House of Commons
Political and Constitutional
Reform Committee

Introducing a statutory
register of lobbyists

Second Report of Session 2012–13

Volume II
Additional written evidence

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2012
The Political and Constitutional Reform Committee

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The Reports of the Committee, the formal minutes relating to that report, oral evidence taken and some or all written evidence are available in a printed volume.

Additional written evidence may be published on the internet only.

Committee staff

The current staff of the Committee are Joanna Dodd (Clerk), Hannah Stewart, Helen Kinghorn (Legal Specialists), Lorna Horton (Inquiry Manager), Louise Glen (Senior Committee Assistant), Jim Lawford (Committee Assistant) and Jessica Bridges-Palmer (Media Officer).

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(published in Volume II on the Committee’s website [www.parliament.uk/pcrc](http://www.parliament.uk/pcrc))

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Written evidence

Written evidence submitted by Action on Smoking and Health (ASH)

ABOUT ASH

1. Action on Smoking and Health (ASH) is a campaigning health charity set up in 1971 by the Royal College of Physicians to work towards eliminating the harm caused by tobacco. ASH is transparent about its activities and its funding which for its campaigning work comes from Cancer Research UK and the British Heart Foundation. ASH works collaboratively with its funders and other health and welfare organisations towards the goal of improving public health by reducing tobacco consumption.

OUR POSITION

2. ASH supports the introduction of a statutory register of lobbyists. We have a particular concern because of the behaviour of the tobacco industry over many years in lobbying government, often covertly, against the introduction of measures related to tobacco regulation.

3. The UK has been a party to the WHO Framework Convention on Tobacco Control since 2005, and as such has clear legal obligations with respect to tobacco lobbying set out in Article 5.3: “In setting and implementing their policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.” The Government can only live up to these obligations if tobacco industry lobbying is transparent, but on many occasions that is not the case.

4. A good example of such covert lobbying is that which took place arguing for the repeal of the legislation to put tobacco displays out of sight. After the Coalition Government took office, lobbyists Hume Brophy contacted MPs supposedly on behalf of the National Federation of Retail Newsagents campaigning for the repeal of the display legislation. The campaign purported to be on behalf of small retailers, but was covertly bankrolled by the tobacco industry, which stood to gain most from the repeal of the legislation. This was only revealed when British American Tobacco (BAT) finally came clean under questioning by the Rt Hon Kevin Barron MP at its AGM. 3

5. The lobbying firm Hume Brophy which acted on behalf of the NFRN subsequently admitted there should have been transparency and wrote to the APPG to say that there should be full disclosure of tobacco funding in all future campaigns of this nature and [I] can assure you that if Hume Brophy ever works in this sector again that this will be a strict precondition for our involvement. However, this is shutting the door after the horse has bolted. Although ASH has written to MPs to inform them that this campaign was tobacco industry sponsored, many MPs are still not aware that the NFRN campaign was funded and fuelled by the tobacco industry.

6. We are also concerned about the use of other types of organisation such as Think Tanks to lobby government, which don’t reveal where their funding comes from. A good example of this is the Adam Smith Institute which published a report arguing that plain packaging of tobacco products would have no public health benefit on Monday 20 February 2012. On the Adam Smith Institute website it does not state anywhere who the organisation’s funders are, only that “To protect our independence, the Adam Smith Institute accepts no government funding. Most of our funding comes from private individuals who believe in liberty and want to see a freer world; the rest comes from various foundations, businesses and the sales of our books.” 4 Yet the tobacco industry documents, made public as a result of litigation in the US reveal a longstanding track record of receiving funding from the tobacco industry. In response to direct questioning from ASH the author of the report, Christopher Snowdon had to admit on the Today programme that the organisation continues to receive funding from the tobacco industry.

COMMITTEE’S QUESTIONS

Q1. Does the Government’s consultation paper represent a balanced approach to the idea of a statutory register?
— Does the paper present the evidence in a balanced way?
— Are you confident that the issues covered are ones on which the Government has an open mind?
— Is the Government clear wherever it has a preference for a particular option, and is this preference in each case a reasonable one?

7. We are very concerned that the Government’s consultation paper does not represent a balanced approach to the idea of a statutory register. The issues are framed very narrowly which argues against government having an open mind on the issues. The Government’s preference is clearly for a register containing minimal

2 http://www.guardian.co.uk/business/2011/apr/27/retail-newsagents-tobacco-ban
4 http://www.adamsmith.org/about-us/frequently-asked-questions
information about lobbying activities and one that would only apply to a minority of lobbyists, those working for agencies and not for example those working in-house or for other types of organization such as Think Tanks. At the moment under the Government’s plans tobacco companies would not be required to disclose their lobbying activities. We believe that it is essential that the register reveals who is lobbying whom in government and on what specific issues.

2. **Does the consultation paper contain the right questions?**

--- Is each of the questions asked in a balanced way?

--- Are there any important questions that are not asked?

8. The consultation paper questions make no reference to requiring lobbyists to disclose whom they are trying to lobby or what they are trying to influence. Both of these are essential if the register is to be effective and lobbying to be made transparent, yet neither has been put forward as an option.

3. **Which lobbying contacts are of greatest legitimate public interest?**

--- Does the consultation paper envisage the capture of appropriate information about these contacts, as opposed to other kinds of contact?

9. There are many lobbying contacts of legitimate public interest but those of greatest concern to ASH relate to the tobacco industry, which because it is recognized that, “There is a fundamental and irreconcilable conflict between the tobacco industry’s interests and public health policy interests.” (see WHO FCTC Article 5.3 Guidelines). The UK is a party to the WHO FCTC and has signed up to guidelines on Article 5.3 which recommend that Parties:

1. Raise awareness about the addictive and harmful nature of tobacco products and about tobacco industry interference with Parties tobacco control policies.
2. Establish measures to limit interactions with the tobacco industry and ensure the transparency of those interactions that occur.
3. Reject partnerships and non-binding or non-enforceable agreements with the tobacco industry.
4. Avoid conflicts of interest for government officials and employees.
5. Require that information provided by the tobacco industry be transparent and accurate.
6. Denormalize and, to the extent possible, regulate activities described as “socially responsible” by the tobacco industry, including but not limited to activities described as “corporate social responsibility”.
7. Do not give preferential treatment to the tobacco industry.

10. In order to ensure that the Government can live up to its obligations tobacco industry lobbying should be subject to the most stringent requirements to ensure that all lobbying by the industry and its front groups is transparent.

4. **How should the Government deal in policy and practice with how it might be lobbied on the issue of a statutory register of lobbyists?**

--- How open should the Government be about such lobbying contacts?

11. As a matter of principle the Government must publish all information about any lobbying on the issue of a statutory register of lobbyists.

5. **How should the Government analyse the consultation responses, and seek to balance the weight of opposing argument?**

12. All those responding to the consultation must be required to make clear any links they have with the tobacco industry, both financial and non-financial.

6. **Do you have any comments on how any proposals emerging from the consultation should be implemented?**

13. The lobbying register must be implemented without further delay and should be comprehensive, statutory and independent with substantive penalties for non-compliance.

February 2012

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Written evidence submitted by Mark Boleat

Introduction

1. On 20 January 2012, the Minister for Government Policy published a consultation paper, *Introducing a statutory register of lobbyists* (Cm 8233). The paper aims to increase the information about lobbyists. Responses to the consultation are invited by 13 April.

2. This response is a personal one, albeit by someone who has substantial experience in this field as a former member of the National Consumer Council, a member of the Regulatory Policy Committee, Chairman or Chief Executive of a number of trade associations, significant experience as a regulator, consultancy work in this field and author of a number of relevant papers.

Executive Summary

— The proposals are not well thought through, their purpose simply seems to be to meet a Coalition requirement.

— There is no easy definition of a “lobbyist”. “Lobbying” is generally not a stand-alone function but rather part of a package of services.

— Any register should not cover individuals deemed to be involved in “lobbying” but rather companies that for reward provide a public affairs service, who should be required to identify their clients, trade associations that have a representative role, who should be required to identify their members, and interest groups that have as one of their functions seeking to influence public policy, which should be required to give details of their membership.

— The register should be confined to basic information, eg no financial information, and should be kept continually up to date.

— Managing the register is a matter for the Government. In practice there will be no enforcement and there will be no effective means of verifying the information on the register.

— The Impact Assessment is poor, contradicting the consultation paper, with inaccurate figures and making no attempt to produce estimates of costs and benefits. It has been judged “not fit for purpose” by the Regulatory Policy Committee.

General Comments

4. The proposals in the consultation paper, seem to be put forward with no great enthusiasm. The main purpose seems to be to meet a commitment in the Coalition Agreement. They are not properly thought through, for example with little thought being given as to how the register would operate in practice and no understanding that there is not a stand-alone, easily definable activity called “lobbying”. The proposals are capable of catching huge numbers of people and organisations, for no apparent purpose. The Impact Assessment has been judged by the Government’s own Regulatory Policy Committee as “not fit for purpose”, and in a number of respects is contradictory to the proposals in the consultation document itself (eg in respect of in-house lobbyists) as well as having figures that are wrong and seem to be plucked out of thin air. This is not good policy-making.

5. A rational approach would be to review the problem that the proposal is seeking to address in the light of the consultation responses. This might lead to a decision to drop the proposal. But there is a climate in which “something must be done”. That something should a very simple register covering organisations only, not individuals, no financial information, and in practice no sanctions. The Government cannot duck the issue that it has to own and manage the process.

