



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

Thursday 30 January 2014

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STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
2nd Meeting 2014, Session 4

CONVENER

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

DEPUTY CONVENER

Margaret McDougall (West Scotland) (Lab)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)

*Cameron Buchanan (Lothian) (Con)

*Cara Hilton (Dunfermline) (Lab)

*Richard Lyle (Central Scotland) (SNP)

*Fiona McLeod (Strathkelvin and Bearsden) (SNP)

COMMITTEE SUBSTITUTES

*Jackson Carlaw (West Scotland) (Con)

*Mark Griffin (Central Scotland) (Lab)

*Colin Keir (Edinburgh Western) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Colin Borland (Federation of Small Businesses)

Sara Collier (Children in Scotland)

John Downie (Scottish Council for Voluntary Organisations)

Neil Findlay (Lothian) (Lab)

Fraser Kelly (Social Enterprise Scotland)

Jenny Kemp (Zero Tolerance)

Richard Maughan (Confederation of British Industry Scotland)

Dave Moxham (Scottish Trades Union Congress)

CLERK TO THE COMMITTEE

Gillian Baxendine

Alison Walker

LOCATION

Committee Room 6

Scottish Parliament

Standards, Procedures and Public Appointments Committee

Thursday 30 January 2014

[The Convener opened the meeting at 09:00]

Decisions on Taking Business in Private

The Convener (Stewart Stevenson): I welcome members to the second meeting in 2014 of the Standards, Procedures and Public Appointments Committee, and I remind members, panel members and members of the public to turn off mobile phones.

The Parliament's photographer may take shots of the committee during the inquiry process. If anyone present has any concerns about that, they should let our officials know.

We have received apologies from the deputy convener, Margaret McDougall, so I am sitting in solitary splendour at the top of the table.

Agenda item 1 is to decide whether to take in private item 4, which is on the provision of services to cross-party groups. Does the committee agree to take that item in private?

Members indicated agreement.

The Convener: Agenda item 2 is to decide whether the committee's consideration of its inquiry into European Union rules and the draft report on EU rules should be taken in private at future meetings. Does the committee agree to that approach?

Members indicated agreement.

Lobbying

09:01

The Convener: Agenda item 3 is our inquiry into lobbying. I welcome our first panel. Sara Collier is a policy officer for Children in Scotland; John Downie is director of public affairs for the Scottish Council for Voluntary Organisations; Dave Moxham is deputy general secretary of the Scottish Trades Union Congress; and Jenny Kemp is co-ordinator for Zero Tolerance.

I intend not to have opening statements but to go straight to questions. If time permits at the end, I will invite panel members to summarise and draw our attention to any points that we have not covered in questions. That approach worked last week, and I hope that it will work this week.

I acknowledge the presence of Neil Findlay at the meeting. If he wishes to do so, he will join in the questioning after committee members have had the opportunity to ask questions on each topic.

Cara Hilton has the first question.

Cara Hilton (Dunfermline) (Lab): Obviously, there have not been any major lobbying scandals in Holyrood to date, so to what extent is reform required?

John Downie (Scottish Council for Voluntary Organisations): I am happy to start.

Holyrood has a totally different ethos and culture with respect to politics in Scotland and the way that the system operates, and we do not think that there have been any major problems. When a member's bill was first proposed, it was acknowledged that there was not a problem that we were trying to solve. That is one reason why we do not think that the bill is necessary, but obviously the key issues are around our need for a participative approach to the development of policy and legislation. That is a fundamental part of a healthy democracy.

Democracy in Scotland has issues. In the previous Scottish Parliament election, 50.4 per cent of people voted, and in the local government election, 37 per cent voted. The figures for the previous three local government by-elections are 20 per cent, 17 per cent and 18.5 per cent last week. Therefore, we have a real issue around democracy and access, which are among the principles on which the Parliament was founded.

The third sector has strong access to and a strong voice in the Parliament, and it can probably be said that we have been the most successful lobbyists over the past 14 years on climate change, the minimum price for alcohol and the

smoking ban, but that is because we have built trust and relationships. There has been a lot of transparency. Therefore, we do not see that there is an issue that needs a register.

Jenny Kemp (Zero Tolerance): I was recently involved in an issue on which the Parliament was caught on the hop. Zero Tolerance was one of the organisations that were very concerned about the continued presence in the Parliament of Bill Walker MSP, who has now left it. I think that people did not anticipate something happening, and there was suddenly a huge scandal and outcry. The Parliament was caught on the hop and had to act very quickly to try to mitigate a really unpleasant situation. It is important to look ahead to see whether we could anticipate any kind of lobbying scandal or other problem to try to head it off at the pass. Our position is that preventative action is better than waiting for a scandal to happen and dealing with the associated fallout.

That said, I agree with a lot of what John Downie has said about the founding principles of the Parliament being about equality of access and opportunity and about Parliament being a participative place, with policy making being open to the Scottish populace. All of that is good and is strongly in place, but we might be kidding ourselves if we think that the Parliament is fully open, accessible and transparent. I think that it is open and transparent to those who operate in this world, who understand the Parliament, who pop in and out of it every day and who are happy to have chats with members about a range of issues. However, there are a lot of people who will never come near this building and find it quite mystical.

If we can do more to capture the kind of activity that happens here on behalf of commercial bodies and vested interests, that will help with the kind of issues that John Downie raised about voter turnout, for example, as people would be a lot less cynical about the Parliament and would believe that it is here to make the best possible public policy.

Cameron Buchanan (Lothian) (Con): With respect, how did the Bill Walker scandal influence lobbying? I do not see that it had anything to do with lobbying.

Jenny Kemp: It is not related to lobbying as such. I was merely using it as an example of a time when the Parliament was caught on the hop because it did not have good rules and procedures to deal with something, and it was not able to respond quickly because the event had not been anticipated. I was drawing a parallel to show that the Parliament should be ahead of issues.

Dave Moxham (Scottish Trades Union Congress): I concur fairly strongly with what Jenny Kemp says. I will preface what I say by

reminding everyone that this Parliament is one that was created in a modern and open way.

Is there a problem? We do not know. That might be because we might not have the systems in place that would identify whether there was a problem. Is there, potentially, a problem? Of course there is, because this Parliament takes decisions that are of enormous significance, financially and strategically, and there are organisations, including mine, that seek to influence those decisions.

That seems to be a fairly straightforward position, and it combines with the public perception factor that Jenny Kemp talked about to create a situation in which, whether we like it or not, a large proportion of the general public are not as trusting of what goes on in this building as they could and should be. It therefore seems to me that it is entirely sensible to design a mandatory scheme for registration that makes those affairs more open, more public and more accountable.

Sara Collier (Children in Scotland): I would like to give an example of a situation that might suggest the need for regulation.

At the start of last year, there was a small Sunday newspaper story that picked up an issue with the cross-party groups in the Parliament—I am on the secretariat of one of those groups. The story pointed out that some groups had not submitted their annual returns, and it raised questions about who was providing the secretariat and what benefit they were getting from doing so.

Your committee acted fairly quickly on the issue. The code of conduct for the cross-party groups was revised, with training being delivered to the members of the groups' secretariats, to ensure that we were doing everything properly and above board.

That story did not deal with a significant issue, but it suggests that people are looking for things like that. With that in mind, we are not really aware of any problems, but that is not to say that something will not arise. We are perfectly happy to be open and transparent in any way.

Cara Hilton: I have a follow-up question for John. The SCVO represents around 1,500 organisations. Can you say with confidence that the position that you have given us today represents the views of your member organisations?

John Downie: Organisations such as the SCVO, the STUC and trade unions cannot represent the views of every individual member. We have members who disagree with our position. Some are in favour of a register; others think, for example, that it would be a good idea for

commercial lobbyists but that charities should be exempt.

We have a fairly strong policy process that we go through with our board and with our policy committee of 32 people who represent the sector. We hold extensive round-table discussions and consultations.

I am very conscious that we need to be seen to have that policy process—part of our unique selling point when we represent views to MSPs and to Government is that we are taking a sector view. That is where we place it. I am certainly confident that those are the views of the majority of our members. Certainly some members disagree, but that is healthy.

Neil Findlay (Lothian) (Lab): I want to ask about how SCVO arrived at its position in relation to the consultation that I carried out. Was the consultation response considered by the policy committee of SCVO?

John Downie: Our policy committee sees all our draft consultation papers and we are open to committee members coming to meetings to discuss our responses. We invite the policy committee members to all our round-table discussions, whether they are on long-term funding, procurement or whatever. I would have to look back to check exactly what the processes were for your member's bill consultation, but that is our normal procedure.

The response from our members was: politicians have the responsibility of public office and it is their duty to be open and transparent, so why place that duty on the third sector?

