINK): Thank you for inviting me to speak today.

With regard to the impact and operation of the act to date, I will reflect briefly on the comments from the first session. From our experience, we have concerns that the impact of the act has been limited, not only in achieving its original goals but in meeting the Scottish Parliament's founding principles of openness and transparency.

Our concerns can be broken down into two issues. First, there is a balance to be struck in creating transparency in lobbying while not creating too much unnecessary additional work for those who are conducting the lobbying. The act is a welcome initial step in creating transparency, but there is a risk that what we have created almost captures the worst of both worlds. We now have a system that is not necessarily easy to use and that makes it difficult to register lobbying, but which, equally, has only a limited impact on improving transparency and gives only a limited insight into lobbying in Scotland.

On the impact and operation of the act, we welcome what it was set up to do and the initial steps that have been made, but, from our experience, we think that more could be done to make it easy to use and to capture a bit more of the lobbying that is happening in Scotland.

Susan Webster (MND Scotland): In thinking about the impact of the act, we would like to know to what extent the public are looking up details in the register and going to find information. I am thinking in particular of small charities such as ours. Are people going to the register to try to find out about the lobbying that we are doing? I do not know that the full impact can really be assessed without knowing the answer to that.

With regard to the impact on our charity, the process is not too onerous, although it can be frustrating and protracted at times when we have to go back and forth, with some submissions being returned and suggestions for reworking being made.

Our fundamental concern in everything that we do and spend time doing is, of course, the impact on people who have motor neurone disease. Does the act have an impact on them? Absolutely not.

However, it could have an impact if the legislation was extended to cover written and face-to-face communication. Such an increase could have a negative impact on people with MND, because we are a very small staff team—only one full-time member of staff and one part-time member of staff carry out our public affairs activity. Any increase in that burden would have a negative

impact on people with the illness because it would mean that we would have less time to do the work that is of actual benefit to them.

James Adams (Royal National Institute of Blind People Scotland): With regard to the impact of the act, RNIB Scotland as an organisation tries to ensure compliance with regulations and legislation, and we have complied fully with the act. We have made 75 submissions in the period since the act's inception.

We are a fairly large charity and most of our staff work in service delivery, so they rarely engage with the field of public affairs or with politicians in a lobbying context in their day-to-day work. Nonetheless, we take the act's requirements very seriously, and we have provided training for our staff to ensure that they are aware that, if they are in a context in which they might engage with an MSP, they should let the public affairs team know so that we can read up on what would be construed as lobbying and so forth and ensure that we report the activity properly.

There has been an unintended consequence, however—I will give you an example. Not long after the act's inception, we held an event to celebrate our 150th anniversary, which was attended by 300 people, including quite a lot of MSPs. We had to give a briefing to staff who were coming along to support the event, and after the event took place we had feedback to suggest that some of the staff had been worried about engaging with MSPs in case they said something wrong that might contravene the act.

That involved some learning for us in terms of the way that we deal with our staff, but we also need to be careful that the act does not have the counter-effect of putting some people off wanting to engage with politicians if they are not used to operating in the public affairs field. That is just an observation that we need to think about.

Another issue is the bureaucracy that is involved. Although we understand the need to report regularly, it takes up four or five hours of one of my staff member's time each month to ensure that we get it all done. Although that is important, we would probably want to ask about a streamlined reporting process. That might come up later on.

Brian Simpson (Law Society of Scotland): As a professional body that is registered as an active lobbyist, the Law Society of Scotland supports the principle of transparency through statutory regulation of lobbying activity. The act introduced a level of regulation that did not previously exist, and it has therefore certainly gone some way to promote transparency over the past two years.

However, we would suggest some improvements that could be considered, which may help to further strengthen transparency and therefore increase public confidence and the confidence of the lobbying sector itself.

On the question of the impact on the Law Society, there has certainly been an impact, which there was always going to be, given that the act placed a new requirement on us. We have developed quite robust internal processes to ensure that we capture all our lobbying engagement and that it is registered in a timely manner.

We had to introduce training for all our staff and we had to put in place related policies and processes, which took some information technology development. Now that all our policies and processes are in place, our team commit some time, but not a significant amount of time, to ensuring that we capture all our lobbying activity. I consider it to be a negligible amount of time; we are talking about maybe a few hours—if, indeed, that—of a colleague's time per week.

The Acting Convener: In the first session, we discussed whether changes were required to the legislation and, if so, what those changes might be. I would like to continue that conversation around theme 2.

I am sorry—I completely missed Alison Douglas out there. We will go to her, and then I will go back to where I was. My apologies.

Alison Douglas (Alcohol Focus Scotland): Thanks, convener. In the interests of transparency, I make it clear that Alcohol Focus Scotland is a member of SALT.

For me, those two questions are about whether the act has increased transparency and how easy it is for the public and lobbyists to use. Those issues came up in the first evidence session. A couple of members of the committee asked about whether the act had, in fact, prevented people from having undue influence. Although that is difficult to know, the fact that it is bringing the activities of lobbyists into public scrutiny will surely have had some deterrent effect in relation to people undertaking activities that are not really acceptable. The lack of examples of people misusing lobbying does not necessarily mean that the act is not having a positive effect.