Purpose of a Register

6. The purpose of the proposal is to meet the commitment in the Coalition Programme—

“We will regulate lobbying through introducing a statutory register of lobbyists and ensuring greater transparency.”

7. Any register and something which ensures a bit more transparency meets this requirement. However, from a government committed to reducing the regulatory burden one is entitled to expect something more sophisticated. A little more detail is given in section 3 of the consultation paper—

“The purpose of the UK register is to increase transparency by making available to the public, to decision-makers and to other interested parties authoritative and easily-accessible information about who is lobbying and for whom. This will help ensure that those seeking to influence decisions do so in a way that is open to scrutiny, improving knowledge about the process and the accountability of those involved in it.”

Definition of a Lobbyist

8. The concept of a register of “lobbyists” naturally begs the question of who is a lobbyist, and this is already the subject of significant debate and lengthy papers. The consultation paper gives the following
definition: “Lobbyists should mean those who undertake lobbying activities on behalf of a third party client or whose employees conduct lobbying activities on behalf of a third party client.” The consultation paper also says “the register is not intended to cover the normal interaction between constituents and their MPs. Nor should the essential flow of communication between business leaders and Government, civil figures, community organisations and Government and so on, be included”, nor is it intended to cover those engaged in lobbying on their own behalf.

9. But this definition raises a host of issues:
   - What about someone writing to a minister of behalf of himself and third parties (“I am writing on behalf of the residents of Parkside Close to protest against the proposal to allow…”)?
   - What about 30 A list celebrities writing a letter to The Times demanding more government funding for their particular cause?
   - What is a community organisation? Occupy London or London Citizens? Why should community organisations be exempt?
   - What about medical charities campaigning for better treatment—perhaps a good case for covering them since some may well be funded by those with a vested interest.
   - Trade associations are not mentioned at all in the consultation paper—surprising given that they are the largest group of “lobbyists” in the country.
   - Think tanks etc seek to influence policy—indeed that is the primary purpose of most.

10. The consultation paper proposes covering not only organisations but also the people within organisations who carry out “lobbying”. This is unwise. Given the definition of lobbying thousands of people would be covered. The large trade associations could easily each have 150 people engaged in lobbying—in that they would personally have meetings with officials, regulators etc seeking to influence public policy. Organisations might engage an individual or a consultant to do a small piece of work for two weeks—for example talking to officials about a specific point. Is the commissioning organisation supposed to record all such interactions on the register? Any lobbying is done in the name of the organisation not the individual and it would be unwise, and indeed impractical, to seek to record the details of individuals employed as “lobbyists”, particularly given that the term is both pejorative in the eyes of many and not capable of a meaningful or simple definition when applied to individuals.

11. The definition of “lobbyist” must be narrowed so as to do the minimum necessary to meet the transparency requirement. Registration could be confined to:
   - Companies that for reward provide a public affairs service, who should be required to identify their clients.
   - Trade associations that have a representative role, who should be required to identify their members.
   - Interest groups that have as one of their functions seeking to influence public policy, which should be required to give details of their membership. This would include trades unions, think tanks and pressure groups. In the case of individual member organisations, eg the National Trust (a fierce lobbying group as the Government knows to its cost), the NSPB and trade unions simply giving the number of paid up members should be sufficient. It would also be sensible to require disclosure of any significant funding (say over £5,000) other than from members, so as to catch, for example, a medical charity acting as a front for a drugs company.

12. It is agreed that in-house lobbyists should not be covered by the register. This is partly because it is clear who they are lobbying for—as is pointed out in the consultation paper. But more importantly it would be impossible to define an in-house lobbyist in a meaningful way. Large numbers of companies engage in lobbying, in that they respond to consultation documents, participate in the work of trade associations, have regular contact with their Member of Parliament and are involved in Chambers of Commerce. Companies typically do not employ a person called a “lobbyist”, not least because this is counterproductive. Large companies will have a head of public affairs, whose remit is very wide-ranging, including typically the media, government departments and Members of Parliament, both domestically and internationally. However, they are not the only people engaged in “lobbying”. The chief executive of any company operating in an area where public policy is relevant can be expected to engage in lobbying activity, as can a number of other members of staff, both directly and through trade associations, and the non-executive-directors.

THE IMPACT ASSESSMENT

13. The Government has set up the Regulatory Policy Committee to provide independent scrutiny of regulatory proposals put forward by government. The Committee has reviewed over 600 proposals. On just five occasions government has gone ahead with a proposal when the Committee has found the Impact Assessment to be “not fit for purpose”. It is ironic that one of these should be a proposal by the Minister for Government Policy on the statutory register of lobbyists. The Committee’s Opinion, published on its website, commented—

“Market failure addressed by proposal. The IA mentions market failure as the driver for the proposal, but does not explain how significant this is and how the proposal will address the causes of the
market failure specifically. The IA needs to do this to allow consultees to see how the proposal could work in practice.

Options. The IA needs to present options to overcome the current market failure to enable consultees to take a view on what is the best means of action in this area.

Costs of proposal. It is unclear how relevant the dental health professional example given is to the issue at hand, and the IA needs to provide information on the costs of registration fees for a wider range of bodies than the one given for dental health professionals.

Benefits from proposal. The IA does not have a separate section in its evidence base on the benefits of the proposal. The IA needs to include this to maximise the value of consultation.”

14. The table on page 6 of the Impact Assessment is bizarre. The table suggests that there are 60 companies with 100 in-house staff engaged in lobbying who would be covered by the Register. But the consultation paper proposes that in-house staff should not be covered. If they were covered these numbers need to be multiplied by perhaps a factor of 50.

15. The table suggests that just 25 trade associations and 50 of their staff are involved in lobbying. The number of trade association is probably nearer 500 and the committee members and staff engaged in lobbying would run into thousands. Representative work is one of the main functions of most associations, but, again, associations do not employ someone called a “lobbyist”. Rather, representative work is a function of most of the senior staff of the organisation.

16. The Impact Assessment makes no attempt to calculate the costs and benefits of the benefits of the policy—contrary to the principles of good policy making. The one regulatory regime which is used as an analogy is the General Dental Council, which is about as bad a comparator as could be found. This council is a regulator of a profession not a register. In terms of the costs of running a register the Claims Management Regulator would be a far better comparator.

17. The Impact Assessment says that micro business (employing fewer than ten staff) will not have to pay the costs of registering. The large majority of businesses that will have to register will be micro businesses, so if the register is to cover its costs larger companies will have to subsidise their competitors. There is no logic in this. All businesses should pay the costs of registering.

RESPONSES TO CONSULTATION QUESTIONS

18. Following are answers to the specific questions raised in the consultation document.

Definition of lobbying and lobbyists

19. Lobbying should be defined as seeking to influence policy or regulatory decisions on behalf of others. Those acting pro bono, trade associations, trades unions that seek to influence policy, think tanks and voluntary bodies that seek to influence policy should all be covered.

20. Those acting on their own behalf (including large companies and individuals) and those acting on behalf of individuals on an issue local to them should not be covered. There should also be a specific exemption for any communication between organisations and individuals and the relevant constituency MP or councillor.

Information to be included in the register

21. In the case of public affairs firms the names of clients should obviously be given. Interest groups should give details of their membership (the number of paid-up members in the case of individual member organisations) and any significant third party funding. However, there should be no requirement to list the names of “lobbyists” as the information would be meaningless. Most public affairs work is advising clients who to lobby and how to lobby. This would not be caught by the definition of lobbyist. (Indeed with the definition some public affairs companies would not be caught because they do not lobby directly.) If individuals had to be registered then public affairs companies would simply register all their staff as would trade associations. The register would be bureaucratic to operate and would require constant updating if it was to be meaningful (“lobbyists” are often engaged for specific short term pieces of work—started instantly and completed in a month or so).

22. If it is decided to include information on “lobbyists” then a bit of common sense is needed. What relevance is it if the head of a unit in a large trade association was a civil servant ten years earlier, or a minister in an outgoing government who had lost his seat in Parliament? If there is to be such a requirement then it should be limited to any positions held in say the last five years.

23. It is agreed that details of meetings should not be included as this would be meaningless unless details were also given of phone calls, meetings at receptions and dinners etc.

24. There should be no financial information on the register, other than significant third party funding of interest groups. It would simply not be practical to include any meaningful financial information. Most of those caught by the register provide a package of services to their clients of which representation is just one. Seldom would anyone be employed solely for “lobbying”, nor would a fee, whether for an individual joining
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a pressure group or a company buying a full service from a public affairs business, separately identify an amount for “lobbying”. What would the National Trust, or Which?, or the National Farmers Union be expected to declare?

25. Section 3 of the consultation paper suggests that a lobbying firm would need to include on the register “registered address of the company and Company Number”. This is rather sloppy. There is no requirement on businesses to be companies and many of those who would be required to register will not be companies. Many trade associations for example are unincorporated. Also, a significant amount of lobbying in the UK is done by companies or organisations that are not registered, incorporated or based in the UK.

How often should the register be updated?

26. If the register is to have any meaning it must be real time or at least promptly updated. Quarterly updates are no use as they would be purely historic. If the register is confined to the key information (ie does not include the names of “lobbyists”, details of meetings, financial information etc) there is no reason why the information should not be kept up to date, any changes being notified within a maximum of seven days. It is assumed that the register will operate on a “self-service” basis with organisations updating their own entries.