Neil Findlay: I have spoken to members of the SCVO policy committee who say that the first time that anything was discussed was December. Mr Downie may therefore wish to check and clarify to the committee whether SCVO, in criticising some of the democratic processes in this Parliament, is a democratic organisation itself. If it did not go through the policy committee—

The Convener: Just a wee second. Procedurally, if you are inviting SCVO to review its processes, I will be entirely happy to receive advice from SCVO at a later date after John Downie has checked what it did—unless he wants to put something on the record now.

John Downie: Neil Findlay may remember that—

Richard Lyle (Central Scotland) (SNP): Attack!

The Convener: Quiet, please.

John Downie: In the consultation on Neil's member's bill, 15 of our major members signed up to our response. We had phone calls from a lot of

members who were working on a very heavy policy workload in relation to responding to the Scottish Government and to Scottish Parliament committees. They asked what the SCVO was doing about the consultation and they signed up to our response.

You will remember, Neil, that at least 15 of our members signed up. We spoke extensively to our members before we responded to you and 15 of them signed up to support our response in principle because they did not have time to write a response themselves and they were happy with ours. We did talk to people.

Neil Findlay: Can I follow up on that, convener?

The Convener: I would like to move on to other subjects because I have given SCVO the opportunity, if it requires to look at the matter further, to come back to the committee, and I would prefer to deal with the issue in that way. However, as we go through the questioning I am quite prepared to come back to that point if necessary.

Cara Hilton: Mr Downie has already answered this question, but I will ask the other panel members for their views. The "Code of Conduct for Members of the Scottish Parliament" places responsibilities on members as regards their dealings with lobbyists. Should responsibility for registering lie with those being lobbied, with the lobbyists, or with both?

Dave Moxham: The STUC supports clear regulation and clarity in relation to the conduct of MSPs. There is no doubt about that. I always find it difficult when one works on a presumption—either organisationally or in relation to representatives—that people are not already conducting themselves with absolute probity. If it sounds as though I am making that presumption, it is because I am dealing with a hypothesis.

Organisations such as mine have a large range of policy interventions and many of those interventions have potential economic consequences. I am not sure that, for instance, the detailing of a meeting with us by an MSP would go far enough to explain our process and our attempts to engage with and influence the Parliament, which we regularly do. I believe that my organisation should be open to a higher level of scrutiny and thus should be registering as an interest. I hate the word lobbying, but you know what I mean.

09:15

The Convener: I will follow up with a wee supplementary question. It is clear that MSPs are bound by a code of conduct that they must obey, but the codes in the lobbying industry are

essentially voluntary. Is your position that there should be a symmetry, in that the lobbied and the lobbyist should both have some formal framework governing their activities?

Dave Moxham: Yes, and those frameworks should both be mandatory.

Jenny Kemp: We must be aware of the wide range of individuals with whom organisations that have an interest in public policy would want to be in contact. We would have to take account of the fact that not all of our contact would be with MSPs; it might be with civil servants, MSP staff or special advisers—a whole range of people.

We need more transparency in MSP diaries. For example, we need to know who they are meeting and what they are doing. However, the bulk of the scrutiny should focus on who is seeking access to public officials and why.

Sara Collier: I agree with what Dave Moxham and Jenny Kemp have just said. Returning to my example of cross-party groups, I would find some guidance along those lines very helpful for doing the annual return, for example, and it would definitely be useful in my lobbying behaviour as a policy officer.

The Convener: Cameron Buchanan will discuss the proposed register.

Cameron Buchanan: First, to what extent will the proposed register address any of the problems that you are talking about? I am not sure about that. Secondly, how should the term “lobbyist”—which has been discussed—be defined?

Dave Moxham: The word “lobbyist” is difficult to define. There is an analogy with tax avoidance; any tax professional will say that there is reasonable tax avoidance and non-reasonable tax avoidance but, just now, as far as anyone is concerned, tax avoidance is a bad thing. The same goes for lobbying—people see it as a bad thing. I do not believe that it is, but we are dealing with a word that has become somewhat pejorative. That presents a difficulty, which I am not sure that I can easily get round.

As far as possible, we must look beneath the semantics and ask some questions. First, we should ask, “Should an organisation that expends resources on attempting to influence policy make that clear?”, and the answer is yes. A second question is, “Should that requirement affect organisations whose prime purpose is to lobby?”, and again, the answer is yes. Another question is, “Should that affect organisations who do that work in-house for commercial purposes?”, and the answer has to be yes, as it would be to the question, “Should it pertain to organisations of a certain size that spend money but do not make a

profit?” Those are the first questions that I would ask about any register on lobbying.

Cameron Buchanan: How do you define the term “lobbyist”? That is what I am trying to get at. The key point is whether we can give a definition.

Dave Moxham: My definition is that lobbying is the attempt to influence policy by relationships with the Government and MSPs through a range of communication devices.

Cameron Buchanan: What do the other witnesses think?

Sara Collier: That is quite a good definition. Our main concern is the point at which lobbying starts and information sharing ends, and the blurry lines between the two. If one of you MSPs asks me for information on something and I send it back to you, am I lobbying you? When I send out a weekly policy update with the details of what has been happening in Parliament, that is more like information sharing but, if I happen to attach a briefing that suggests that you should vote a certain way on a bill, that perhaps steps over the line into lobbying and influencing. We would be happy to help you to pick out such details and find the right definition of lobbying behaviour.

John Downie: It is really difficult to define the term “lobbyist”. At the level at which our organisations operate, the position is much clearer, but it is less clear when we look at local campaigns by organisations. One example is the story today about the group that is campaigning against the plan for a quarry in New Lanark, which the Scottish Government has called in.

The group has run an effective campaign that has encompassed people from professional organisations who oppose the quarry and people who live in the area. I am sure that it did not spend much money, but the campaign was effective. In effect, it was lobbying, which is absolutely fine. However, it is interesting to consider how we define lobbying in the third sector. Many SCVO members are grass-roots organisations and, as Sara Collier said, there is a question about where campaigning ends and lobbying begins.

A grass-roots organisation has invited me to take part in a panel with the First Minister this week. When that organisation takes part in that panel, it will have a conversation with him. Will that organisation be lobbying about its issue when it is talking to him or will its participation be about relationships, trust and information sharing? It is difficult to define lobbying. That has always been a problem. It always seems clearer between the third sector and the private sector.

All charities are regulated by the Office of the Scottish Charity Regulator. It is very much the case that charities are acting for the common

good, that their values and mission have been agreed and that they are regulated. There is a case for exempting the third sector from any lobbying legislation because we are already regulated and have to act within OSCR's guidelines. That is a bit like the "Code of Conduct for Members of the Scottish Parliament". There is already a code of conduct for third sector organisations on how to behave and campaign.

The Convener: To be clear, you are making the point that a financial threshold would not really be appropriate, because lobbying can often be comparatively free from cost.

John Downie: That can be the case for many grass-roots organisations. I was at a session of the poverty truth commission on Friday, which is a fantastic organisation that brings together lots of small grass-roots organisations and community activists who are lobbying strongly and campaigning against poverty. We do not want organisations such as that to have to register. If there were to be a register, what the definition is and where the thresholds lie would have to be clear. Members would have to think carefully about the third sector because, as I said, what we do is already regulated.

Richard Lyle: I will concentrate on a point that Mr Downie made a second ago. People phone MSPs' offices because they want to meet us. They also come to our surgeries to talk to us about various issues. Parliament is very accessible. If lobbying were subject to a bill, would that drive people away from Parliament or discourage MSPs from seeing as many people as they do?

John Downie: I think that it would. Access to the Parliament is one of its democratic traditions and one of its strengths. However, as I said, we have a problem with democracy in Scotland, because 1 million people—most of whom are in our poorest communities—are disengaged from politics. People in those communities are not voting in local government or national Government elections. That is where the disengagement is. I do not think that a lobbying register will make any difference to that. The onus is on the political parties and politicians to get out and engage more.

Small grass-roots organisations might feel that, if they ran into their MSP in the supermarket or on a bus or train, they would have to report the conversation. I accept what Dave Moxham said—if we had a register, we would have thresholds and limits—but we are talking about real engagement with real people, which we do not want to limit. I do not think that the SCVO would have any problem in complying with a register if one was introduced, but we are concerned about our small and medium-sized members and grass-roots organisations.

Jenny Kemp: I represent one of those small organisations. Zero Tolerance is a tiny charity with only six staff members. I do not think that any kind of registration of lobbying would deter people from seeking to contact their MSPs. People get in contact because they have an issue that they feel is important and because they want to be heard. Any process that opens up the Parliament and looks at making it more transparent probably gives people more confidence that they will be heard, that they do not have to wear a sharp suit or be a specialist and that they do not have to be knowledgeable about this place to engage with it.

Small organisations probably have quite a lot to gain from more transparency, because we are not on a level playing field. My organisation has a third of one third of a week to engage in such activity; the rest of the time, we are doing other things. Most big charities have a full-time public affairs person—or even two or three. They might have people in other jobs who have public affairs as part of their role and maybe they can occasionally afford to engage paid-for lobbyists.