The question that came up again and again in the first session was about the scope of the act and the scope of the activities that are covered. We would certainly wish to see the act extended to cover a wider range of activities and a wider range of individuals or groups of people. The issue of usability also came up again and again in relation to accessibility for those who are registering their activities, and for the public and others who are using the register. We would like to see improvements to simplify the submission of

information and we would like lessons to be learned from the example of Ireland in relation to how searches can be undertaken on the lobbying register.

The Acting Convener: I will now hand over to Willie Coffey to kick off on theme 2: the status quo or legislative reform.

Willie Coffey: Good morning. Alison Douglas started to take us into the area that we now want to discuss. We would like to get on the record the views and thoughts of all the witnesses on whether we should maintain the status quo or reform the act in respect of two key issues. The first area is the communication methods that are to be regulated as lobbying and whether they are they right ones; at the moment, it is face-to-face lobbying. We would like your views on whether that should be extended to include other forms of communication. The second area is the people who are covered by the act—MSPs, members of the Scottish Government, law officers, junior ministers, special advisers, and the permanent secretary. Should we extend the terms of the act to cover other people? I would be obliged if we could hear your views clearly for the record.

The Acting Convener: Could the witness who wishes to kick off either raise their hand or pop an R in the chat function? If nobody does, I will pick on someone.

Fergus Boden: I am happy to go first. We would support an extension of the act in both those areas. We have particular concerns about the lack of coverage of non-face-to-face communication, particularly with regard to phone calls.

10:45

As the first session touched on, in the past six months we have entered a new age of communication in which we can communicate with people via Zoom across the country. As it stands, the act means that a video conversation with someone is registrable but a non-video call that is audio only is not registrable. There are four people calling in to this meeting by video call, and I would like to think that if one of their webcams died they would be no less persuasive than if we could see them. To us, the exemption for having to be face-to-face is no longer fit for purpose and we question its inclusion in the first place.

We would also be supportive of extending the act to cover senior civil servants. Some of our most productive and particularly detailed conversations about the creation of legislation and the implementations happen with civil servants, and often a civil servant will be a specialist in an area. Therefore, if we can meet them and discuss an issue in more detail it is a really effective way to change the final shape of legislation or decisions.

I appreciate that extending that to every layer of the civil service is, perhaps, unnecessary, as there are some people in the civil service who do not have decision-making powers. However, we think that those higher up civil servants who do have decision-making powers should be covered by the act in some form.

The only caveat is that we think that that should be done in conjunction with changing the registration process and making it easier—we might come on to discuss that. Some legitimate concerns have been raised about the difficulty in registering what we do. If that were easier, it would make extending the act more palatable.

Alison Douglas: Alcohol Focus Scotland would also support the extension of the act to cover a wider range of, or all, communications. As Fergus Boden highlighted, that could be significant in influencing decision makers. The current situation has only served to accentuate reliance on contact that is not face to face; we need to acknowledge and respond to that, as it will give us a much fuller picture of the scale and extent of lobbying activity.

Lobbying activity involves a sophisticated mix of interactions with decision makers. Those interactions are partly face to face, but—as was discussed in the previous evidence session—they may be followed up with phone calls and emails. It is important to get a picture of the lobbying that takes place.

The Scottish civil service has a flatter structure than the UK civil service. As an ex-civil servant, I know that those who are at a lower level in the hierarchy can still have a significant impact; they receive quite a lot of lobbying from organisations and have a significant role in providing policy advice to ministers. Therefore, we think that the act should be extended to cover the senior civil service.

Brian Simpson: During the act's passage through Parliament in 2016, we expressed the view that it should be extended to include all communications. The act is unique in its focus on face-to-face communication. Almost all jurisdictions that have any kind of legislation to regulate lobbying try to encapsulate written and oral communication of all types, not just face-to-face communication.

The act effectively allows a lobbyist to pick up the telephone, for example, and express views, opinions and suggestions, which is basically lobbying, and the MSP does not need to register or log that in any way. However, if that lobbyist meets the same MSP face to face and expresses the same views and comments, that has to be registered. There is therefore a bit of a loophole.

We do not have any evidence of this, but some lobbyists may have identified it as a legitimate loophole that they can utilise for their own purposes by picking up the phone rather than meeting with MSPs.

As another witness pointed out, the pandemic and the various lockdowns that have occurred since the 2016 act came into force have led to a greater emphasis on lobbying by telephone.

As I am sure that committee members will know, the Law Society engages quite heavily with members of the Scottish Parliament. In our lobbying activity and engagement, we have shifted towards using communication methods other than meeting face to face. We are currently still carrying out some face-to-face meetings via videoconference, but the majority of our activity takes place over the telephone and via email.

On the question of which activities should be covered, we pointed out both in our evidence when the act was going through the parliamentary process and in our written submission to this committee that it is possible to influence policy development and legislative reform at a much lower level, through senior civil servants. They have influence over Scottish ministers and potentially over MSPs, and the act fails to recognise that.

James Adams: Although further transparency must be an objective for civil Scotland, I will discuss the bureaucracy aspect of the act.