Additional functions linked to the register

27. There should be no additional functions linked to the register. The Government should decide on the format for data and then leave it to those registering. An “operator” cannot possibly be given responsibility for verifying the information? How is an “operator” supposed to know who the clients of a public affairs company are, or how many members the NFU or the AA has? The consultation paper refers to “reasonable steps”. What is in mind here? The consultation paper refers to investigating anomalies or non-disclosure. This can be done only by a statutory body armed with statutory powers (Offspin?), the introduction of criminal offences etc. It is assumed that it will be a criminal offence not to register, and someone has to be identified as “the enforcer”.

How should the register be funded

28. If the register is confined to basic information as set out in this response then costs should be minimal. A standard annual fee, say £100, should be sufficient. It is difficult to relate any fee to turnover as few businesses could identify turnover related to lobbying and there would be no means of validating any figures. The proposal to exempt micro businesses from paying the fee is misguided as it would not be easy to identify such businesses given that lobbying is not a stand-alone activity, and if they were exempted it would not be possible to fund the costs of running the register without a substantial cross-subsidy from larger businesses. If someone is going to start verifying data and taking enforcement action where there is non-disclosure etc the costs will be massive.

What sanctions would be appropriate?

29. In practice, it is unlikely that any sanctions would be applied given that there is no expectation that any organisation will be charged with policing the register. It would be adequate that if organisations were not on the register, then in the case of public affairs companies, they would find it difficult to get work, and in the case of interest groups, their views would be ignored. However, sanctions will have to be included in the legislation if only for show. A modest fine would be sufficient.

Who should run the register

30. It is irrelevant who runs the register. This is a mechanical operation, provided it is kept simple. It is for the Government to decide who should manage the operation. The analysis in the consultation paper is naïve. The issue is not who runs the register but who is responsible for making the rules, commissioning the register as a mechanical operation, enforcement etc. It is no use the Government asking others how it should run its business. This must “belong” to the appropriate bit of government. However, it seems that there is no appropriate bit and no department is volunteering to take this. The Cabinet Office will have to set up a unit to manage the process. The establishment of Claims Management Regulation (in which the author of this paper was heavily involved as a consultant then as the regulator) is a useful model for what would be required.

31. The suggestion in the consultation paper that there will be “legislation to create a statutory register run by a body independent of government” is contradictory. If the register is statutory the body cannot be independent of government.

March 2012
Written evidence submitted by the Bureau of Investigative Journalism

1. Last year the Bureau carried out an undercover investigation into Bell Pottinger’s representation of foreign governments with dubious human rights records.

2. The investigation was prompted by reports that London is a first port of call for regimes in need of “reputation laundering”.

3. In the US, lobbyists acting for foreign governments are asked to publicly disclose in great detail the value of their contracts and their contacts with the media and politicians. (www.fara.gov)

4. The lack of disclosure requirements may partially explain why London appears so attractive.

5. During the investigation into Bell Pottinger it proved difficult to establish when the firm had started and ceased to act for countries such as Sri Lanka and Yemen, which in turn made it more difficult to establish lobbying impact.

6. The Bureau therefore supports the concept of a statutory lobbying register for the UK.

7. The Government’s stated aim with its proposed register is to shed light on “who is lobbying and for whom” and to ensure that “those seeking influence do so in a way that is open to scrutiny.”

8. For journalists aiming to scrutinize the lobbying process, a US FARA-type register is most helpful, as it is so comprehensive.

9. Closer to home, the register produced by the group Conservatives in the European Parliament is also useful:

(http://www.conservativeeurope.com/media/ResourceCategories/64/LobbyingContactReportsJan-June10.pdf)

10. This shows the name of the individual that has approached the MEP, the date of the meeting, the name of any third party being represented and the subject under discussion.

11. If Conservative MEPs—who, as the register shows, meet a lot of people—are willing and able to produce a document of this type then lobbyists shouldn’t struggle to report along similar lines.

12. Some of the larger trade associations already provide regular updates of their lobbying encounters with parliamentarians for the benefit of their members.

13. But the Government’s current proposals fall far short of this.

14. They would only require third party lobbyists to register. Many of the individuals who appear on the Conservative MEPs’ list would not be caught as they are in-house lobbyists.

15. The Government also expects lobbyists to disclose lists of their clients, but asks for no further detail about their contacts with politicians and government officials. The reasoning given is that ministers and senior civil servants already disclose their contacts with external organizations.

16. Ministers can be reluctant to disclose the detail of their discussions with lobbyists—“catch up meeting” is a typical description. And many lobbying meetings do not take place with ministers, but with special advisers (who only have to disclose hospitality), parliamentary private secretaries and select committee chairs and members (who do not currently have to disclose anything).

17. Only the most senior officials in regulatory bodies are expected to disclose meetings, and then only if they have received hospitality.

18. Establishing details of these undeclared meetings using the Freedom of Information Act has been difficult; untargeted FOI requests are often rejected on grounds of cost.

19. A register that showed all meetings between government officials and lobbyists, would help considerably.

20. In short, the register as currently proposed would do very little to assist journalists and others scrutinize the lobbying process.

21. And scrutiny is badly needed, as the lobbying scandals of the last few months have shown.

April 2012
Written evidence submitted by Emma Catterall

1. Question addressed in this response:

Are there important questions that are not asked (in the Government’s consultation on a Statutory Register of Lobbyists)?

2. I agree with the Government’s point that providing duplicate information about meetings in the proposed statutory register of lobbyists is unnecessary as “departments already publish lists of their external meetings.” However, I was disappointed to find that the Government’s consultation ignores questions on how to make the current list of meetings between ministers and third parties more transparent, particularly as it is because of this list that the Government’s plans currently justify the exclusion of in-house lobbyists from the proposed register.

3. The current details of ministers’ external meetings are vague and not as transparent as they could be. The current list of external meetings only state:
   — The date (month and year only) a meeting takes place.
   — The name of the organisation met (not the name of the individual(s) representing the organisation in the meeting).
   — The purpose of the meeting (the information provided here is very vague, eg “Welsh issues”, “social issues”, “energy issues,” or “general discussion”).

4. The mere provision of an entry that states a meeting took place between an organisation and a minister does little to hold the Government or an organisation to account. While it may show who is meeting with whom and how often, unless what was discussed, requested, and promised is recorded and made available, then this information does little to hold anyone accountable. The views of organisations are already evident in meetings where they present oral evidence as the transcript is hyperlinked to the meeting entry. However, there is no such transparency found with private meetings.

5. The Government could do more to increase transparency by publishing the minutes of meetings along with the current meeting entry. The list of meetings also should be made easily accessible from the register of lobbyists. This information would make significant contribution to improving scrutiny and knowledge about the political process and hold those involved in policy decision-making to account. To conclude, if the Government is using the list of minister’s external meetings to justify the exclusion of certain lobbyists over others, questions should be asked on how to make this list more transparent and open to scrutiny.

February 2012

Written evidence submitted by the CBI

1. The CBI is the UK’s leading business organisation, speaking for some 240,000 businesses that together employ around a third of the private sector workforce. With offices across the UK as well as representation in Brussels, Washington, Beijing and Delhi the CBI communicates the British business voice around the world.

2. We welcome the opportunity to provide written evidence to the Political and Constitutional Reform Select Committee’s inquiry into introducing a statutory register of lobbyists. The CBI’s response to the Government’s consultation is currently being developed in consultation with CBI members and we will provide a copy to the Committee when finalised. The consultation response will outline our full position, but we wish to make the following points at this stage:
   — Lobbying is a fundamental part of the UK political process and is essential to generating effective, consistent and pragmatic public policy. Proposals to regulate lobbying must strike the right balance between improving transparency and upholding existing freedoms to put forward views to government.
   — We believe the Government must more clearly articulate the problem that a register would address and what it would achieve before taking proposals further.
   — Lobbying contacts with ministers are of greatest legitimate public interest and the Government should improve the way it records this information.
   — Plans for further pre-legislative scrutiny via a white paper and draft bill are essential. This will help ensure any final policy outcomes do not have an overly burdensome regulatory impact and can be implemented effectively.

3. Lobbying is a fundamental part of the UK political process and is essential to generating effective, consistent and pragmatic public policy. Proposals to regulate lobbying must strike the appropriate balance between improving transparency and upholding existing freedoms to put forward views to government.

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7 Ibid: p 9.
4. The CBI engages with the Government throughout the policy development process, putting forward views on behalf of our members both proactively and at the invitation of the Government. This dialogue is in the long-term interest of developing public policy reflecting the needs and realities of British business and the economy. We are therefore pleased the consultation paper emphasises the need to maintain essential communication flow between business leaders and government.

5. We believe the Government must more clearly articulate the problem that a register would address and what it would achieve before taking proposals further.

6. The consultation paper states the purpose of a statutory register as increasing transparency to make it clear “who is lobbying and for whom,” and the accompanying impact assessment adds that a lack of transparency “creates a market failure caused by imperfect information that can undermine public confidence in the decision making process and its results.”

7. We agree with the Regulatory Policy Committee’s statement on the impact assessment, which says that “market failure [is identified] as the driver for the proposal, but [the impact assessment] does not explain how significant this is and how the proposal will address the causes of the market failure specifically.” We strongly recommend that the Government addresses this point before taking its proposals further.

8. We recognise that insufficient transparency in lobbying could have the potential to undermine public perceptions of the political system and its policy outcomes. However, we believe the government must set out in greater detail a description of the problem requiring attention, its causes and how a statutory register would provide a resolution. Once this is achieved, the government will be better positioned to identify preferred solutions. If this is not addressed, there is a risk of regulatory failure and a weakening of confidence in the Government’s proposals.