It is not a level playing field, and anything that opens up the Parliament has to be a good thing. I do not think that people would be deterred from having a conversation with their MSP because they thought that it would be captured as lobbying.

Dave Moxham: The question about individuals is important. This can end up as a battle of examples, but individuals have to ask themselves whether they are financially gaining from the activities that they are undertaking, either through their employment, through the operation of an agency or through a fee. I will give an example. If I bring in 10 ordinary—I put that in inverted commas—trade unionists as individuals to give evidence on the living wage, my view is that they should not be asked to register that, but I should register it, because I brought them in and I am employed to do that, and because I would be co-ordinating a policy response and seeking to influence.

It is a battle of examples, but with examples of individuals—constituents and others—we are in danger of overcomplicating things. The question of financial gain should probably define whether an individual should register.

The Convener: Before I go back to Cameron Buchanan, can I ask whether you caught my eye, Mr Findlay?

Neil Findlay: No; it is okay. I am just listening at the moment. I will let others go first.

Cameron Buchanan: What worries me is whether, if we have a lobbying register, it will affect the Parliament's reputation for openness, accountability and the sharing of power. That is

what we are concerned with. What are your opinions on that?

Jenny Kemp: A register would enhance that reputation. At the moment, when something happens in the Parliament, it is hard to know who has discussed it and what their interests are. We have been looking at the sex industry, over which a struggle is becoming clear between private commercial bodies with a profit-making interest and organisations that look at the sex industry as an issue of public health, exploitation and violence against women. We find it hard to find out who is engaging on those issues and, particularly from the commercial and corporate vested interest side, who is meeting MSPs. Some of the people involved are not employed or professional lobbyists. Anything that opens up the process and lets us know who MSPs are meeting and discussing things with, what information they receive and how they reach their decisions has to be a good thing.

Sara Collier: I absolutely agree with what Jenny Kemp just said. We often talk about how helpful and transparent the Parliament is and how easy it is to come into the Parliament to talk to members, but we forget that there are those who find the procedure to come in and meet people incredibly intimidating. If we could demystify the procedure and make clear the sorts of things that we talk to people about and the fact that others could quite easily do that as well, that would be positive.

Cara Hilton: I have a question for John Downie. You talked about the possible impact on grass-roots organisations and small charities. Do you accept that quite a lot of your members are large organisations and that some of them compete for substantial public contracts? They are shaping public policy, so should they not be required to register?

John Downie: I accept that we have most of the top 100 charities in Scotland by scale as members. We are in a different situation now. The third sector has a much greater role in the delivery of public services; that has been a trend over the past few years. The situation is difficult for organisations that have a strong campaigning role in a particular health area and also deliver services on behalf of their client group, mostly for local authorities. They are competing for contracts with the private sector. There are usually clearly defined signs for that, so I do not see that as a major issue.

In general, there are different perceptions of where the third sector is coming from. Dave Moxham talked about financial gain. We can agree or disagree, but most charities are acting on behalf of the common or public good, however they may define it in their status or their charitable mission. Most of them are not lobbying for financial gain.

They might be campaigning on mental health issues and to get the Scottish Government to introduce a mental health strategy, as it did last year.

Such campaigning is not for financial gain. Things such as climate change legislation, a minimum price for alcohol and the smoking ban are about the people of Scotland's health and our environment. That is an area in which a register needs to be thought through carefully.

09:30

Neil Findlay: The issue of public gain is very important, because one person's view of public gain can be completely contrary to another's view of it. As Dave Moxham said, we are in a battle of examples, so I will give you a couple. The first is that some significant organisations that compete for public contracts are charities and third sector organisations. They are entitled to do that and they may believe that they are acting for public gain but, if they are replacing a public sector worker because the contract has been lost to the public sector, that worker might think that they are not acting for the public gain. The second is that I notice that—

The Convener: Could we focus on questions, rather than statements?

Neil Findlay: We will get to questions, but we are giving examples.

The Convener: I am giving you a bit of rope, but not too much.

Neil Findlay: I do not think that the Scottish Council for Voluntary Organisations publishes membership lists any more, so the last one that I could find was for 2005, and it states that the Equality Network is a member. The debate about gay marriage is topical just now, and I would expect Scotland for Marriage to be a member of the SCVO—although I do not know, because I cannot check the membership list. Those two organisations have polarised views and contrasting positions on gay marriage, but both would argue that they are working for public gain.

The Convener: Are we coming to a question?

Neil Findlay: My point is that John Downie's argument that charities work only for public gain is contentious. Do the witnesses agree?

John Downie: There could be a strong debate about that but, on the other hand, we could equally argue that public sector trade unions are lobbying against the third sector having a greater role in public services.

Dave Moxham: We would agree, which is why we would register.

John Downie: Of course, and that is the debate that you would need to have.

Our issues with OSCR regulating local authority arm's-length organisations as charities, with which we totally disagree, are part of the debate, too. We can all give examples but, in general, most third sector organisations are acting and campaigning for the public good. I accept that there is strong debate and perhaps disagreement about certain areas.

The Convener: I say to members that we will have to focus on questions. There will be opportunities for debate on another occasion. I will probably be a bit tighter about that from here on in, illuminating as the debate might be.

Richard Lyle caught my eye for a question, but I am conscious of the need to make progress time-wise.

Richard Lyle: I have just a small question. Do the witnesses think that a register would encourage competing firms to compete more to see MSPs? For example, would a firm think that, as it was seeing MSPs only twice a year while another firm was seeing them four times a year, it should see MSPs more frequently?

John Downie: I do not know the answer. I do not know about the private sector in that regard but, if we looked at who has been into the Scottish Parliament most often to see MSPs over the past year, we would probably find that it was third sector organisations. The third sector probably lobbies more than the private sector.

From my point of view that is perfectly good, but it is up to MSPs to judge the merits of the organisations, their case and what they come in to talk about, whether it is public procurement or health and social care and the Public Bodies (Joint Working) (Scotland) Bill. We are talking about amendments to that bill and to the Procurement Reform (Scotland) Bill at stage 2, which is coming up next month. I am sure that MSPs have had lots of representations on those from the private sector and the third sector and from a range of organisations. We put our trust in MSPs' judgment on that.

The Convener: Fiona McLeod will ask about some of the practicalities.

Fiona McLeod (Strathkelvin and Bearsden) (SNP): I have been a bit uncomfortable with the way that some of the questions have been going. I thought that we were considering a register of lobbyists to ensure that we are transparent and so that there can be no undue influence because of a commercial lobbyist's financial muscle. However, I want to look at the possible practicalities if we decide to have a register.

When we had representatives of professional organisations at our previous meeting, each of them said that their members—commercial lobbyists—had to register with their organisations. So there are voluntary registers, and we tried to tease out what that meant. The SCVO has told us that charities have to register with OSCR for other conditions. If we have a register, what information should be included in it? However, before we get to the question whether we should have a stand-alone register of lobbyists, is there any way in which the current system for commercial and voluntary organisations registering with their professional bodies would be sufficient, or do we need a register?

Dave Moxham: I do not think that the current system is sufficient, because registration with professional organisations is voluntary, and I do not believe that the scheme should be voluntary. Organisations are not mandated to be members of their professional body.

I will give members a good example. The Royal College of Nursing Scotland, which is a trade union, has submitted evidence to the committee. It is not a member of the STUC. Therefore, the approach would not work in that case. The RCN would not necessarily be a member of an organisation that could fulfil the function that you have described. Therefore, I do not see that approach as being enough.

Jenny Kemp: Charities are members of OSCR to ensure, for example, that they have good governance and financial probity, but that does not capture the kind of activity that we are talking about, so I do not think that the approach would be sufficient. If there was a register, the key criterion—the thing that I would be most interested in seeing—would be its being searchable by whether the person who was conducting any kind of lobbying contact was from a charitable organisation, a trade union or a commercial organisation. For our organisation, the real underlying issue is getting behind commercial interests in the Parliament. That is what we would be most interested in seeing.

John Downie: The OSCR example is interesting. Fiona McLeod is probably aware that, a few months ago, OSCR issued guidance on the third sector's engagement in the independence referendum campaign. OSCR put out a consultation paper, which people responded to, and it issued guidance on how charities should engage in the referendum campaign. That guidance was fairly light touch but very clear about what charities should say and do. For example, if a charity takes a position, that has to meet its charitable aims, the board of trustees has to agree the position, and it must be clear on the process of taking legal advice and other processes.

That is a good example of OSCR responding to a changing situation. It gave charities guidance on a fairly tricky situation. Charities were unsure about how to engage and what the rules were, so the regulator issued updated guidance. All regulation moves on. Sara Collier talked about cross-party groups. All those things need to be under review, but we have a number of codes that help. If we strengthened some of those codes, they could improve some of the transparency that people are talking about.