RNIB Scotland represents the interests of blind and partially sighted people. Our small team covers 13 or 14 substantive policy areas of the Scottish Government's programme and the Scottish Parliament's work, and we engage regularly with MSPs and senior civil servants on a whole panoply of Government policy issues.

If we had to report further on the communication methods that we employ to do that, it might go some way towards achieving greater transparency, but it would also place a bureaucratic and administrative burden on RNIB Scotland, which is essentially a charity. Although we are a large charity, most of our staff do service work and not public affairs work, which means that there would be a lot of pressure on our small public affairs team.

If the reporting requirements were extended much further, we would have to consider how we could afford to meet those, and we would also have to find a way of costing that work. We would not want to reduce our main activity in order to find the staff resource to cover such administration, but we would have to find a way of doing so.

Many activities that are pertinent to blind and partially sighted people in Scotland are carried out by local authorities. We therefore regularly bend the ears of councillors and council officials, and we spend an awful lot of time engaging with them. If the direction of travel is to extend the act at some point, we would assume that its application to local authorities would have to be considered, because a lot of lobbying goes on in that regard. If we were to go down that route, we would have to set up a whole cottage industry of monitoring officers and organisations to cope with all the bureaucracy.

I flag that up not as a reason not to extend the act's reach, but to highlight that it would have an impact on RNIB Scotland and, I would imagine, on an awful lot of other organisations. How would we service those requirements, and to what end? We must ask to what extent the public go and scrutinise such information, and what they get from that.

I have one suggestion, which might not be popular with committee members. We might want to consider whether there is a way of publishing MSPs' and senior civil servants' work diaries. If they were to be put in the public domain, they would show, for example, that a certain MSP, in their meetings with RNIB Scotland, had discussed issues relating to a transport bill.

Rather than organisations having to administrate all their own reporting, the information could, with a bit more resource, be gathered centrally by pooling all MSPs' records. That would make for a smoother system, although I appreciate that putting members' diaries in the public domain might cause other issues. It is just a suggestion.

Susan Webster: On extending the act's provisions on communications, there is no doubt that MND Scotland's greatest concern would be an extension to cover written communications. As was highlighted in the previous evidence session, we would not know, for example, whether an email had been read, or indeed whether it had been read by a member of staff rather than the MSP to whom it was sent. Emails are more of an intent to lobby than a form of lobbying. In many such emails, an intention to lobby may be there, but the question is whether lobbying has taken place—usually, it has not.

The question whether to extend the lobbying provisions to cover civil servants is an interesting one. Most of our work with civil servants is carried out within working groups that are initiated by the Scottish Government. Although that work is led by civil servants and we are asked to give our opinions on certain issues and to make suggestions within that scope, I would be interested to know how such working groups would figure in the process.

A helpful way of amending the act would be to extend the list of exemptions in it. For example, we could amend the small organisations exemption; that point was touched on by James Adams. We are similar to RNIB Scotland in that—as I said earlier—we have only two members of staff who engage in public affairs activities. If the small organisation exemption could be reworked to take into consideration how many public affairs staff an organisation has, rather than its staff numbers in total, that could potentially make a big difference.

Another issue—it is smaller, but nonetheless relevant—is that cross-party groups are exempt from the provisions, but only if they are quorate. It does not make sense that lobbying is not regulated by the act if it takes place in a CPG meeting with several MSPs, but it is covered if only one MSP is present and the meeting is inquorate. All CPG meetings should be exempt, no matter whether or not they are quorate.

The Acting Convener: I have two requests for supplementaries from members—I will bring in Graham Simpson and then Colin Beattie.

Graham Simpson: I did not know about the CPG rule to which Susan Webster referred—it is very strange.

I want to follow up on the question of the type of communications that should be included. I have been struck by several points that have come up in both sessions. The first relates to emails. I accept that many emails are not read, and there is no way of knowing whether or not they have been read.

Almost weekly—almost daily, in fact—all MSPs are subject to a barrage of emails from supporters of organisations such as Friends of the Earth. Those emails are from members of the public, but they are generated by organisations. It strikes me that that could be regarded as a form of lobbying. What do the witnesses think about that?

The Acting Convener: Before our witnesses answer, I will go to Colin Beattie, as his supplementary might be similar. If not, the witnesses can answer the questions collectively.

Colin Beattie: My question is a wee bit different. I go back to what James Adams said about the resources that would be needed if the lobbying provisions were extended to cover emails, for example. I have no feel for what proportion of lobbying as a whole is currently captured by the act—it could be 10 per cent or 20 per cent. We might talk about needing an extra body or two, or perhaps more staff hours. Does anybody know what would be needed if all the different forms of lobbying were included?

The Acting Convener: Those questions are very different, but I ask the witnesses to answer them both, if they can—I apologise for that.

11:00

James Adams: I will answer both points, convener.

The point about the "barrage" of emails that MSPs might receive is a fair one; I imagine that thousands of emails may suddenly come into the inbox as part of a particular campaign. That might get an MSP or policy officer looking at the issue, but it is not substantially going to change an MSP's view. RNIB Scotland does not use such a device, as we prefer to engage in much more measured and targeted lobbying and communications when issues come up.