9. Lobbying contacts with ministers are of greatest legitimate public interest, and the Government should use this consultation process to review how this engagement is recorded.

10. The Government does not propose that any information on ministers’ meetings with external parties should be included in a register as this would duplicate information already in the public domain. We agree that information should not be duplicated but are concerned that the Government’s argument is undermined by the way this information is currently presented in practice. We have three principal concerns, which we believe should be addressed as a matter of urgency:

- **There is no adequate central government portal for accessing this information.** The data.gov.uk website—which is mentioned in the consultation paper—directs users to a third-party website called Who’s Lobbying, which aggregates information from government departments. Similar information is provided on the Number 10 website, although this does not aggregate data from across all government departments.

- **Information is not kept up to date,** with the latest information available for the period ending 30 June 2011, some eight months out of date at time of writing.

- **Information is not presented consistently across departments,** with some departments providing Word documents, some spreadsheets and some PDF files. The level of information available about meetings is also not consistent.

11. Plans for further pre-legislative scrutiny via a white paper and draft bill are essential. This will help ensure final policy outcomes do not have an overly burdensome regulatory impact and can be implemented effectively.

12. We are pleased that the Government plans to undertake further pre-legislative scrutiny of its proposals via a white paper and draft bill to be scrutinised by the Political and Constitutional Reform Committee before taking forward primary legislation. This will provide significant opportunity for interested parties to comment on the proposals and should support the development of a policy that is workable and does not stifle essential communication between government and external parties.

*February 2012*

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9 http://data.gov.uk/whoslobbying
10 http://www.number10.gov.uk/transparency/who-ministers-are-meeting/
Written evidence submitted by Central Lobby Consultants Ltd

WHO WE ARE

1. Central Lobby Consultants Ltd is a commercial government affairs consultancy set up by Helen Donoghue in 1984. The current directors are Helen Donoghue (managing), Frank Cranmer and David Walburn (non-executive).

2. We are not registered with the UK Public Affairs Council nor are we registered with the Association of Professional Political Consultants. We are, however, registered on the European Transparency Register and with the European Public Affairs Consultancies’ Association (EPACA).

3. We have no desire to give oral evidence but we would, of course, be happy to do so should the Committee wish.

 LOBBYING

4. We regard lobbying, so long as it is carried out in accordance with the law and with due regard for Parliamentary privilege, as an entirely proper and honourable activity which has benefits both for the client and—potentially—for government. A technically-competent lobbyist who understands the machinery of government and Parliament and the process of legislation should make it easier for the client to present a reasoned case to ministers and civil servants and, in doing so, should enable the client to bring to the attention of ministers and civil servants issues that they might otherwise have overlooked.

5. We have no problem whatsoever with the idea of transparency: if, as we contend, lobbying is an honourable activity there is no reason why it should not be subjected to scrutiny like any other kind of interaction with government. No lobbying firm that conducts its activities in a proper manner has anything to fear from a register: any firm that does not conduct its activities in a proper manner should not be in business.

THE GOVERNMENT’S PROPOSALS

6. We can see the reasoning behind the initial definition that “Lobbyists should mean those who undertake lobbying activities on behalf of a third party client or whose employees conduct lobbying activities on behalf of a third party client”; however, if the purpose of a register is to bring transparency to lobbying it needs to go further than that.

7. First, “lobbying activities” need to be interpreted very strictly. There are several law firms (some of them parliamentary agents) that have expanded into general government relations work and which attempt to claim solicitor-client privilege for activities which are, in reality, lobbying rather than legal advice. We would obviously not argue for the total destruction of solicitor-client privilege; but that privilege should not be extended beyond legal advice given strictly in relation to the legal affairs of the client concerned. If it is to be effective, a compulsory register should do exactly what it says on the tin, with only very limited exceptions.

8. Secondly, there is a problem in relation to the proposal to exclude those who engage in lobbying activities on their own behalf rather than for a client. Obviously, personal communications between constituents and MPs or ministers need to be excluded: were it otherwise, every constituent who wrote to his or her MP or to a minister would have to register—which would clearly be absurd. However, if the purpose of a register is transparency, it is difficult to see what meaningful distinction can be drawn between a commercial lobbying firm like ours working under contract on behalf of a third-party client and a group of in-house PR/lobbying staff working for that same client. The only discernible difference that we can see is that we are contractors while they are employees. But the end result is the same: some kind of ex parte approach is made to civil servants or ministers.

9. The consultation paper states in setting out the Purpose of the UK Statutory Register that “The Government already publishes quarterly information about Ministers’ meetings. Information about which stakeholders are meeting Ministers to put forward their views on policies is therefore already in the public domain. But under the current system, when Ministers meet lobbying firms it is not transparent on whose behalf they are lobbying” and therefore “Given that is clear whose interests they represent, it is not evident that an extension of the register to in-house lobbyists would provide any additional transparency”.

10. In response to the first point: transparent to whom? It must be transparent to the person being lobbied; otherwise, the lobbyist in question is not doing his or her job properly—and we cannot conceive of any circumstances in which a minister would agree to meet a third-party lobbyist without being told in advance the identity of the client. Presumably, therefore, that information would appear in the record of the meeting in question. If it is recorded then it should also be transparent to the public at large; if it is not, then ministerial meetings are not being recorded sufficiently thoroughly. There should be no question of a minister meeting either a public affairs company or an in-house lobbyist without the purpose of that meeting being clear from the record.
11. While we can understand the point that the consultation makes about in-house lobbyists, we cannot envisage very many situations in which we, as commercial lobbyists, would go to meetings without the client whom we are representing. On the rare occasions when we do so we make it absolutely clear to our interlocutors that we are CLC Ltd, representing XXX organisation.

12. So there is no practical difference in terms of the person being lobbied; however, there is certainly a practical difference in terms of the person seeking information about who has been lobbying. From the point of view of transparency, the merit of requiring in-house lobbyists to register would be that it would make it much easier for members of the public to access information about lobbying on individual issues.

13. Thirdly, we have doubts about blanket exclusions for charities and trades unions: surely the issue is one of transparency in relation to attempts to influence policy-making rather than whether or not the person or organisation attempting to do the influencing is paid? While we would certainly not wish to see small charities unduly burdened, we feel that the matter should be given further thought. Perhaps registration for charities could be linked to income, as is the case with the current charity auditing requirements.

14. Fourthly, while we agree that the consultation document’s basic proposals for the information to be included in the register (company registration details, names of those employed, contracted or otherwise engaged to carry out lobbying, whether anyone engaged is a former minister or senior civil servant and a list of clients) are broadly reasonable, we have three caveats:

— Should not firms that employ current or former Members of the House of Commons or the House of Lords be required to state that fact? If the purpose of disclosing the presence of ex-ministers or senior civil servants is that the firm which employs them will be able to make particular use of their political contacts, then that might reasonably be applied equally to ex-MPs of recent vintage—and it would certainly to current MPs and peers currently in receipt of a Writ of Summons.

— Does “senior civil servant” mean precisely what it says or does it (or should it?) go wider than that? At CLC we currently have two employees with public service backgrounds: a former member of the Senior Civil Service and a former Principal Clerk in the House of Commons. Is there any meaningful distinction to be drawn between the two?

— At what point does employees’ previous professional experience become irrelevant? Someone who leaves the Civil Service and who is immediately employed as a lobbyist will obviously have useful contacts within Whitehall; someone who last worked in the Civil Service five years ago might not.

15. Fifthly, we accept that a system of registration inevitably implies penalties for non-compliance. In our view, however, sanctions should be civil rather than criminal—and the first and simplest sanction for persistent breach should be deregistration.

16. Finally, given that it is unlikely that the Government would give the job to a Civil Service department, we agree that the register should be managed and enforced by an independent body. Of the alternatives proposed, our preference would be to extend the remit of an existing non-departmental public body to run the register. We would certainly not be in favour of an independent register run by the industry itself.

CONCLUSION

17. If we have any overall criticism of the proposals it is not a criticism of registration as such: we repeat that we are entirely in favour of transparency. The problem is that the consultation document seems rather confused as to the issue to which its proposals are directed: are they aimed at transparency for lobbying or transparency of lobbyists? That it is possible to draw such a distinction might be persuasive for many; in our view, however, such a distinction is untenable and has merely led to a confusion of aims, with the result that the proposed register as at present conceived will not fully achieve either purpose.

18. The register as proposed will leave unregulated a whole area of lobbying that ought to be brought under scrutiny and it will leave unregistered a whole swathe of, in effect, full-time professional lobbyists who work for major plc’s, large charities, professional bodies and trades unions.

19. In short, if the purpose of the proposed register is to introduce transparency into lobbying and to allay public fears of improper approaches, then it would benefit from some very careful further thought.

February 2012
Written evidence submitted by Karen E Shepherd, Commissioner of Lobbying of Canada

1. In Canada, lobbying legislation was first introduced in 1989. The initial Lobbyists Registration Act focused primarily on the registration of lobbyists by introducing basic disclosure requirements for lobbyists. Subsequent amendments to the legislation changed the focus from simple registration to more extensive regulation of lobbying activity. Over time, the federal legislative framework for lobbying has been strengthened, through: the development of a Lobbyists’ Code of Conduct; the creation of an independent Commissioner of Lobbying with greater powers to carry out investigations; an increase in the disclosure requirements for lobbyists; and increased penalties for offences under the Act.