That is purely from a third sector point of view. Obviously, things are entirely different on the commercial side.

Fiona McLeod: To continue on that theme, if we decide that we need a register—no decision has been made, but we have to tease out the issues—who should administer it? The Scottish Information Commissioner, the Commissioner for Ethical Standards in Public Life in Scotland and the Parliament itself, possibly through this committee, have been suggested. Should we set up a completely new regulator for registering lobbyists?

Sara Collier: We do not have a strong position on who should administer the register, but it should certainly be somebody who has the capacity to take that on. Again, I will use the cross-party group example. If I have a question about the annual return or the minutes, this committee answers it quickly and efficiently, but we are talking about a much larger scale, with people registering their lobbying behaviour themselves. I imagine that they will have many questions, particularly at the beginning, so there must be someone with the capacity to help them, and training, assistance and advice will possibly be needed. That is my point on who should maintain and administer the register.

John Downie: Obviously there are lots of examples of people who are independent but who are appointed by and report to the Parliament, such as Scotland's Commissioner for Children and Young People and the Scottish Information Commissioner. There are strong examples of any process that the Parliament could introduce if there was a register. Some have worked and some have not, but that would be the right route.

Fiona McLeod: If we go down the route of having a register, there will have to be rules for registering and what lobbyists can do, and there will have to be monitoring. Should there be sanctions for someone who does not comply and, if so, what should the sanctions be?

Dave Moxham: I feel sorry for John Downie, because he is being asked to move into hypothesis and he does not particularly support the idea, so I will step in. I would not support a

system for registration without any form of sanction. However, exposure is something of a sanction in itself, so it could well be argued that, in many cases, the biggest penalty would be reputational rather than financial. Access to Parliament could be limited for a period of time as a consequence of a failure to comply.

I do not have a fixed view on financial penalties, but I tend to think that, particularly in cases in which commercial interests can be shown, some sort of proportionate financial impediment might be appropriate. I have to say that I have not given much thought to the judicial elements of that.

John Downie: If you set up a register of lobbyists, it will lead to the professionalisation of lobbying, which already tends to be professional, particularly when giving evidence to Parliament and Government. So any administrative burdens that occur because of a registration process need to be simple enough to allow organisations to comply.

On sanctions, in any of these areas, reputation is a key factor. Organisations want to be transparent in their engagement. The other question is: where would the register stop and start? We are talking about the Scottish Parliament, but local government makes crucial decisions on issues such as planning, education and health, and that has not yet been factored into the debate, but the committee will have to look at it. We are talking about not just the Scottish Parliament but democracy as a whole. Where does any register end? Local government is probably being lobbied more than the Scottish Parliament, so the committee might want to look at that area of debate.

Jenny Kemp: Can I just come in to agree—

The Convener: Sorry, but before we leave Mr Downie I want to be clear about something. Is Mr Downie advocating the need for action in relation to local government when he is perhaps advocating that there is no such need for the Scottish Parliament?

John Downie: I am just saying that, if you are debating having a lobbying register, it cannot be confined to those who lobby the Scottish Parliament and MSPs, because lobbying takes place at all levels of government in Scotland. For example, the large supermarkets are concerned about planning. With all due respect, that decision is not for MSPs but for locally elected members. So if the Parliament is thinking about a lobbying register, the bill will have to consider where lobbying stops and starts.

The Convener: I just want to be clear whether the SCVO, represented by you today, Mr Downie, is opposed to a register in principle or whether, within the confines of what we are trying to

establish, which relates to the Parliament, you think that a register is not necessary. In principle, would you not be opposed to a register if its compass was bigger?

John Downie: We would have to go back and talk about the second part of your question. We have said that we are opposed to what is being proposed at the moment because we do not think that there is an issue in the Parliament.

The Convener: Well, that is—

John Downie: That is our position, but if you were to decide to introduce a register, we would need to consider its scale and scope and come back to the committee with our views on where it should stop and start in relation to democracy and elected members throughout Scotland. That would be your next issue if you—

09:45

The Convener: Okay. Let me move on to Jenny Kemp.

Jenny Kemp: I come back to the point about sanctions. I agree with Dave Moxham that a regime that did not have any sanctions attached would not be valuable. We also need to be careful that we are realistic about the difference between an organisation whose prime purpose is to lobby, which is well-resourced and which is able to comply with a regime because that is its job, and a very small charity, community group or grass-roots group that might forget or that might not get the paperwork because it does not have an office. It might be acting in the best of faith but might not keep up to date with the register. It is important to have a way of trying to distinguish between a situation in which there has been an administrative oversight or a change of staff or that kind of thing and deliberate evasion.

Fiona McLeod: Is that not the nub of the whole issue? Is a register not being discussed because we are concerned that commercial companies that lobby us have an undue advantage because of their financial muscle? If we introduce a register because of those organisations, will that impact on the smallest charities, which, as Mr Downie has said, are doing such work for the most legitimate of reasons?

My last question is: if we are going down that route, how do we resource it? Should there be a fee-based system? A large commercial company can afford to pay the fee and such activity is part of its job, but what about a small local charity? If we impose a fee but an organisation cannot pay the fee, it cannot register to lobby and it therefore cannot lobby. How should we resource the register? Should the system be fee based and, if so, how should the fee level be reached?

Because we are short of time, the witnesses might want to think about those questions and write back to us. Is that helpful, convener?

The Convener: That is mildly helpful. I would appreciate brief answers.

John Downie: I will give a brief answer, although we will come back to the committee on the issue.

Fiona McLeod raises an interesting issue. The answer would depend on the scope. The SCVO has said that publishing MSPs' diaries and having more information available is a way to do this, but some people have said that diaries do not cover emails, text messages, telephone calls and a range of other things. That is where we get into the tricky territory of the administrative burden and what information is included, because cost and time would be big factors for organisations—it is not only about the monetary aspect of a fee. The SCVO's membership is stratified in terms of the scale and size of the organisations.

Dave Moxham: I will answer in one sentence. There should be no fee and I would argue that there should be a simplified online system that allows people to sort themselves out of the process very quickly by answering some fairly straightforward initial questions, which would clear as many people as possible from consideration in the first couple of questions—an online system would be the starting point for that.

Jenny Kemp: I also say that there should be no fee, as a fee would not align with the Parliament's founding principles. I think that the money for the system would have to come from the public purse.

Sara Collier: My short answer is that there should be no fee, as that was our members' response when we asked them about the issue.

The Convener: I move on to Richard Lyle.

Richard Lyle: Should there be a threshold for registration? What exemptions should there be from the register?

Dave Moxham: I will not be able to give you a precise figure, but I believe that it is reasonable to look at whether costs are incurred and money is spent—as opposed to voluntary activity being undertaken—and to place some cost limit on that. I do not have enough knowledge to say exactly what the limit should be, but cost and expenditure are probably the best starting point for sorting out voluntary activity from paid activity.

Jenny Kemp: I am not sure about exemptions. It is a difficult issue, because the driving force behind and purpose of the measure is to open up the Parliament to further scrutiny. I am not convinced that there are strong arguments for anyone being exempt. However, as a small

charity, we are wary of the burden that a register would bring. That is why our written submission stated that we are open to persuasion but not convinced about the need for a register.

If there were to be a register, we would want to be included on it. We should not be exempt just because we are a small charity. I agree with Dave Moxham that such a register should not be burdensome, but I would be anxious about exempting too many people, because we would then lose the thrust of why we are looking at the issue.

John Downie: I mentioned an exemption for the third sector. Many of the submissions that the committee received from third sector organisations highlighted the difference between commercial lobbyists and third sector lobbyists—I put “lobbyists” in inverted commas for the latter—and said that the third sector should be exempt. That would be the big area of debate in the third sector and, if there were to be a register, we would come back and argue that case.

Sara Collier: I am not sure that it is fair to say that voluntary and third sector organisations support exemptions for themselves. Most of our members to whom we have spoken would be perfectly happy to appear on a register. What they are concerned about is the level of burden, and how much information they would have to provide and record. That type of thing, rather than exemption from such a register, is the real issue.

Richard Lyle: There is one question that I must ask. We have various MSPs who are on very powerful committees, and the witnesses have mentioned the different bills that go to the Health and Sport Committee, for example. If someone wanted to come and see me on every bill, I would soon rack up many hours seeing this or that organisation, as I have done in the past. Someone would then say, “Why is he seeing these people?”, forgetting that it was because of all those different bills. Would that mean that certain MSPs would turn round and say, “Whoa—I am not going to see these people because I do not want to be on the register 20 times, as opposed to my friend Cameron, who is only on the register once”?