The point about the percentage of lobbying that the act currently covers, and the resources that would be needed if it is extended, is a very good one. What would an extension mean in that regard? RNIB Scotland has completed 75 returns under the current reporting requirements since the act came in. I am racking my brain to remember what happens when a bill goes through parliament. How many times might I phone to get the ear of an MSP or a civil servant who is drafting an amendment, or to speak to somebody whose position we are trying to shift? Would I be required to write all that down in a log, get it processed and get it all to somebody in my public affairs team, who would then have to have a dialogue with the clerks involving ping-pong back and forth?

That is a lot of bureaucracy. If it is necessary for transparency and to meet the aims that civic Scotland is trying to achieve, by all means it should be done. However, consideration must be given to what that would mean for the resources of MSPs, Parliament and the reporting organisations.

There is no doubt that if there is an extension of what the act covers, there will be an extension of the reporting requirements, which will involve a cost to, and take up the time of, people at both ends who have to do that work. Perhaps the committee needs to think about that before any decision to extend the act is made.

Fergus Boden: As Scottish Environment LINK is one of the organisations that does a lot of barraging of MSPs' inboxes, I should probably respond to that point.

In a way, the questions from Graham Simpson and Colin Beattie are linked in that they both speak to the need to look at the act as a whole, taking into account its many different elements and the framework that they create.

A member of the public who participates in an online e-action would not be covered by the act,

even if it was extended to cover emails, because of the many exemptions that—rightly—differentiate between a member of the public and a lobbyist for an organisation. For example, members of the public are not being paid to do it, they are contacting their constituency MSP, and they are not necessarily affiliated with the organisation. That may be a separate issue, because the exemptions mean that it is omitted from the scope of the act.

A really important part of our democracy is that organisations like ours make it easier for people who care about an issue to contact their MSPs. Engaging with Parliament can be a confusing process, if a person does not live and breathe its many quirks, and organisations such as Scottish Environment LINK help to simplify that process for members of the public.

With regard to a potential extension of the act, Colin Beattie made the good and interesting point that we do not know how much lobbying the register currently captures. One of the benefits of extending the act is that it would close a specific loophole that is tied to the definition problem. The act captures my activity as lobbying only if I make a specific ask of an MSP; I think that it says that the activity has to relate to parliamentary process or legislation. If I meet and talk to an MSP and we both just complain a bit about the lack of bike lanes in their area, that would not be lobbying under the act. However, if I said to the MSP that they should lodge an amendment to a bill to increase the number of bike lanes in their area, that would be lobbying.

Exempting phone calls creates a framework whereby I could meet someone, establish a relationship with them and explain the underlying points of an issue, and then follow that up with a phone call or an email to say, “By the way, I didn’t mention this the other day, but can you put in an amendment to this bill?”. If I make that final request by phone or email, it is not covered by the act.

That is a glaring omission. One of the risks with the act as it currently stands is that it almost creates a framework to avoid having to register things.

The Acting Convener: Do any of the other witnesses want to respond?

Susan Webster: On the barrage of emails, our supporters generally email their own MSPs, so that there is a personal connection—they are a constituent. We also encourage them to speak about their experience and to say how something affects them, by talking about their own experience of the illness and how different things have impacted on them. Therefore, it is very much their personal message, and, for that reason, I do not see that as lobbying. It is not really our message; it is all about them. As was highlighted earlier, our understanding is that that is what MSPs want to hear—how things affect individuals personally.

On Mr Beattie’s question about how much lobbying goes on, there is no getting away from a response that was made earlier in the day that everybody knows that the most effective lobbying is done face to face. I accept that, to a degree, telephone conversations are effective as well, but everybody knows that, fundamentally, sitting down with an MSP, pre-Covid in a meeting room or in a virtual meeting like we are having today, is the effective way to lobby. Therefore, from our point of view, including emails and so on will not really influence the quality of lobbying that is taking place, because people will always strive to do what is most effective. The biggest achievement is to have face-to-face meetings with MSPs, because that is the most productive approach.

Neil Bibby: The balance that we are trying to strike is to have transparency without being overly bureaucratic. To go back to an example that James Adams gave, if, for example, we are discussing an amendment to a bill and he speaks to an MSP on a number of occasions about the same issue, it would be overly bureaucratic for all of that to be recorded in a log. I hear what Mr Adams says in that regard, but is it not important for there to be transparency about the fact that there was at least one phone call with an MSP during that process? If there is not a record of every phone call, should there at least be transparency that, during the passage of a bill, there was telephone contact between your organisation or an organisation and an MSP or MSPs?

The Acting Convener: I will take comments from Brian Simpson and Alison Douglas before I bring in Mr Adams to respond directly to that point.

Brian Simpson: The point about emails is a good one—would it require every email to be registered as a lobbying activity, and how would you know about the contents of the email and whether it had been read? This is not without precedent, because both the UK Parliament and the Republic of Ireland lobbying regulations cover written communications, including emails. Therefore, if the committee is that way inclined, it could look at what is happening in those jurisdictions. It is potentially problematic. One way around it would be to go back to the definition of “lobbying” and think about it a bit more. For example, does lobbying include one-way communication—that is, sending an email setting out your views—or does it require two-way interaction and conversation, which is what you

get with face-to-face meetings and telephone calls? The committee could consider that.