2. Under the current federal Lobbying Act (which replaced the Lobbyists Registration Act on July 2, 2008), the Commissioner’s mandate is threefold:
   (i) establish and maintain the Registry of Lobbyists, which contains and makes public the registration information disclosed by lobbyists;
   (ii) develop and implement educational programs to foster public awareness of the requirements of the Act; and
   (iii) undertake administrative reviews and investigations to ensure compliance with the Lobbying Act and the Lobbyists’ Code of Conduct.

3. It is in this framework that I wish to respectfully submit the following areas for the Committee’s consideration in the context of the introduction of a Statutory Register of Lobbyists.

1. Registry

Definition

4. Under the Lobbying Act, lobbying is defined as communicating, with a public office holder, for payment, in respect of specific subjects.

5. There are two types of lobbyists: consultant lobbyists and in-house lobbyists, who may be employed by either corporations or by organisations. Corporations are profit making entities. Organisations can include trade or industry associations, unions, partnerships, charities and not-for-profit corporations. For in-house lobbyists, the need to register lobbying activities is triggered when the combined lobbying activities of the entity represent a significant part of the duties of one person’s time. The “significant part of duties” has been interpreted as 20% of the duties of one person’s time.11

6. Certain communications with public office holders do not require registration: oral or written submissions to Parliamentary committees; oral or written communications to a public office holder concerning the enforcement, interpretation or the application of any Act of Parliament or regulation; and oral or written communications made to a public office holder that are requests for information.

7. In addition, the following individuals are not required to register for communicating with public office holders: members of provincial legislatures, of municipal councils and their staff; government employees; members of a council of an Indian band or their staff as well as band council representatives; members of an aboriginal government; diplomatic agents and representatives of foreign governments; and officers of international organisations.

8. From the perspective of operating an online lobbyists’ registry system, the existence of different types of lobbyists has not created any problems. The system allows for access and provides search features based on each of the two types of lobbyists.

Frequency of reports

9. Lobbyists shall file an initial registration in the Registry indicating that they will communicate with public office holders from specific departments, on what subjects and on behalf of whom. Both categories of lobbyists must update their initial registrations by the 15th of every month if: any information contained within is no longer correct; additional information has come to the attention of the registrant that is required to be disclosed; the undertaking has terminated (for consultant lobbyists); or no employees are conducting activities requiring registration (for organizations and corporations).

10. In addition, lobbyists have to report certain types of communications with certain senior federal officials (known as “designated” public office holders) on a monthly basis. These returns specify the date of the communication, names of designated public office holders attending and the subject-matter of the communication.

11. If there has been no monthly report because no prescribed communications with designated public office holders took place nor any changes made to the initial registration, and five months have lapsed since the last update, lobbyists must renew their registrations.

11 Additional information on this issue is available on my Office’s website at: http://ocl-cal.gc.ca/eic/site/012.nsf/eng/000115.html
12. The introduction of monthly communication reports in 2008 has made available information regarding actual communications between lobbyists and senior federal government decision makers. Monthly communication reports provide timely information on who is lobbying which high-level public office holder, and on what subject-matter. These reports increase transparency in that they provide a more complete picture of lobbying activities actually being conducted at the federal level.

13. Requiring lobbyists to regularly update their registration improves the transparency of lobbying activities by improving the accuracy of the information in the registry.

**Funding**

14. There are no fees to register under the *Lobbying Act*. Prior to 2008, Filing a registration on paper cost $150. This cost was not truly reflective of the administrative cost to process registration. Given that more than 99% of registrations were filed online, the Government decided to remove the option of filing registration on paper. There is a special provision to allow persons with a disability or without access to a computer to file on paper at no cost.

15. System upgrades to the existing registration system (set up under the previous version of the Act) were necessary in order to accommodate the requirements of the *Lobbying Act*. As it required major changes, the upgrade cost approximately $2 million. An annual budget of about $1.1 million is allocated to the administration of the Registry, including salaries for the equivalent of six full-time employees dedicated primarily to providing registration assistance to lobbyists.

16. The Lobbyists Registration System requires ongoing maintenance and development. The annual budget mentioned above includes an amount of $400,000 to $500,000 that is invested by my Office annually. The system is complex and “bugs” often emerge, which must be fixed. We also make improvements to system features and capabilities, which allows us to better meet the needs of users. The improvements to the system since its creation have made it significantly more user-friendly than when it was first released. Users of the system include lobbyists, the media, academic researchers, corporations and organizations and the public.

2. **Education and Awareness**

**The importance of an education mandate**

17. I firmly believe that fostering awareness of the requirements of the *Lobbying Act* among lobbyists and public office holders leads to greater compliance. As part of the 2008 amendments to the federal lobbying legislation, the Commissioner of Lobbying was provided with an explicit mandate for education. Paragraph 4.2(2) of the *Lobbying Act* states:

   The Commissioner’s duties and functions, in addition to those set out elsewhere in this Act, include developing and implementing education programs to foster public awareness of the requirements of this Act, particularly on the part of lobbyists, their clients and public office holders.

18. Last year, my staff and I met with nearly 800 individuals, including lobbyists, public office holders, parliamentarians and their staff, my counterparts, academics and university students, to provide information about the federal lobbying regime.

19. Education activities include:

   — responding to inquiries from registered or potential lobbyists about the registration requirements under the legislation and providing technical assistance to facilitate their interaction with the web-based Lobbyists Registration System;
   — delivering training and information sessions to individuals and groups about the key features and requirements of the Act;
   — meeting regularly with associations representing lobbyists, including the Government Relations Institute of Canada, the Canadian Public Relations Society, the Public Affairs Association of Canada, the Canadian Chamber of Commerce, and the Canadian Society of Association Executives, to inform participants and share views on the legislation;
   — contacting registered lobbyists directly to provide information on specific changes to registration requirements, with a view to raising awareness and further improving compliance—communications are primarily done via email; and
   — sending advisory letters to individuals who may be engaging in lobbying activities but may be unaware of the registration requirements under the *Lobbying Act*, to encourage them to visit the Office’s website so they may determine whether they should be registered as lobbyists.

20. I believe that federal public office holders, whether they are elected officials or public servants, have a key role to play in ensuring a better understanding of the *Lobbying Act* and its requirements. When public office holders understand what the *Lobbying Act* is intended to accomplish, they can contribute to greater transparency by inquiring if the lobbyists they meet are aware of the Act and are in compliance with it.

21. Our website is one of our main outreach tools, and visits to the website are on the rise. More than 110,000 visits were recorded last year, an increase from the 89,000 visits in the previous year.
22. My experience is that a more in-depth understanding of the requirements of the Act is demonstrated in part by the decrease in the number of technical questions addressed to the Office.

3. Enforcement

Fines

23. In 2008, penalties for breaches of the Lobbying Act were increased to a maximum fine of $200,000 or imprisonment for a term not exceeding two years, or both. If a person is convicted of an offence under the Lobbying Act, the Commissioner may also prohibit the person from lobbying for a period of up to two years.

24. Under the Lobbying Act, the Commissioner can investigate allegations of breaches of the Act and the Lobbyists’ Code of Conduct. Enforcement options available to the Commissioner are: referral to a peace officer (Royal Canadian Mounted Police) when the Commissioner has reasonable grounds to believe an offence under the Act has occurred, and Reports on Investigation, tabled in both Houses of Parliament, at the conclusion of my investigation into an alleged breach of the Lobbyists’ Code of Conduct.

25. Despite the available penalties, no one has ever been charged or convicted of an offence under either the Lobbyists Registration Act, or the Lobbying Act (which came into force on 2 July 2008). Since 2005, 12 cases have been referred to the Royal Canadian Mounted Police.

26. In my recent submission to the House of Commons Standing Committee on Access to Information, Privacy and Ethics in the context of Parliament’s statutory review of the Lobbying Act,12 I recommended introducing administrative monetary penalty provisions, for the following reasons:

— Not all alleged breaches of the Act should be treated in the same manner, as they can range in gravity.

— As some transgressions, such as late filing, do not warrant referrals to the RCMP, I have chosen to educate registrants, in order to ensure compliance for these and other minor transgressions. Providing me with the ability to administer monetary penalties would address the lack of flexibility in terms of enforcement options provided for in the Act. There is no option between the two extremes currently being utilized: the system of education, correction and monitoring employed by me, at one end, and a Report to Parliament and/or criminal proceedings with resulting fines, jail terms and possible prohibition, at the other. Minor transgressions, such as late filing, do however negatively affect transparency. In cases such as these, I believe that having the ability to administer administrative monetary penalties might improve my ability to ensure compliance by demonstrating consequences for even minor breaches of the Act of the Code.

Ensuring compliance

27. There are challenges in enforcing the “significant part of duties” provisions of the Lobbying Act. This is all the more problematic given that the concept is applied in a number of areas.

28. The most obvious is that the provisions affect the “coverage” of the legislation. Does the legislation capture the individuals it was intended to regulate? Currently, the Act does not require the registration of corporations and organizations whose employees do not spend, collectively, “a significant part of duties” on lobbying federal public office holders. Many organisations and corporations who lobby federal public office holders are therefore not required to file a registration to be in compliance with the Lobbying Act. An unknown number of lobbying activities are therefore not disclosed publicly. Transparency is further reduced given that corporations or organizations that do not have to file an initial registration, are also not required to file monthly communication reports when their employees meet with designated public office holders.