Jenny Kemp: If you are meeting with people in confidence because you think that they can give you good information to help you to make the best evidence-based decisions, you should feel absolutely comfortable with that. I hope that we do not move to a culture in which people start bean-counting and saying, “They’ve had three meetings, and they’ve had four, and they’ve had two.” As Dave Moxham said, the word “lobbying” is becoming pejorative. We mentioned that in our submission, and we said that we do not want lobbying to be seen as something that is in and of itself a bad activity. Lobbying is just about sharing

information and trying to get good decision making.

I hope that a register would not be a deterrent, and that if an MSP was involved in considering a chunky bill and was having a lot of meetings about it, they would feel good and think, “I’m doing my job here, I’m finding out everything I need to know to inform my decisions in this committee on the bill.” I hope that people would not start questioning that activity and seeing it as a bad thing.

Perhaps the word “lobbying” itself has a negative connotation. We might need to consider using the term “information sharing” or something like that.

John Downie: I think that having MSPs publish that information, via diaries or in any other way, would be quite a good thing. In a sense, they would be publishing—I will use the word “lobbying” again—a lobbying contacts report or an engagement report that notes which organisations they are talking to and what they are talking about, whether it is health and social care or amendments to the Procurement Reform (Scotland) Bill. Finding a way to do that through the current system would be very helpful and would add to transparency. We have suggested that diaries are a way to do that, because MSPs could say, “I attended X dinner, hosted by and sponsored by X, and these were the attendees.”

The SCVO invites MSPs to events and we have invited committees to engage with us on certain issues. The interesting thing is that we always ensure that our members make up the majority of the people at an event. MSPs ask us what the cost of the dinner is, so that they can think about whether they need to register it, and who is going to attend. If that information were published in diaries, it would help with transparency. I do not think that it would end up being a competition. It would be helpful if MSPs started thinking about producing a contacts report on who they are engaging with.

Dave Moxham: I have a counter example. I attended the back-bench Scottish National Party trade union group yesterday—we do the same with the Labour Party, too. That is set up so that a number of MSPs come along and meet a number of trade unionists on an agenda of three or four issues. I had one issue to raise, and I think that it is more appropriate for me to say what issue I went along to raise and lobby on than to expect the MSP, who came along among other MSPs to speak on an agenda of three or four items, to be the person who captures completely the important information that was discussed at the event. It would be far simpler for me to say, “I was lobbying on civil justice, and I went to the SNP trade union group and these are the MSPs who were there.” I would report that information to my organisation,

so I would not have a problem reporting it to the Parliament.

The Convener: We have a final question from George Adam.

George Adam (Paisley) (SNP): I apologise for my lateness. I was on time until I got to the lift; then my sprinting up four flights of stairs was less than successful.

I have a question about other jurisdictions. We had evidence at our previous meeting from witnesses about the Westminster Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Bill. I am paraphrasing, but they believe that the bill is complete pants and that there is nothing to learn from it.

The Convener: Careful.

George Adam: I am just paraphrasing what the witnesses said.

The Convener: But still be careful.

George Adam: Do we have anything to learn from that Westminster bill? We heard in evidence that, although there is quite extensive lobbying on bills and so on in Canada and in Washington in America, the systems there are transparent. I think that it was said that Canada has one of the best systems in that regard. Can we learn anything from elsewhere in the world that could be added to a lobbying bill?

Sara Collier: The United Kingdom bill—we probably agree with John Downie's view of it—has been called a gagging law. Our issue with that bill is that it sets spending limits on non-party campaigning, which could impact on us. We are not yet clear about what the implications of that might be for us, but it is a concern. I am happy that that aspect does not seem to be an issue in Scotland. Nobody is suggesting here that there would be limits on the amount that we could spend; it is more about being transparent about what we are spending, who we are seeing and what we are talking about, which is certainly a good thing.

John Downie: I totally agree. There is nothing to learn from the gagging bill, which will actually put democracy back and hamper the campaigning of third sector organisations. I think that we can always learn from other jurisdictions, but I do not know enough detail on the United States or Canadian examples to answer the question on them. However, I am sure that they will have areas that we can learn from. We can probably learn more from the Canadian than the American example.

Jenny Kemp: I have not looked into what happens in other countries, but I would be a bit anxious about comparing what we do with what is

done in America, because it is such a money-soaked democracy. The political action committees there are multibillion-dollar organisations. I do not think that we have any parallel with that, so it might be useful to look at other small nations with relatively accessible Parliaments and see what kind of practice they have. I do not know what we could learn from America.

I share the concerns of Sara Collier and John Downie about the UK bill. It looks like it will preclude a lot of legitimate third sector campaigning. There is some concern that that is a deliberate and not unintended consequence. I think that we need to be very careful not to preclude legitimate contact.

Dave Moxham: I have a specific point on that. I will not mention section 3 of the UK bill, which is entirely designed to attack trade unions and has nothing to do with what this committee is considering. The UK bill confuses public campaigning, which it massively overregulates and circumscribes, with activity within Parliament that is designed specifically to influence the decision-making process of a particular MP or Government, and it underregulates that. It underregulates where it should regulate more and overregulates public campaigning, which is a mistake that you should not make.

Neil Findlay: I have just a brief point, which is that we should not confuse the funding of political parties with lobbying. I think that that funding is the issue in America, but the lobbying system is rather good there.

I have a couple of quick questions. Do you have an estimate of how much public money each of your organisations receives? Do you think that it is important that we have the utmost scrutiny of that public money and that its use is open and transparent? Finally, do you train people in your organisations to lobby?

10:00

Sara Collier: I will take that one first. Children in Scotland is the national membership organisation for those who work with and for children in Scotland. We have more than 400 members, who are a mixture of statutory, professional and voluntary sector. Most of the local authorities are members of Children in Scotland.

Some of our funding is core funding from the Government, some is membership money from our members, and some is raised through things such as events and training, and separate grants. For all those, we are accountable. We report to the Government and our funders on how their money is being spent and what it is being used for, and we report back to our members through our board

annual reports. As far as I am concerned, we are completely transparent about how all the money that we get in goes out and what it is used for.

I would not say that we have trained our members and staff in lobbying. We have certainly made attempts to connect them with decision makers. In November, we held an event as part of UK Parliament week in which we invited in an MP and a member of the House of Lords, and we got really good feedback on that. Members said that that was something that they had never really thought about doing before and they felt as though they were quite disconnected with Westminster. It is our role to help our members to connect with elected representatives.

John Downie: The SCVO is the umbrella organisation for the third sector in Scotland. We get a core contribution from the Scottish Government. We also run programmes such as community jobs Scotland, which has been highly successful in getting young people into work in the past few years, and we have a consortium of 500 organisations. We can easily submit our previous annual report to the committee to show our funding.

We also run an extensive training programme for the sector. Part of that is about engaging with Parliament and Government. Next month, at our major conference entitled "The Gathering 2014", we are holding an event with the European Commission's office in Scotland about how people in the sector engage with the European Parliament. That is another area to consider.

We work hard to ensure that our members think about engagement with public bodies. We do not particularly train our staff in lobbying. It is more about their communication skills which, in effect, they use for lobbying, but we do not actually say that. The training is more about engagement.

The Convener: The committee would welcome the submission to which you referred, Mr Downie.

Dave Moxham: We receive approximately £2 million of public money, the large majority of which is for our administration of the trades union learning fund, which is a programme that we share with Government, and we disburse the money to our member unions. We have a Government and Parliament officer whose precise duty is to attempt to expedite positive policy outcomes for the STUC and our members. We do not run formal training sessions, but we offer support and advice to our member organisations on how they might approach the Parliament and specific MSPs.

Jenny Kemp: Zero Tolerance receives Scottish Government funding for our core costs. As we said in our submission, that makes us doubly aware of the need to be open and transparent. Like Children in Scotland, we also bring in other grant

money and money from training activities and that kind of thing. Like all charities that operate under the OSCR regime, we are fully accountable and report back to all the funders from whom we are lucky enough to receive funding.

We do not have a big staff team, so we do not train people in the organisation to lobby but, a bit like Children in Scotland, we try to facilitate access to Parliament for our supporters. We are not a membership organisation, but we have supporters and we hold events in the Parliament for young activists or trainee journalists and that kind of thing because we want them to see the Parliament as something with which they can engage and exercise some influence.

Neil Findlay: Convener, can I raise a point?

The Convener: If it is a question and not a point, Mr Findlay.

Neil Findlay: It is a question. Mr Downie, are you aware that, last year, the SCVO ran a course that cost between £100 and £230, depending on whether an attendee was a member or a non-member, the purpose of which was to discuss influencing policy development, the most effective routes for voluntary organisations, how to get a message across effectively, the pros and cons of different lobbying tools, and the pitfalls to avoid?