On how much lobbying activity is going on at the moment, it has been rightly pointed out that we just do not know. We do not know how much face-to-face lobbying activity fell off as a result of the introduction of the 2016 act. Did more lobbyists revert to using telephone calls for communications? We do not know. I do not think that any research has been conducted on that in Scotland. However, down in England, which is covered by the UK Parliament, it is estimated that a maximum of only 5 per cent of lobbying activity is captured, but the activity that is captured in England is much narrower than what we capture in Scotland.

Alison Douglas: The point about face-to-face contact probably being the most impactful is well made. However, colleagues have highlighted that, if someone has a role in an organisation in which influencing decision makers is a significant and important part of their work, in order to be effective, they need to develop relationships with people that mean that, when they send an email, more attention is paid to it than would be paid to cold calling, if I can put it that way. That speaks to the fact that all communications have an impact when a relationship has been established, which is why all communications need to be within the scope of the provisions and are relevant.

On the issue about the range of individual activities, it would be helpful to look at the Irish model. It would appear from the way in which you can search on the Irish database that it is possible to look at the different types of activity that relate to a specific campaign or issue that is being raised. That gives a fuller sense of how organisations are engaging with decision makers. For those who are looking at the information, it would be more illuminating to take that approach and to be able to look at activity more from a campaign perspective, rather than there simply being a register of individual activities and engagement.

James Adams: Neil Bibby makes a fair point. Should there be a level of transparency about a phone call or a number of phone calls relating to a particular lobbying issue? If there was a time limit to engagements—for example, if a transport bill was going through Parliament—an organisation might be able to provide a report to say that it will be lobbying, over a certain period, on the key principle areas that it wants to be included in the bill and that that will involve various types of communication. Rather than having to provide a log with, in essence, every bit of the extended communications that are made, we could be open about the fact that we are engaging and about the points on which we are lobbying in relation to the bill. A single report could be provided, rather than giving details of the 27 activities that might unfold during the period of that lobbying.

The Acting Convener: That is quite a good suggestion. Organisations could list the MSPs who were covered, too.

I will pick up on one general point. On both panels, there seems to be a general acceptance among the witnesses that face-to-face lobbying is more effective than that done by phone calls. I would counter that view by going back to the questions from Alex Neil and Graham Simpson to the previous witnesses. Carrying out illicit lobbying, or lobbying that is outwith the scope of what is right, requires there to be a relationship, a level of confidence and a level of secrecy. People are more likely to carry out such lobbying by phone than during a face-to-face meeting in a Parliament building or in a restaurant or cafe. I want to push back slightly on the suggestion relating to phone calls. Do any witnesses have any reflections on that?

11:15

Fergus Boden: I absolutely agree with what you say there. Even if it was less effective, it would create a loophole for people to exploit if they wanted to. Phone calls are sometimes a necessity, but that does not make them any less important; we know that when decisions are made at the last minute, sometimes people have to make a phone call. If you get wind on a Monday that there will be a statement on Tuesday about an issue that you care about, the only way to get in touch with people may be over the phone, and we know that that has happened. We keep saying “phone call” but in reality, as I said earlier, switching off your webcam is captured as audio only, and we need to bear that in mind. There have been times when because of the internet connection we have had to call people, so I agree entirely that it is not necessarily less effective but we need to bear in mind that sometimes it is the only option and the public are no less deserving of knowing about those phone calls than they are about a face-to-face meeting.

The Acting Convener: Can I get an indication of those who think that calls should be included? By a show of hands, who thinks that calls should be included? And who thinks that they should not? Brian Simpson, Alison Douglas and Fergus Boden say that calls should be included, and it looks like Susan Webster and James Adams are abstaining; is that correct?

James Adams: Before I get into saying that that is our firm position, I want go back to the point that I made earlier. I racked my brain to do some analysis as we were speaking about how many

phone calls we might typically make across a range of different policy areas in the 14 different areas of the Government that we try to cover. I could not even begin to list them. During the coronavirus period, we have spoken to all sorts of bits of the Government for perfectly obvious and legitimate reasons, so, before we come to a strong position on whether calls should be included, we would really want to do some analysis on how many calls there are, what that means in relation to reporting, how we report that, whether we would report the content of the conversation and what level of detail we would include. That could potentially be complicated.

Brian Simpson: Although the Law Society would support phone communications being covered, along the lines of what Mr Adams said, we agree that there would need to be some kind of mechanism behind that to ensure that not every phone call would have to be recorded because, as one of the panel members pointed out earlier, we could get into the situation where you have a face-to-face meeting followed up by numerous telephone calls. If telephone communication had to be recorded, would every telephone communication on that particular matter need to be recorded, or would it only be the initial communication where the lobbying activity initially arose? If it was to be all the subsequent telephone conversations, that could be quite onerous on lobbyists and the lobbying registrar's department.

The Acting Convener: Do the witnesses have any other comments on the status quo or legislative reform before I move on to theme 3?

Fergus Boden: There are two things that I hope would be considered. James Adams made a point about the imbalance between MSPs and lobbyists in terms of reporting, with the lobbyists having to do all the reporting and MSPs not being required to report on their interactions with lobbyists. It might be an unpopular suggestion in this room, but we support calls to publish MSPs' calendars to some degree, which is something that some groups in the European Parliament do anyway, and there is software that does that. I appreciate that we do not need every detail of every MSP's calendar published—we do not need to know what day you go to the dentist—but there are elements that should be published, and that would go a long way to reducing the burden on lobbyists while creating a much broader overview of the system.