29. In order to facilitate compliance (and enforcement), it is preferable to have a clear demarcation of what activities are covered by legislation. The use of the concept of “significant part of duties” makes it difficult to quantify the level at which the Act applies. As previously mentioned, the concept has long been interpreted as 20% of duties (ie, the 20% rule), which is essentially a measurement of the proportion of time worked. This requires an extensive examination to properly measure the amount of work that has been performed and to verify that this work is related to activities requiring registration. Furthermore, one must ascertain the total amount of work being performed.

30. The 20% rule therefore requires the measurement of two activities—registrable activities and total work activities—both of which are difficult to quantify reliably and with accuracy. In spite of the longstanding interpretation, it is possible that the courts might take a different view of what constitutes a “significant part of duties”, as this interpretation has not been tested in the courts to date.

31. Please note that, as I previously mentioned, the Lobbying Act is currently under a legislative review. The House of Commons Standing Committee on Access to Information, Privacy and Ethics has prepared its report. The next step is the Government’s response.

12 My report, entitled “Administering the Lobbying Act—Observations and Recommendations Based on the Experience of the Last Five Years”, is available online at: www.ocl-cal.gc.ca
32. More information on the activities of my Office and accomplishments is available in my Annual Report on my Website: www.ocl-cal.gc.ca.

33. In conclusion, I hope the members of the Committee will find my comments useful in the introduction of a Statutory Register of Lobbyists. I will be pleased to provide clarifications if necessary.

May 2012

Written evidence submitted by the Countryside Alliance

1. The Countryside Alliance is the major British campaigning organisation on rural issues. With over 105,000 members the Countryside Alliance defends and promotes the rural way of life. We welcome the opportunity to submit to the Political and Constitutional Reform Committee’s inquiry into the consultation on a Statutory Register of Lobbyists.

2. Lobbying by definition covers any activity that seeks to influence or change government policy and/or the legislative process. Anyone from a constituent seeing or writing to their MP to the largest charity or multinational company seeking to influence government policy or the passage of legislation is engaged in lobbying.

Countryside Alliance Position

3. The Countryside Alliance has welcomed the Government’s consultation on a register of lobbyists and believes that the consultation allows for a full range of comments and options but that it also clearly indicates where the Government has a current preference with regard to the various options. As such the consultation is, we believe, fair and open. Respondents are clearly able to agree with the Government’s preferred options or to disagree; whether they favour less regulation or for the proposals to go further and be more restrictive.

4. As the consultation recognises, lobbying is an intrinsic and essential part of a properly functioning democracy. Charities, companies and individuals acting on their own behalf can make a valuable contribution to policy, debate and legislation ensuring that government and politicians understand issues and the impact of policy and legislation on those affected.

5. Most organisations which lobby on their own behalf do so openly and publicly. Indeed, it is often very obvious in relation to a given issue, proposal or piece of legislation, which interests will seek to be involved and will be seeking to influence the development of policy and legislation.

6. As the consultation notes ministerial meetings with stakeholders are already published and communications between ministers and individuals or organisations are subject to freedom of information legislation. As such there is already a considerable degree of transparency in addition to the fact that it is quite obvious in most instances which organisations are likely to be seeking to influence a given policy area.

7. Where the activity of lobbying becomes opaque is where third parties are employed, whether or not for a fee, to represent an interest or facilitate a meeting with someone within the Government. In this scenario simply being able to know that someone met a particular minister will not always reveal the interest which that person was representing. It is this aspect which a register of lobbyists would shed light upon.

8. The register should also apply in the situation where a union or charity employs a third party to lobby on their behalf. That person, either as an individual and/or the lobbying firm employing him, should be registered so that it is clear who is acting in whose interest.

9. We do not believe that the register should go further and should remain targeted at the problem; not become an unnecessary and bureaucratic burden on those engaged in the democratic process on their own behalf, as is necessary in a properly functioning democracy.

In response to the Committee’s specific questions our response is as follows:

1. Does the Government’s consultation paper represent a balanced approach to the idea of a statutory register?
   - Yes

   1. Does the paper present the evidence in a balanced way?
      - Yes

   2. Are you confident that the issues covered are ones on which the Government has an open mind?
      - Yes

   3. Is the Government clear wherever it has a preference for a particular option, and is this preference in each case a reasonable one?
      - Yes
2. Does the consultation paper contain the right questions?
   Yes
   — Is each of the questions asked in a balanced way?
     Yes
   — Are there any important questions that are not asked?
     No

3. Which lobbying contacts are of greatest legitimate public interest?
   Where a person is employed as an individual or a company to lobby on behalf of a third party then it should be clear for whom that person is acting.
   — Does the consultation paper envisage the capture of appropriate information about these contacts, as opposed to other kinds of contact?
     Yes

4. How should the Government deal in policy and practice with how it might be lobbied on the issue of a statutory register of lobbyists?
   All submissions to the consultation should be made public. Correspondence and meetings can be assessed under existing rules and should make clear where a meeting was held with one person acting on another’s behalf.
   — How open should the Government be about such lobbying contacts?
     Submissions and meetings should be a matter of public record.

5. How should the Government analyse the consultation responses, and seek to balance the weight of opposing argument?
   In the usual way for treating government consultations.

6. Do you have any comments on how any proposals emerging from the consultation should be implemented?
   None.

February 2012

Written evidence submitted by Simon Cramp

1. To give you some background to me, I am writing as a private individual as I have lobbied government ministers and officials on a voluntary basis, but also until recently for two major learning disabilities charities who were not for profit in more of a campaigning role in trying to get a better deal for people with a learning disability.

2. I am 40 years old and live in Chesterfield. I don’t have any children and I am single and basically I have been to conferences in the social care sector and ask the question everyone wants to ask but dare not ask sometimes for people rights and fairness.

3. I hope to answer the questions fully as best as I can and help your inquiry from the perspective of someone with three hidden disabilities, sorry forgot to mention I am dyslexic and dyspraxia.

QUESTIONS

Does the Government’s consultation paper represent a balanced approach to the idea of a statutory register?
   — Does the paper present the evidence in a balanced way?
   — Are you confident that the issues covered are ones on which the Government has an open mind?
   — Is the Government clear wherever it has a preference for a particular option, and is this preference in each case a reasonable one?

4. No I am not clear what the Government is calling a lobbyist because the chance that a small organisation or something like the national forum for people with learning disability is not going to get a chance to meet ministers, because people with disability don’t have much influence.

5. And on page 14 what the document going on about the rules for non department bodies, I can’t find any document on the Cabinet Office website so why mention it.

6. I think it a dog breakfast as it too wishy-washy on what it define as a lobbyist.
Does the consultation paper contain the right questions?
— Is each of the questions asked in a balanced way?
— Are there any important questions that are not asked?

7. It does but the paper seems to lean towards who are paying for it, I think the issues how does all society get there voice heard.

8. I think there should have waited the Government for at least for an interim report from the Leveson inquiry as the press have a lot to do with this maybe I wrong but I think the media have to play and do play a lot of the lobby in recent years. Maybe I am wrong but I believe why should political and leaders of our political parties are allowed or have been allowed to woo papers like the Sun and others in my book that’s lobbying.

Which lobbying contacts are of greatest legitimate public interest?
— Does the consultation paper envisage the capture of appropriate information about these contacts, as opposed to other kinds of contact?

9. No for the reasons I gave in my previous answer.

How should the Government deal in policy and practice with how it might be lobbied on the issue of a statutory register of lobbyists?
— How open should the Government be about such lobbying contacts?

10. With my answer in question 2 I believe the Government because it came out with the consultation before Leveson has reported missed the point of government whatever political colour I believe is not reflect in the document.

How should the Government analyse the consultation responses, and seek to balance the weight of opposing argument?

11. I don’t believe the Government has addressed all the issues in the paper in the first place.

Do you have any comments on how any proposals emerging from the consultation should be implemented?

12. No apart from and this a political point all Members of Parliament and House of Lords that have put entries in the Register of Members’ Interests should also be made then if the document is asking to pay towards the register a fee that is deducted from their expenses by IPSA.

Final Comments

13. I am writing this as personal view and yes these are from my perspective and I think the current Government has put it size 12 in without thinking though the issues current with some of the inquires and police investigations taking place.

February 2012

Written evidence submitted jointly by Phil Harris and Conor McGrath

“Good Lobbying is like Growing Asparagus, you wish you had started two years ago”

Michael Shea

1. Please find my submission to the inquiry. I am joint funding editor of the Journal of Public Affairs and have been researching the area internationally for more than a decade. I attach a copy of my doctoral thesis which was submitted in 1999 which covers much of the early origins and processes of the industry and some related theory. I also attach some related articles evidencing the breadth of the international industry and critical developments for the committee to consider. Lobbying is a critical component part of International Public Affairs Management and thus this submission of a range of articles from the JPA to give international context to the scale and regulatory issues around a viable regulatory process being developed in the UK.

2. Lobbying is an international industry of major significance with key focal points of activity being centred on Brussels, Geneva, London and Washington and more recently Berlin and Hong Kong. Lobbying is seen as being an integral part of Public Affairs Management, which is the strategic international business communication focused on informing legislatures, officials, policy makers and those that influence regulatory frameworks whether they are at a local, national or at an international level.

13 Not printed.
14 Not printed.
3. There are increasing amounts of published research in this field and it is an area of professional practice that has seen substantial growth over the past decade. Public Affairs and particularly government relations/lobbying, have evolved from a tactic adopted by organisations to amend occasional legislation to become a managerial strategy to achieve competitive advantage. A well cited example of lobbying is that of particular European vehicle manufacturers to ensure catalytic converters were installed as standard emissions systems in Europe, ensuring they gained competitive edge.