John Downie: That is a perfectly legitimate course to run for our members who are engaged with the democratic process and the parties. The difference in prices meant that it cost a member £100 and a non-member £200 or whatever. As I say, we are open and exist to facilitate our members' engagement with the Parliament. Every time we have events at the Parliament, that is what we do. At our last parliamentary reception, in December, the main speaker was the manager of Fife Gingerbread. We want to get across the experience and issues of our members, rather than those of the SCVO. We are quite open about what we do, whether it is lobbying or engagement.

Fiona McLeod: I find this line of questioning really strange. It is making me focus on why we are having this inquiry. When I worked in the voluntary sector, I was employed specifically to train volunteers to sit in board meetings of the health board. That made them better volunteers and made them better able to represent the issues that they were concerned with. I am getting confused about what this bill is about, convener.

The Convener: That is perhaps a subject to which we will return.

Finally, I will give the members of our panel up to 100 words—that is about one minute—to cover any points that we have not covered or re-emphasise important points that have been touched on.

Sara Collier: Unfortunately, we ran out of time before we got into the detail of issues such as who should be on the register, although I know that you dealt with that issue in one of your other evidence-taking sessions.

I would not want a charity shop manager who happens to speak to an MSP about a policy issue to appear on a lobbying register. However, that charity's director of policy, who is a former MSP—I am thinking of a real-life example—should certainly be on the register. That issue should be considered further.

I would also like to reiterate the points that I have already made. Children in Scotland and most of the people we have heard from are happy to be on a register of lobbying. The voluntary sector accounts for a large proportion of the lobbyists in Scotland, and there is also a crossover in that voluntary organisations sometimes employ commercial lobbyists to do work on their behalf. That has to be considered. We are happy to comply with any requirement on lobbying, as long as it is useful to someone and we are not recording information that no one ever reads.

John Downie: In principle, we are opposed to the register. We have advocated the publishing of MSPs' diaries, because we believe that MSPs and politicians at all levels in Scotland are responsible for the transparency of their activities, rather than those who wish to engage with them. It is important to make that public office much more transparent in terms of decision making and the issue of who people are meeting and so on.

Dave Moxham: I agree that the primary purpose of the bill should be to regulate commercial activity and gain, but consistency requires that lobbying activities that have an economic or power-based impact, irrespective of whether they turn a profit for somebody, need to be included in the bill.

I underline the fact that if the register is created in such a way that inclusion on it appears to be a pejorative factor—which is to say that, essentially, the good guys are not on it and the bad guys are on it—it will fail, because that will introduce a disincentive effect. What we need are incentives to ensure that as many people as possible are content to join the register. There are risks attached to its being a pejorative thing rather than a positive thing.

Jenny Kemp: I reiterate the point that the lobbying that happens on behalf of the third sector is a good thing and is designed to bring about change. Our organisation, in particular, advocates on behalf of some of the most vulnerable people in society, whose voices are not heard and who will never be part of any kind of lobbying process. Organisations such as ours try to bring those

voices into the Parliament. It is important that we look at the commercial interests and distinguish between those and people who are trying to introduce social change in Scotland.

I agree with some of the points that have been made about ensuring that the process does not become burdensome, and that the register is not seen as being a pejorative thing. However, in general, anything that aligns with the founding principles of the Parliament and opens it up and makes it more accessible has to be a good thing.

The Convener: Thank you for your attendance and your contributions. If, when we reflect on the evidence that we have received, we identify any further information that we might want, I hope that we will get a positive response.

We will suspend the meeting briefly to allow a change of witnesses.

10:09

Meeting suspended.

10:13

On resuming—

The Convener: I welcome our second panel. Richard Maughan is head of campaigns at the Confederation of British Industry—the agenda says “CBI Scotland”, but strictly that should be “CBI”, although it is, of course, the same organisation; Colin Borland is head of external affairs in Scotland at the Federation of Small Businesses; and Fraser Kelly is from Social Enterprise Scotland.

Once again, we will not take opening statements, but I hope that there will be an opportunity for concluding statements, if time permits. That seems to work rather better.

Cara Hilton: Good morning. My question is for everyone on the panel. To what extent is reform required? There have not been any major lobbying scandals at Holyrood yet. Will a register lead to greater openness in the political process?

Richard Maughan (Confederation of British Industry Scotland): Shall I kick off?

The Convener: That is up to you guys.

Richard Maughan: I think that we would all agree that transparency is a good thing in itself. The question then is whether the means that we currently have are sufficient to deliver that transparency, and what else we could do to deliver it. Given the lack of evidence that there is a problem with lobbying in Scotland, we would argue that to introduce new legislation and new regulation that might create additional burdens is not justified and is not a proportionate response.

Colin Borland (Federation of Small Businesses): I largely echo that. As we say in our written submission, we have not seen any evidence that would make a compelling case for extra statutory regulation. However, we concede that we are not experts in the field. We think that, if the committee takes a contrary view after taking evidence and it decides that it wants to proceed with a register, it would be more effective to record particular meetings than to try to focus on particular classes of individual. Having considered that, we think that it would be difficult to the point of being impossible.

Fraser Kelly (Social Enterprise Scotland): Good morning. We see lobbying and campaigning as a good thing and as being part of an open and democratic process, and we believe that organisations and individuals should be encouraged as much as possible to engage with elected politicians in the parliamentary process. The fact that regulation does not exist creates an open, transparent and fairly flexible process for that to be achieved.

I am interested in the previous comments on the application of a register. People have asked whether we can learn anything from the Westminster bill. I think that we can learn lots from it, and the fundamental thing that we can learn is not to do things in that way. We should make the regulatory processes that we have in place as effective as possible before we think about new legislation.

Cara Hilton: The “Code of Conduct for Members of the Scottish Parliament” places responsibilities on members in respect of their dealings with lobbyists, and some consultant lobbying firms have their own voluntary codes. Should responsibility for registering lie with lobbyists or with those who are being lobbied?

Colin Borland: The crucial question is who counts as a lobbyist. If we can get a workable definition of a lobbyist, that question will become a lot easier to answer. In our written submission, we say that that would be quite difficult to arrive at and that, unless we can get a definition that is clear and good enough to use in statutory regulation, a neater and more cost-effective solution seems to be for responsibility to lie with those who are being lobbied. After all, they are elected by us to exercise that sort of judgment.

Richard Maughan: We would echo a lot of that. It is clear that existing means of guaranteeing transparency and probity in MSPs’ dealings with external parties are set out in the code of conduct. It is right that there are expectations on those who lobby to adhere to similar principles, but we could say that, arguably, the means of guaranteeing those things already exist.

Fraser Kelly: The code of conduct is already very strong, but all lobbying should be as open and transparent as it can be. There is a dual responsibility on MSPs and organisations that lobby to be as transparent as they can be to the public and the media through any mechanism that they have. I do not think that an absolute responsibility is required for organisations or individual MSPs. There is a dual role and a collective responsibility.

The Convener: George Adam wants to follow up on some of the things that have been said.

George Adam: The idea of MSPs having to publish details of meetings has been mentioned. How do you see that working out, if we went down that route? Would that approach be used instead of a register—I think that you are hinting that that is the way that you are thinking—or with the register?

Colin Borland: We are naturally attracted to solutions that look cost effective and simple. If the committee believed that an issue needed to be addressed and a register of such meetings was administered by those who were being lobbied, that could be done within existing administrative budgets and resource allocations and, crucially, we would not be trying to categorise individuals. Perhaps we will talk about membership organisations later, but for organisations such as ours, that categorisation might present a few interesting challenges.

Under what we propose, we would not have to go down that route, which would be fraught with difficulty. Rather, we could rely on the good judgment of our elected representatives, who deal day in, day out with concepts such as reasonableness and how things should be presented. As elected representatives, you know when someone is coming to talk to you as a constituent and when someone is coming to try to influence you or to advocate a particular policy line. I do not think that there is a difficulty with your making that distinction.

Where we believe that there could be an issue is with regard to whether a small businessman who is involved in making certain representations on behalf of a particular campaign or a local issue should register. A similar issue would arise if he was a member of an organisation such as ours, as that could further complicate matters. Dealing with the issue through some sort of enhancement to the code of conduct for MSPs would seem to be a neat way of dealing with it.

Richard Maughan: On the idea of publishing details of meetings, our submission stresses that details of ministers’ meetings with external parties are already published. We think that that system could be strengthened as we believe that the

information is not published in a timely fashion, which undermines the purpose of publishing it. An extension to the system could involve publishing MSPs' diaries. The advantage would be that that would address the fact that the common factor between the full panoply of people who lobby is their engagement with the people at the centre—that is to say, MSPs and the Government. As Colin Borland said, we want to make the system as simple as possible, and it seems to us that publishing at least Government ministers' diaries—we have not yet come to a decision about MSPs' diaries—would be a good way of doing that.

The Convener: Are you deliberately or accidentally excluding officials? They can be lobbied as well, and they can, in turn, influence elected members.

Colin Borland: I am terribly sorry. You are absolutely correct to point that out. Their exclusion was accidental. In our submission, we use “MSPs” as shorthand. We should have talked about decision makers.