Alex Neil: The vast bulk of an MSP's contacts is with their constituents, and there is no way that I would publish a list of constituents I have met, visited or spoken to. It would be a total breach of confidence in the relationship with the constituent. With all due respect to MEPs, they never dealt with constituency work. They might get the odd case, but it forms the vast bulk of our work. I see where you are coming from, but it might be better to put a general duty on MSPs to report a situation where they believe that they have been lobbied for something but it has not been registered by the person doing the lobbying. There are practical issues to address, but that would be a reasonable proposition. If we start publishing MSPs' diaries, that would be a total negation of our constituents' rights and I, for one, would not do it under any circumstances.

Alison Douglas: Another issue in relation to the legislation, which came up in the first session, is around disclosure of the financial costs of lobbying. We have not explicitly touched on the different scale and magnitude of lobbying activity by organisations, based on the capacity and resources that they have available to them. It would be naive to assume that that does not have an impact with regard to influence. I support the call from SALT earlier to include disclosure of financial information on campaigns as part of the legislation going forward.

James Adams: On Alex Neil's point. I do not think that anybody is suggesting that we would want to know about constituents in their MSPs' care. Clearly, there are privacy issues there. However, an organisation that is set up to lobby the Parliament in order to affect legislation or influence how governmental resources are utilised is different from a constituent. If an MSP is being lobbied by RNIB or Shell UK, they or their office could put in the diary that they were lobbied on that day by RNIB on, say, the transport bill on certain issues. If they put it in the diary, it means that hundreds or thousands of organisations all round the Parliament would not have to wrestle with how they report that. The organisations might not have the staff to do it or they might not understand the process, so they do not do it. Whereas, if, alongside the clerks, the MSPs and the Parliament were set up to register the lobbying in an appropriate and effective way, it would make the method more efficient and would cost society less overall.

The Acting Convener: However, we could end up in a situation where MSPs meet organisations just so that they can log them in the logbook rather than because they want to genuinely engage with them. That would be a counter issue.

Neil Bibby: I will ask about the timescales for reporting. We discussed that issue with the first panel of witnesses, and the Law Society of Scotland said in its submission that there is a potential weakness, because the timescales do not allow proper public scrutiny as decisions can be made and legislation can be passed many months before contact with MSPs and decision makers is declared. Do the witnesses support a

shorter reporting period? If so, why? If not, why not?

The Acting Convener: In the interests of brevity, witnesses should say yes or no and, if yes, what the timeframe should be.

Fergus Boden: Yes, I support that. The other issue about timescales is that, at the moment, we have a six-month period. It is not six months from the day that we lobby; it is six months from the end of the period. There is a way to reduce the period to, say, three months or quarterly but make it from the date of lobbying. That might give some people more time, because, if I lobby three weeks before the end of the registration period, I have only three weeks to register my lobbying. In those circumstances, that could buy more time.

Brian Simpson: [*Inaudible*.]—the timeframe to perhaps every quarter. As we pointed out in our evidence, a period of six months might create a loophole. If somebody carried out a lobbying activity at the start of the reporting period, they might not report that until five months and three weeks had gone past. By that time, the issue that they were lobbying on, such as a bill in Parliament, might have gone through the parliamentary process and be out of the public mind. That lobbying activity might have been of public importance or might be something that the public wanted to know about.

Alison Douglas: It might be helpful to have a quarterly registration period, but Fergus Boden makes a good point that it would be more helpful to have a requirement to register within a certain length of time from the date of the lobbying activity rather than having it in blocks as it currently is.

The Acting Convener: Susan Webster and James Adams, in the interests of brevity, do you broadly agree? It looks as if James Adams broadly agrees.

Susan Webster: [*Inaudible*.]—100 per cent accurate.

The Acting Convener: I am sorry Susan, we lost you for a moment. Could you say that again?

Susan Webster: We submit all our returns immediately so that we can be sure that they are 100 per cent accurate. There would be no problem for us if the period was shortened.

The Acting Convener: We have one final legislative area to cover before we move on to non-legislative improvements. That is the area of exemptions. Does anyone have any concerns about whether the current exemptions are fit for purpose or whether they need to change? If they should change, how would they change? We heard a little from the first panel about communication on request. Does anyone have any thoughts or suggestions about the exemptions or about any clarifications that should be in legislation, or are people content?

Susan Webster: I highlight what I said earlier about the exemptions around—[*Inaudible*.]—and the small organisation exemptions. I can go over the points that I made at the time; I do not know whether you have a note of them. Those were the two issues that we would like to see attention given to.

The Acting Convener: No problem—we have them.

Fergus Boden: There are two main exemptions that require review. One is the constituency exemption. I cannot remember how it is phrased, but it deals with an exemption if a business is related to activities within an MSP's region or constituency. A previous witness pointed out that that means that an energy company with equipment in every constituency would, technically, not have to register anything. There should be some clarity on that to make sure that it does mean that the exemption is for local businesses. As a national coalition, LINK often undertakes national activity that is delivered through local organisations—we have local organisations campaigning on national campaigns—and we could, technically, be exempt. It would be great to get clarity on that.