4. The rapidly increasing strategic role of public affairs has been spurred on by the trend towards privatisation and regulation. This together with the globalisation of business operations and a surge in trans-national government legislation (European Union [EU], North American Free Trade Area [NAFTA], World Trade Organisation [WTO]) has forced organisations of all types to pay greater attention to their relationships with government—at all levels. The formal approval of acquisitions, alliances, mergers, standard-setting and takeovers is increasingly under government scrutiny as it attempts to regulate markets and trade. The regulation of auditing, banking and the large accountancy groups is now much on the world public affairs agenda and exercising leading corporate, political and research minds as they attempt to produce good corporate governance.

5. The increasing role of government as regulator as old corporatist linkages break down under globalisation is a phenomenon that public affairs practitioners and corporations have to deal with on a daily and yet strategic basis. The transfer of publicly owned businesses to the private sector such as energy, telecommunications and water utilities has directly stimulated the increasing importance of the public affairs area.

6. In addition the growth of increasingly powerful and well-organised pressure groups, which are capable of mobilising strong opposition to organisations whose policies they disagree with, has further stimulated public affairs work, stakeholder programmes, political campaigning and lobbying activity. Technological advances within the media now allow events in virtually any part of the world to be screened almost instantaneously, subjecting the behaviour of organisations even in the most remote parts of the globe to world-wide media and public scrutiny. The global dialogue in trade, commerce, and investment involves business executives, government officials, and representatives of non-governmental organisations (NGOs). Not surprisingly, this dialogue often includes environmental (ecological), social and community issues. Thus the entire business government society relationship is open to discussion, debate, and redefinition throughout the world.

7. Businesses, government agencies, and NGOs have a stake in cultivating a dialogue that is informed, fact driven, and progressive. Population growth, the need for improved quality of life, food and raw material security, human rights, and sustainable economic and ecological practices are among the broad issues shaping the public agenda for nations across the globe. Constructive dialogue depends on accurate information, commitment to human interaction, and the willingness to think long- as well as short-term.

8. The Committee will need to assess the development of a full register to include in-house lobbyists from large corporates, pressure groups and industry associations alongside individual lobbyists, this is where there has been most significant growth in the industry in the UK and worldwide over the last decade. Much attention is now being focused on international public affairs focused on Asian Growth markets and needs and the adoption of soft power techniques are being appreciated and developed.

9. I hope this information and submission is helpful and would be happy to present further information on the scale of the industry internationally or be of advice or provide further evidence if that was deemed of use.

AUTHORS

10. Phil Harris is Executive Dean of the Faculty of Business, Enterprise and Lifelong Learning (and Westminster Chair of Marketing and Public Affairs) at the University of Chester. He was previously Professor of Marketing at the University of Otago in New Zealand, and Co-Director of the Centre for Corporate and Public Affairs at Manchester Metropolitan University Business School. He is joint founding editor of the Journal of Public Affairs and a member of a number of international editorial and advisory boards. He has published over 150 publications in the area of communications, lobbying, political marketing, public affairs, relationship marketing and international trade. His latest books are European Business and Marketing (with Frank Macdonald, 2004), The Handbook of Public Affairs (with Craig Fleisher, 2005), Lobbying and Public Affairs in the UK (2009), and The Penguin Dictionary of Marketing (2009).

Political Marketing and Lobbying: A Neglected Perspective and Research Agenda

12. This paper proposes that political marketing and lobbying have much to learn from each other. Both are essentially persuasive forms of communication; both have some basis in more general marketing theory; both involve exchanges, networks and relationships. However, while much lobbying practice is underpinned or informed by (political) marketing theories, this connection is only rarely made explicit in the literature of either field. Most political marketing writing relates marketing solely to the arena of party political electoral competition, ignoring how it could be developed further into the area of interest groups generally—and, more specifically, into an examination of how organizations attempt to influence public policy. This paper looks briefly at lobbying activities such as grass roots lobbying and lobbying coalitions, and suggests how political marketing can extend its research focus to a wider range of lobbying practices. It seeks to identify the conceptual basis for the beginnings of a marketing perspective on lobbying. Lobbyists can learn from it how to put marketing principles to practice, and academics will gain an understanding of how this analysis can be applied and further developed.

Keywords Lobbying; Political Marketing; Persuasive Communication; Networks; Exchange Theory; Relationship Marketing

Introduction: Political Marketing and Lobbying

13. Political marketing has become an increasingly popular area for academic research over the last decade in both the USA and UK since Butler and Collins noted (1996, 25) that there “appears to be little appreciation of marketing theory” in political science. Several journals have since published special issues on the subject; this Journal of Political Marketing has enjoyed a tremendously successful first decade; specialist conferences and conference panels are now regular events; and a Handbook of Political Marketing (Newman, 1999) and several major texts have appeared. However, the vast majority of political marketing literature to date is limited by its emphasis on political parties—and within that, on electoral campaigning (Butler and Harris, 2009). Indeed, the motivation behind this conceptual article lies in the authors’ frustration that so much work is bounded solely by discussion of party strategies and voter behavior during elections. A review of political marketing literature by Scammell (1999), for instance, makes no direct mention of interest groups. A more recent article outlining the main criticisms made of current political marketing research agrees that the field has been, “overly focused on one aspect of marketing theory (ie communication) as part of an election campaign” (Henneberg, 2004, 235). A similar point has been made by another eminent scholar in the field: “Pure concentration on campaigning or marketing techniques will only take us so far. While such a locus of study is a good place to go, we must be careful not to rest there too long and miss the broader (if longer) journey to apply marketing to all areas of politics” (Lees-Marshment, 2003, 29). We seek here to assert a broader scope for the discipline of political marketing—and in particular, draw attention to the fact that the relationship between political marketing and interest groups/lobbying is a relatively neglected but important sub-set of this general field. We identify specific areas of lobbying practice which are underpinned by marketing theory, in the hope of stimulating future research by others.

14. Not only is the impact of corporate lobbying as a form of marketing communication largely unresearched, but it is rarely mentioned in the political marketing literature except in passing. Yet, the number of interest groups and social movements, as well as the degree of their influence over policy, has expanded inexorably. This has occurred in large part at the expense of political parties which may be regarded as incapable of maximizing their share of the political participation marketplace (Bauer et al., 1996). Moreover, even the small amount of political marketing literature on lobbying tends to focus on the recruitment and retention of members and the provision of benefits to members by interest groups. Very little research has been undertaken to date on how (political) marketing theory can explain or illustrate the representation of interests by lobbyists, or their policy-influencing activities. These functions form the core area of political lobbying and associated marketing activity, which is explored in this article. They predominantly cover external relationships and avenues for exerting policy influence. Yet, the attention paid thus far by political marketing specialists to lobbying has tended to downplay or ignore many of these key lobbying functions.

15. Political marketing has been developed to a tremendous extent over the last 15 years, and yet the gaps in this research have been described as, “like a newly discovered gold mine just waiting to be exploited” (Lees-Marshment, 2003, 3). The fundamental contention here is that one of the most potentially valuable seams of this mine is future research into lobbying. Lobbyists can learn from it how to put marketing principles to practice, and academics will gain an understanding of how this analysis can be applied and further developed.

Keywords Lobbying; Political Marketing; Persuasive Communication; Networks; Exchange Theory; Relationship Marketing

16. Although it is true that this potential has been relatively neglected to date, it would be unfair to suggest that it has gone entirely unrecognized by academics. One definition asserts that lobbying is, “The marketing communication of information and pressure on government or public bodies to bring about commercial gain or competitive advantage” (Harris, 2009, 12). An American writer described lobbying in terms of its relationship to marketing thus:

Organizing support for a position on an issue is similar to planning a marketing campaign. Selling the policy issue in the government marketplace is parallel to selling a product or service. It is essential to plan, package, and present the issue to convince the decision maker, often a legislator or
Exchange Theory

21. Political exchanges are certainly different from commercial exchanges (Brennan and Henneberg, 2008), but there are parallels. Lock and Harris have defined political marketing in terms of a philosophy of marketing exchange theory (which can be applied to specialist lobbying exchanges, and buyer-seller interactions in political networks): “[Political marketing is] the processes of exchanges between political entities and their environment and amongst themselves, with particular reference to the positioning of those entities and their communications” (1996, 28). This definition strengthened how the term “political marketing” was then understood by allowing it to take credence of modern developments such as the emergence of environmental, political cause and pressure group campaigning, political lobbying, the impact of referenda and aspects of cause and social marketing. This definition fits well the phenomena examined in this article, and suggests that modern marketing theory and practice encompass much of what we regard as public affairs and especially strategic lobbying. Moreover, the concept of exchanges in the lobbying process is already well recognized by political scientists, in significant work around the provision of information by lobbyists in exchange for access to policy makers (Ainsworth, 1993; Austen-Smith, 1995; Bouwen, 2002).

22. One of the key lobbying techniques now widely employed is known as grass roots lobbying, whereby organizations seek to persuade their members and supporters at large to contact policy makers themselves in an effort to persuade them to favor the group’s policy position. The connection between grass roots lobbying and marketing has been noted thus by one journalist:

Every lawmaker’s chief interest is getting elected. So lobbyists see it as their job to persuade lawmakers that voters are on the lobbyists’ side. To that end, Washington has become a major marketing center, in which issues are created by interest groups and then sold like toothpaste from Portland, Maine, to Portland, Oregon. Thanks to Washington–based direct-mail and telemarketing wizardry, corporations can solicit letters and phone calls from voters in any district in the nation. And clever Washington–based lobbyists know that the best way to guarantee that their point of view will be heard is to take constituents with them when they go to speak to members of Congress (Birnbaum, 1992, 6).