George Adam: Earlier, I asked a question about other jurisdictions. Mr Kelly has addressed the issue, but I would like to hear what other members of the panel believe we can learn from what is happening elsewhere. Previous submissions have suggested that Canada is an example of best practice and that there are things to learn from what happens in Washington. With regard to the UK legislation, I will paraphrase what I said earlier and say merely that people have suggested that it is less robust than they hoped for. Is anyone aware of anything that we can learn from what happens in other places?

Colin Borland: I asked a few colleagues around the UK how they deal with these issues. The jurisdictional point is interesting, especially for those of us in organisations that deal with local government, Holyrood, Westminster and Brussels.

One issue that was raised is that, last May, the Welsh Assembly said that it would maintain a watching brief on the matter. I think that it is going to think about introducing a voluntary code of conduct. I do not have the details of that, but I could explore it further. When I asked my colleagues in Wales what the practical effects of that might be and whether any of the members that they represent had concerns about it, they told me that it was fine and that the Assembly seems happy enough with the suggestion as a first step. Like the Scottish Parliament, the Welsh Assembly has not had a significant lobbying scandal, as far as I am aware. We can perhaps learn from how it has approached the issue.

The Convener: Was that an offer to provide the committee with something, Mr Borland?

Colin Borland: Certainly, if that would be helpful.

The Convener: It is always helpful.

I beg your pardon—I have just been told that we have that information anyway. That relieves you of that particular task.

Richard Maughan: It is important to look at examples of functioning lobby registers elsewhere. However, you must always remember that those other systems have other cultures and practices anyway. We are considering the issue at the UK level and the Scotland level. The UK Government and the Scottish Government have set out principles around better regulation, and those are the principles that we follow in these jurisdictions. We should consider the issue of proportionality and whether a new regulation would be targeted before we bring forward a fresh regulatory burden.

Fraser Kelly: I commented earlier that what we can learn from the UK bill is how not to do this. The feedback that I have had is about the speed with which the bill has dismissed the details about thresholds, structures and so on and turned to language about compliance, penalties and offences. As was mentioned earlier, it is being turned into a pejorative process, with lobbying being seen as something that is underhand and done in a clandestine way such that the legislation requires to look at offences and penalties. The legislation is seen as probably overburdened and too heavy handed.

The Convener: To be clear, Mr Kelly, are you suggesting—you may not have considered it at this level—that if a bill were to proceed, the details of levels at which people could be caught, reporting and so on could be covered in subsequent secondary legislation and so be subject to changing circumstances? In other words, the bill would enable those details to be decided on and they would then be dealt with outwith the bill. Would you find that sequencing useful?

Fraser Kelly: Indeed. All these things are temporal because circumstances change—our economic circumstances change and a whole range of things within the political arena can change. Legislation has to be fit for purpose and it has to be flexible—we have to be able to adapt it as our circumstances change. The anecdotal and informal feedback that I have had is that there is a relatively small amount of detail on the register and how it will be managed and regulated, but the legislation is heavy on detail as regards the things that will happen if people fall foul of the register.

The Convener: Right. Cameron Buchanan has some questions on the detail.

Cameron Buchanan: We asked the earlier panel how “lobbyist” should be defined. How do you all feel it should be defined? Would it affect the openness and accountability of the Parliament if “lobbyist” was defined rather strictly?

Colin Borland: That is a crucial point, and we have considered it. We are not experts on the lobbying industry, but we spend a lot of time looking at how to ensure better regulation. Fraser Kelly made a point about the need for certainty, and that is crucial. The biggest difficulty that our members experience in relation to regulatory compliance is around trying to work out which regulations apply to them, and that is before they have even begun to fill in a form.

It is crucial for people to know exactly when such a register would apply. Some cases would seem to be black and white. I assume that the Parliament would not want the definition of “lobbyist” to apply to a constituent who goes to church on a Sunday morning, is given a postcard to sign by the minister about a particular piece of policy and hands it in—I do not imagine that the Parliament would intend to include such people. However, the register probably would apply to the director of corporate affairs in a large lobbying organisation. How would the Parliament define that in language that is sufficiently clear to render it suitable for statutory regulation?

I have also heard people talk about time limits and time thresholds. In my case, I spend maybe a couple of hours a week, maximum, on actual lobbying. That amount of time would not come close to crossing such a time threshold. Would the definition rely on whether someone was employed? Organisations such as ours have lay members who may receive a small honorarium from the organisation for doing bits and pieces of work for it. Part of their job is to go and build good relationships with locally elected representatives and advance FSB policy. How would you include them—or would you not include them?

What about a local small businessman or businesswoman who happens to be an office-holder in a business organisation? What if they start talking to a local elected representative or a local authority official about an issue that relates directly to their business and they then begin to talk about something else that the FSB may be arguing for, with or without our knowledge?

It would be difficult to arrive at a definition that includes all the people you want to include and excludes all those you think it should exclude, and to make it clear and robust enough to meet the principles of better regulation. That is why we believe that an easier solution would be to record particular meetings, where the context is everything.

10:30

Richard Maughan: I would like to extend that point, which, to our minds, gets right to the heart of the issue of in-house teams. We can come to our own definitions of what lobbying is but, as Colin Borland said, we need to look at the practicalities of how a register would be implemented and who would be in it. There would be a unique challenge for an in-house team to judge who within a business would be registered. Would it be the chief executive, who might have incidental contact with individuals in politics or the civil service? Would it be the public affairs team? Would it be technical experts, who might engage with civil servants on specific issues on an ad hoc basis or on a particular project?

From there, we would quickly get to having to set up systems in businesses for tracking engagement and making judgments about who might pass the threshold. We seek to stress that compliance burden to you. We hope that we can consider working towards implementing some kind of register that will not create a huge regulatory burden.

Fraser Kelly: I suppose that the starting point should be to say that everyone is in, rather than to say who is excluded.

Our position is strange and is similar to Colin Borland’s. As a membership organisation that creates opportunities for our members to engage with MSPs, would we be the registered body or would it be the organisation that has the contact with the MSP? There is an issue about which organisation would register.

We will always create opportunities for our members to meet MSPs. We do not know what specific commentaries they engage with them on, but we create those opportunities. We are also regularly invited to respond to consultations and we are happy to represent our members’ interests in those. Again, though, would we be the registered body or would it be the organisation that we are representing?

Cameron Buchanan: Thank you.

Fiona McLeod: I would like your thoughts on some of the practicalities of going down the route of a register. There have been various suggestions about who should administer a register if we set one up: the Scottish Information Commissioner; the Commissioner for Ethical Standards in Public Life in Scotland; the Parliament, perhaps through this committee; or a whole new organisation. I would like your thoughts on that.

I would also like your thoughts on whether there should be a fee for registering, and, if there should be, how that should be set. Finally—this is

something that I am keen on—if we do have a register, how should we monitor compliance with registration? Should there be sanctions for anyone who does not maintain the ethics of the register?

Colin Borland: The route that we are suggesting is a fairly neat, almost cost-neutral solution that would enhance the MSP code of conduct. It would be applicable to members and indeed officials and others who the Parliament deems are decision makers who are sufficiently important to be lobbied. That would mitigate the need to create an extra body, which would come at extra cost, require extra administration and all that. We could bypass questions about who would fund it, because it could probably be met within existing administrative budgets.

Richard Maughan: We have not taken a view on which organisations should house a register if one was created. Our starting point is that we do not believe that a sufficient case has been made for the creation of a register in the first place.

Working in the reality that one might be created, we said that a register would need to be independent of Government, Parliament and the industry itself. In that respect we would suggest looking at organisations that fit that bill and which could work a register in, rather than creating a completely new organisation at additional cost.

Fraser Kelly: Similarly, we would not be able to advise you on who should host the register, but we would certainly caution against creating any new bodies—we are new-bodied out at present in our relationships with Government and Parliament.

With regard to a fee structure, we have huge concerns that it would get to a stage at which people who could pay the most would get to say the most and shout the loudest. On sanctions, I refer to my earlier comments on the language in the bill that is currently going through Westminster. Inevitably, if one creates a register and a set of circumstances in which there is an expected behaviour, one must have some way of regulating behaviour if it becomes inappropriate.

Therefore, if you went down the route of creating a register, I would say yes to sanctions but no to fees. I would not be able to advise you at present on who should take responsibility.

Fiona McLeod: Thank you.

Richard Lyle: My question has been partly answered already. If there was a register, should there be a threshold for registration? What exemptions should there be?

Colin Borland: As I explained in my answer to Mr Buchanan, the question of how we define the threshold is the nub of the issue. It is obvious in the sense that we know who we want to get and who we do not, but how do we define that

correctly? It cannot be easily defined by the time or money that is spent, because of the questions that Richard Maughan raised about in-house staff and how work is allocated. It is a tricky issue, and I am afraid that we do not have an easy answer to it.