The other exemption that could be reviewed is the on-request exemption. Someone might ask to meet us about one issue, but any good lobbyist will try to shoehorn in five other issues. It would be good to have clarity about whether those five other issues must be registered.

Alison Douglas: I agree with both of those points. If something is a genuine constituency matter, it should be exempt. It often happens that a national issue is being raised, but—on a technicality and because a lobbyist is from that constituency—that is not subject to the register's requirements and would not be subject to scrutiny. That seems illogical.

I am sorry—I have lost my train of thought on the other forms of exemption. Excuse me. I will come back.

The Acting Convener: No problem.

Brian Simpson: I echo what the other witnesses said about the constituency exemption, which causes quite a bit of confusion. The Law Society sat on the working group that developed the parliamentary guidance on it, and the group had a lot of problems with that exemption because it is open to interpretation. Clarification would be welcome, and it should be looked at more closely.

The Acting Convener: Thank you. Before I move on, does anyone have any final points on that theme? As no one does, I hand over to Neil

Bibby to kick off theme 3, which is non-legislative improvements. We have covered some of those already, but now we can do so in more detail.

11:30

Neil Bibby: We have covered the potential legislative changes, but, as was said when we spoke to the last panel of witnesses, there are practical issues with uploading data and some problems with reporting. What do the witnesses have to say about non-legislative changes that could be made to improve the system?

The Acting Convener: We have heard about the interface; for example, there have been suggestions for a mobile app and for bulk uploads. All of those suggestions seem sensible. The committee would be happy to hear any other comments on those or other suggestions.

Brian Simpson: In relation to the interface, I refer back to the parliamentary working group. That is something that we suggested when we looked at the guidance. A concern at that time was the inability to upload bulk returns. At the moment, it is required to submit an individual return for every engagement. If someone is at an event—whether a social event or one at the Parliament—and they meet, for example, 10 MSPs, they are required to input 10 separate information returns. It would be very helpful if they could do some kind of bulk return on which they could list all those MSPs, particularly if they were discussing the same subject matter with all of them.

It must also be remembered that this system was introduced only two years ago, and there will always be technological advances and changes. Technology is evolving, the way everybody uses computers is evolving and people's expectations are evolving.

Our experience of searching on and using the register is actually that it is very user friendly. If the committee members or anybody else tries searching on the UK Parliament's register, they will see how difficult searching for information can be. Our view is that, at the moment, the Scottish lobbying register is fit for purpose. It is easily accessible: you can put in the MSP's name and it pulls up all their engagement activities. We are happy with where it is at the moment, but we agree that some improvements could be made.

Alison Douglas: Going back to my comments on a previous question, on exemptions, the one that I missed was the on-request exemption. There can sometimes be a fuzzy line, which might reduce transparency. We have had the experience of having conversations with MSPs about an issue and subsequently being approached by them for input for parliamentary questions or debates. It is not obvious to me why those approaches should be exempt from reports to the lobbying register, whereas, had we proactively provided that information, it would have been required to be covered.

Moving on to non-legislative improvements, we do not have a full sense of the extent to which the register captures activity in our area of alcohol policy. We know from academic research that a lot of activity is not particularly visible but is highly co-ordinated, and we think that it could be useful for the committee to think about commissioning research in order to get a sense of the extent to which the register is effective in casting light on lobbying activity. It could be based on a triangulation of ministerial diaries and other sources of information, in order to analyse and bring to light whether the register is really capturing the activity that is taking place. Doing that as a case study could be valuable.

James Adams: I reinforce what Brian Simpson said about bulk reporting. It would make it a lot easier and quicker if there was a category in a drop-down menu that said, for instance, "transport bill", under which you could report that you would be engaging with these several MSPs on the issue over the period of the bill and which you could go back into and amend if you happened to broaden it out to engage with further MSPs or civil servants, by simply adding that in.

The other thing that would make things a bit quicker is having a couple of fixed addresses in there. There is a little address box where you have to type in everything, including the postcode. Given that a very large percentage of the meetings will probably take place in the Scottish Parliament, there could be a couple of fixed addresses in there for when you are typing in the address.

Those are a couple of little changes I would suggest to reinforce the bulk reporting point.

Susan Webster: We support previous requests for one-event returns, particularly for party conferences. Having those would make a big difference.

We also support a point that SCVO made earlier. We can have a reasonable proportion of returned submissions and suggestions for reworked submissions. I support what SCVO said earlier about either simply accepting a submission as it is or rejecting it. The proposal that submissions be reworked can be problematic, as it can lead to our policy officer having to go backwards and forwards and it can all be very protracted. For example, they might have to go back to our chief executive officer—who may have done the lobbying—and ask whether they were happy with the reworked version. There is therefore a lot of value in simply accepting or

rejecting the submission rather than suggesting that it be reworked.

That leads into the point that a lot of events are problematic for lobbying. In relation to party conferences, for example, there a lot of questions between the register team and our staff about whether lobbying did, in fact, take place during the meetings that we had there. Conversations with MSPs at conferences are, by their nature, fleeting. They take place in passing, and we have a couple of minutes to highlight our key issues and give them a briefing. It is questionable whether they are, in practice, lobbying. That can lead to a lot of returns being refused or suggestions for reworking being put forward, which needs to be looked at. Those events are in a category of their own, and we need to consider the submissions that result from them so that they do not become too burdensome—which, to be honest, for our charity, they can be.

Alison Douglas: This is linked to what Susan Webster just said. I note that we have also had a lot of going backwards and forwards with staff about what constitutes lobbying. My perception is that, in practice and in the guidance, a narrower definition of lobbying is being used than what we understand the act to cover. I think that I am right in saying that the guidance says that lobbying takes place where it is to inform or influence decisions, which has the implication of there being a call to action. However, a lot of lobbying may be more general in nature. It may be about raising an issue and getting it on the agenda well in advance of there actually being a decision point. The guidance could therefore be clarified to make it clearer that that wider scope should be applied.

Neil Bibby: I think that the question that I was going to ask has been covered. Nonetheless, I note that, although the act allows for voluntary registrations to be made, we have heard from respondents that registrations that they made in good faith were rejected because they did not constitute lobbying. Do other witnesses have any further thoughts on that?

Fergus Boden: On the issue of voluntary submission, it is welcome that people can submit if they want to, although I question why some people feel that they need to do it voluntarily when others are not doing it. I have concerns that that creates an imbalance, as there are some organisations that want to maximise the transparency of their work while others would actively avoid making a submission if they could.

I support what everyone else on the panel has said about the ways in which the user experience of the process could be improved. Issues with the act go beyond the user experience, but the user experience needs to be fixed to make the other changes to the act more palatable.

The Acting Convener: We are in the final few minutes of our evidence session. Before I ask individual witnesses to provide further reflections and thoughts, are there any comments or questions from committee members? There is still an opportunity for the witnesses to provide more thoughts to the committee, if anything was missed, as they can send those in to us and we can reflect them in the next stages of our work.

There are no comments from committee members. Are there any reflections from the witnesses on what we have heard on today's three themes or on something beyond the three themes that we should be considering as part of our work?

Alison Douglas: The point was made that lobbying is really important in helping to inform decision making, but it is also worth mentioning that lobbying is sometimes used to misinform decision makers. In the alcohol field, there is research that shows how information can be represented or provided selectively in order to influence decisions that are being made—that has been documented in relation to minimum unit pricing. That underscores why it is so important that we do what we can to maximise transparency and why we need to ensure that the system is more comprehensive than it is now.

Fergus Boden: I have two points to make. The first is to reiterate something that was raised earlier about the costs that are associated with lobbying, which was one of the biggest omissions from the legislation. Introducing a banding system and a minimum threshold would introduce more transparency in a user-friendly way. Costs are one of the biggest black holes for the transparency of Scottish politics. People can spend five-figure sums to get access to ministers or MSPs at party conferences, and there is little transparency about that.

Secondly, I want to push back on what a witness said about nobody caring. It might be true that the man on the street does not wake up and wonder what is new on the 2016 act, but the fact that people do not care does not mean that they do not want to care.

The current system is difficult to use. Someone made the valid point that a lot of people hear about lobbying transparency through the media, and the journalists we speak to say that the act does not necessarily shine enough light for them to get a story. There might be a hint that something is happening, but they do not know the cost of the lobbying or how many phone calls have been made, for example.

The fact that people do not currently care about the issue does not mean that there is no scope for the act to introduce a degree of transparency and interest in Scottish politics.

Brian Simpson: We have to be careful when talking about costs. I am sure that the committee and members of the panel are aware of this, but costs and thresholds are two separate things. If a threshold is put in place, it develops and becomes part of a criterion. For example, if your lobbying costs fall below a certain threshold, you do not have to register your lobbying activity, but if the costs are above the threshold, you do. If a threshold were to be introduced, a lot of lobbying activity that would be captured at the moment might not be captured, which would reduce transparency.

11:45

My other point is that, if we want to capture costs, we must ask what that would actually add. It is fair enough to say that it would provide more information, but it would not add anything over and above that. It would not increase the number of lobbyists who register their activity. We would also have to be careful, because such material might be sensitive business information, which organisations and bodies might not necessarily want their competitors to know about.

It might be worth taking those considerations into account.

Susan Webster: If increasing the level and range of communications is being considered, I ask the committee to be mindful that that would result in an increase in workload, particularly for small charities.

I do not think that the meeting has discussed the impact of the Covid pandemic on the charities sector. A lot of their funds would usually have been brought in by community event-led fundraising, but that has not been able to take place this year—it has gone. Therefore the income of many charities has reduced, which has led to quite significant redundancies in the sector. If increasing charities' workload is being considered, that needs to be taken into account. Their internal resources and their capacity are currently much more stretched as a result of the impact of the pandemic, and it could take a long time for them to recover from that.

The Acting Convener: No other member wishes to make a final comment.

I thank James Adams, Fergus Boden, Alison Douglas, Brian Simpson and Susan Webster for their time and their contributions to our discussion.

I close the public part of the meeting. We will now move into private session.

11:46

Meeting continued in private until 12:03.

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