Richard Maughan: To extend my earlier point, we would take the view that, if there was to be a register, a proportionate response would be to draw a fairly narrow scope. The register might include third-party lobbying consultancies, for example, where there is an issue around whether it is clear on whose behalf the interactions are taking place.

It is clear that in-house teams would be more of an issue because of the practical difficulties that I described earlier, and we would argue for such teams not to be covered.

Fraser Kelly: When you start to consider whether a register would be valid and what the thresholds would be, you get into new territory. At present, consultations through the Parliament are very open and transparent, and the system works very well. As soon as you start to create a register with various thresholds—whether those apply to the amount of money that is spent on lobbying, the turnover of organisations or the expenditure on staff—you need to justify those thresholds.

When you begin to go through the consultation process, how do you select people whom you think will most effectively influence and give best evidence to the consultations? Do you pick three from the top of the list, two from the middle and three from the bottom? If you start to put a register together and apply thresholds, you have to be clear about what you want to achieve in using the register and in relation to lobbyists and influences, to ensure that the policies, procedures and legislation are as effective as possible.

I am sure that, if you go down the route of having a register and start to be selective, the first thing that will happen is that someone will take you to task on why you have taken one organisation at the expense of another one, and ask whether that is fair and reasonable.

Richard Lyle: As other witnesses have said, if MSPs sit on a particular committee people may believe that they are more powerful than they are. Basically, an MSP may see one company but, because of the number of bills that are coming before their committee, that company may come in and see them 20-odd times but come in to see their colleagues only once. Would that drive MSPs to say, “No, I’m sorry—I don’t want to see you”?

Fraser Kelly: Your processes are open and transparent, and I do not think that there is any set of circumstances in which an MSP would not want to see an organisation if it was able to inform their

decision making and understanding. They would not get into the territory you describe, because the systems and procedures that are in place at present—outwith the fact that we do not have a register just now—are transparent and strong.

The Convener: Does George Adam want to ask anything more on the publication of MSPs' diaries?

George Adam: I asked a question about that earlier. However, I have a question about Mr Kelly's statement that if we had a list of lobbyists it would be a question of who would be asked to come and give evidence. The Parliament wants to be open and transparent, but it can be difficult for a clerk who has perhaps five evidence sessions coming up to organise them. It could be argued that a lot of the same faces and groups attend a lot of the committee inquiries at the moment. Would it not be more open and transparent to have a list of groups so that the public could see who was going back and forward and engaging with the parliamentary process?

Fraser Kelly: That is a fair comment, but as I said earlier I think that all our activity should be as open and transparent as possible, irrespective of whether that is the activity of the Parliament or of organisations petitioning the Parliament.

My comments are made on the basis that you need to get the best information that you can to inform your decision-making process. I think that, in recent work, MSPs have identified that they get breadth and quality of information by going to intermediate organisations and representative membership bodies that will give them feedback on issues such as geographical content and the scale, scope and structure of business.

As soon as you start to put a register together, you will select someone but might exclude someone else who has a slightly different view. I think that the processes are open enough at the moment, and I do not see how a register could add to that.

George Adam: My argument is that groups could make accusations about the current process and ask why they were not asked to give evidence. For example, I am a member of the Education and Culture Committee, and we have been dealing with the Children and Young People (Scotland) Bill, which will go to stage 3 in the next couple of weeks; an organisation might say "We never managed to get evidence into that. How could we not get in it? We are a children's charity." That could be the accusation at the moment. However, if there was a list of all available groups, we would know who was involved. It might make some of the clerks' work a lot easier if they could see who would be available for evidence sessions.

Colin Borland: That is a fair point. Mr Lyle referred to the unintended negative perceptions that could arise from publishing diaries or, indeed, lists of consultees. As Mr Adam said, there is a fair amount of the usual suspects being involved, and a list could make people look a bit more widely and try to get as many views as possible. However, the clerks do that at the moment and I pay tribute to them for it. They do not simply ask us in to give evidence but ask whether they could get a selection of our members. If our members do not want to come to a formal committee meeting, the clerks ask whether they would like to attend a round-table meeting with MSPs to discuss how legislative changes might operate on the ground or explain a particular problem that the committee is looking at.

I think that all of that is perfectly legitimate. People might try to spin the current system against committees by saying "Oh, wait a minute—you've met that organisation so many times and now look at all these stage 2 amendments that have been lodged as a result. Isn't there some sort of conspiracy here?" However, at the end of the day, we are professional communicators and, if someone has brought a compelling case and we have acted on it, we have to make that point. It sounds like democracy in action rather than anything more sinister.

The Convener: I wonder whether panel members can comment on an area with which I have some difficulty, which is knowing who I am speaking to. I do not mean Colin Borland for example—that is the name of an individual—but who people are in terms of who they represent.

For example, in the Federation of Small Businesses in Scotland, the chair might be speaking on behalf of the organisation, but he is also a businessperson who might speak on behalf of his organisation and he is a resident of the north-east of Scotland who might have personal issues. Is there a need for greater clarity as to what hats people are wearing when they are engaging with public decision makers?

10:45

Colin Borland: Possibly, although I have not yet seen any evidence that that is creating a problem.

You are right that our chair, who is from your part of the world, may go and speak to you about a matter that particularly relates to an issue that he is involved with—it may be something very specific to his business—but may then say, "Incidentally, the following things are happening." That would be entirely natural; indeed, I expect that to happen and do not see that as a major issue.

However, if a meeting were to turn into a situation in which someone who had said that they wanted to speak to you as a constituent in fact sat there reading from a policy document, at that point you could tell yourself to record that, because you are being lobbied by an outside organisation during that part of the meeting. That would be a fairly straightforward way to address the matter.

The Convener: Just to be clear, I was not picking on any individual in particular.

Colin Borland: No, but the FSB is a perfectly good example.

The Convener: Does anyone else want to comment?

Fraser Kelly: Social Enterprise Scotland is another good example because membership is open to associate members, and organisations such as PricewaterhouseCoopers and the Royal Bank of Scotland are associate members.

We represent our members' interests. We do not represent RBS and PwC in the context of our policy campaigning. Therefore, it is important that you understand who we are as representative bodies, who our membership is and what our construct is.

Our memorandum and articles are constructed carefully to set out who can be members and how those membership categories are distinguished, to ensure that we represent the interests of the people that fit our membership criteria on social enterprise.

Richard Maughan: I echo a lot of what the other panellists have said. CBI and CBI Scotland are in a similar position. The individuals who sit on our decision-making committees and our chairmen, both in Scotland and at UK level, often wear different hats in their day-to-day working life.

An effective way to add a bit more transparency would be to return to the issue of the details that are published about meetings that take place. The UK Government puts out, to a varying degree, information about the topics that are discussed at meetings. That approach could be looked at in Scotland as well, because the topics discussed at ministerial meetings are not necessarily published. All such information helps us to get to a fuller picture of the issues that are being covered.

The Convener: As colleagues do not appear to have any further questions, I offer the panellists, in 100 words, which is about 1 minute top whack, the opportunity to sum up or draw our attention to anything that we have not otherwise covered.

Fraser Kelly: I return to my original statement. Lobbying and campaigning are good things: we should be encouraging as many people as we possibly can to do them. The existing systems and

procedures are robust. I am encouraged hugely by our connection with Parliament in all its guises on behalf of our members. While we respect your right to look at registration and will abide by any decision that you make on that, we believe that the current processes and procedures are very effective for our organisation's membership.

Colin Borland: We have not seen evidence that the case has been made for imposing additional statutory regulative burdens. However, should the committee and Parliament take the contrary view, a register of lobbyists would not be the simplest and most effective way to ensure transparency. Indeed, when we look at who should and who should not be captured and how to arrive at a definition that is sufficiently clear and robust to meet the requirements of better regulation, we see that it is difficult to the point of impossibility. A far neater, easier and more cost effective way would be to place the responsibility on those who are being lobbied to record the meetings in which they think that someone is trying to push or advocate a particular policy or line.

The Convener: They should record and publish that information.

Colin Borland: Yes.

The Convener: That would include officials.

Colin Borland: Yes.

Richard Maughan: We are clear that lobbying is an essential part of the public policy-making process, so it is right and proper to look at transparency. The question then becomes how that transparency is delivered. A range of measures exist, whether through the MSP code of conduct, publication of meetings and freedom of information, as well as other things. Bearing all that in mind and the fact that we have not seen any evidence of wrongdoing in Scotland, we argue that a register is not a proportionate response or in line with the Scottish Government's better regulation agenda.

The Convener: Thank you very much for attending and for your input. If we have any further issues that we want to raise with you, I hope that you will respond positively if we ask for that information. I see that the panellists are nodding their heads.

10:50

Meeting continued in private until 11:18.

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