23. While there is a multitude of academic definitions of political marketing, they tend to be focused on political marketing by parties rather than more generically, and thus are of little relevance to lobbying. One
exception is offered by Henneberg (2002, 103): “Political marketing seeks to establish, maintain and enhance long-term political relationships at a profit for society, so that the objectives of the individual political actors and organizations involved are met. This is done by mutual exchange and fulfilment of promises.” Grass roots lobbying campaigns fit easily into this notion of mutual exchange—grass roots activists can exchange their future voting behavior in return for support for their policy position from legislators. Exchange theory is prevalent in much political marketing literature (although it usually relates to exchanges between political parties and the electorate). So, for instance, according to Scammell (1999, 722): “The political market, as the commercial market, contains sellers and customers who exchange ‘something of value’: the parties/candidates offer representation to customers who in turn offer support (votes).” Applying exchange theory to grass roots lobbying, an interest group asks its supporters and members to exchange their views/potential votes in return for the prospect of their position being represented by the politicians targeted. Grass roots efforts are therefore intended to be mutually beneficial to both parties involved in the exchange. As in marketing theory, whereby high levels of consumer satisfaction ought to ensure continued sales, politicians often need to maximize voter satisfaction in order to receive electoral approval.

24. In an article which undoubtedly helped to stimulate the academic thinking which later developed as political marketing, Kotler and Levy (1969) observed that marketing involves more than simple, direct, transactions of goods or services; rather, it is concerned with the more general (even sometimes indirect and intangible) exchange of commodities (including ideas). As is widely noted, this was followed—albeit not for 16 years—by the decision of the American Marketing Association to redefine marketing such that both exchanges and ideas were central. Any exchange implies that participants have something the other wants, that they are willing to give something in order to gain that which is desired, and that there is some form of interaction between the participants to enable the transfer to take place. These conditions are certainly satisfied in grass roots lobbying—indeed, they are at its heart.

25. Much marketing theory tends to emphasize the buyer rather than the seller. It is clear that the same is true of grass roots campaigns if voters are thought of as the customers of both interest groups and politicians (both of whom rely on continued support from voters). Margaret Scammell (1999, 725) has suggested that marketing is, “broadly a philosophy of business which says that companies can best achieve their objectives through customer satisfaction, and that customer satisfaction is best achieved by attending to customer wants and needs at the start, as well as the end, of the production process.” It is certainly possible here to draw an analogy with grass roots campaigns, in which interest groups place the concerns of members early in the policy making process, and politicians seek to ensure policy outcomes which respond to those concerns, so as to achieve voter satisfaction. As in marketing, interest groups (producers) use grass roots efforts to satisfy member/supporter (customers) demand, but if the activity is successful then it will fundamentally meet the interests and needs of the interest group itself—achieving customer satisfaction is done less for its own sake than as a means of achieving producer satisfaction.

26. One grass roots technique commonly used by American interest groups is to bring some of their members to Washington once a year to meet with legislators. These “Lobby Days” are organized in a highly professional manner, as illustrated by the National Beer Wholesalers Association (headed by David Rehr):

Each Spring since 1991, NBWA and the two brewers’ organizations have held a Joint Legislative Conference (JLC) in Washington DC, with wholesalers and brewers from across the nation. The NBWA/BREWERS JLC provides a key opportunity for beer wholesalers to demonstrate the grass roots base of their government relations campaigns, and raises the association’s visibility on Capitol Hill. At the JLC, beer wholesalers personally lobby their Representatives and Senators about NBWA’s three or four key legislative and policy issues. Attendance at the JLC has increased from 562 in 1991 to 1,020 in 2001. Rehr (and Beer Institute President Jeff Becker) teach beer wholesalers and brewers to regard their meetings with Representatives and Senators as “Making the Capitol Hill Sales Call”. He reminds wholesalers that meeting a Member of Congress to ask for support on policy issues involves a number of things:

— “Sales Kit”—NBWA and the two brewers’ organizations supply this; a packet of information outlining the beer industry’s position on key pieces of legislation, along with background data on the three associations and the economic contribution made by the industry. It also includes a “Capitol Hill Worksheet” on which wholesalers record the responses given by their Members of Congress to each request to support or oppose particular Bills;

— “Know Your Product”—Rehr runs through the main points on each legislative issue, so that wholesalers know exactly which messages to deliver during meetings;

— “Respond to Rebuttals”—wholesalers are provided with appropriate responses to a number of questions commonly asked about each issue;

— “Ask for the Order”—at each meeting, the beer wholesaler should ask the legislator whether he or she supports NBWA’s stance on each piece of legislation, and record the responses on their Capitol Hill Worksheet; and
— “Follow Up to Complete the Sale”—the Member of Congress should be invited to visit the wholesaler’s facility in the constituency. All Capitol Hill Worksheets should be returned to NBWA staff, and finally, the wholesaler should send a note of thanks to the Member on company notepaper (McGrath, 2003, 219–220).

27. This example also serves very clearly to show the explicit relationship between grass roots lobbying and (political) marketing—the language here is all about sales, product, orders.

28. Lees-Marshment argues (2003, 12) that, “Political marketing is about political organizations adapting techniques (such as market research) and concepts (such as the desire to satisfy voter demands) originally used in the business world to help them achieve their goals.” In terms of grass roots lobbying efforts, it is clear that an interest group is a political organization; and that it employs techniques (eg, direct mail, market research) and concepts (eg, segmentation, exchanges) from marketing in a strategic way to achieve goals. In other words, grass roots lobbying is certainly a political marketing phenomenon.

**Relationship Marketing**

29. Originating from a services marketing perspective in the 1980s, relationship marketing is a paradigm which some see as helping to connect (electoral party) politics with marketing (Johansen, 2005; Henneberg, 2008; Henneberg and O’Shaughnessy, 2009). More specifically, from our perspective it also offers valuable conceptual insights into political lobbying. As one text puts it, “In its earliest guise, relationship marketing focused simply on the development and cultivation of longer-term profitable and mutually beneficial relationships between an organization and a defined customer group” (Peck et al, 1999, 3–4). An illustration of how this can apply to lobbying is given by a Washington consultant who specializes in grass roots programs, who told one of the authors (in a 2005 non-attributable interview):

> The most effective method is to find one person with a strong interest in the issue from a Member of Congress’ own district. Now you are into grass roots based on developing relationships between the Members and the constituents, rather than based on how many people deliver a message. The number one tension in relationship based grass roots is ensuring that the central message is consistent in every congressional office while allowing each person the freedom to tell their personal story and local statistics, but always ending up asking for the same thing. But this approach is more long-term, allows messages to be crafted to maximum effect with each individual legislator, and makes the most effective use of the people who are the key strength of the grass roots campaign.

30. Evert Gummesson argues that, “the prime focus of [relationship marketing] is on the individual, on the segment of one. It’s one-to-one marketing” (1999, 6). Again, this fits neatly with lobbying, in which most direct advocacy is characterized by personal and individual approaches between a lobbyist and a policy maker. Relationship marketing holds that a personal relationship between a seller and a customer is of key importance. In order to achieve that, the seller must have direct access to the customer, just as a lobbyist prizes personal access to a policy maker above almost all else. As Moloney expresses it: “It is a sine qua non of all lobbying that there be contact with public decision-makers…. The provision of access results in the ability of the group for whom the lobbyist works to make its case to a decision-maker” (2000, 175).

31. It is imperative to the lobbyist not only that he or she can establish a direct and personal relationship with a policy maker, but that this relationship can then be maintained over time—expressed by Hillman and Hitt (1999) as relational political activity, by which companies seek to build long-term relationships with government across a range of public policy issues. While much historical work on marketing tended to view marketing as involving an immediate sale or satisfaction, relationship marketing goes far beyond a “one-shot deal”: it is concerned with protecting and nurturing the personal seller-customer relationship on a sustained and ongoing basis (Bannon, 2005; Stromback et al, 2010). From a marketing perspective, commitment and trust are crucial to the building and development of relationships (Morgan and Hunt, 1994): the commitment element here (meaning in essence that both partners believe that their relationship brings sufficient benefits as to be worth devoting time and attention to its continuance) reminds us of the importance of exchanges in that the information which a lobbyist brings to a legislator, for instance, must be valuable and useful if the legislator is to be willing to invest further effort in maintaining the relationship. The component of trust we discuss below in the context of network theory.

32. In lobbying, most of the literature suggests that lobbyists spend the vast majority of their time and effort working with their known supporters (in an effort to reinforce pre-existing views) rather than attempting to convert people who disagree with them. One American study asserted that effective lobbying involves:

> … identifying members who are already friendly to the general proposition and providing them with enough material to serve as a rationale for voting the way they would have voted in the first place…

In sheer volume it probably surpasses every other technique for getting bills passed (Kiplinger and Kiplinger, 1975, 207).

33. Actually pressuring policy makers to adopt positions contrary to their own views is utterly counter-productive in the long term: “nothing should be done to alienate policy makers by criticizing them or applying some form of ‘pressure’ to change their views” (Berry, 1977, 218). Julius Hobson, then of the American Medical Association, confirmed this to one of the authors:
You can't look on somebody as the enemy and deal with them in that fashion—the enemy this morning may be your closest ally this afternoon. It is the same too in terms of your relationships with legislators: the issue of managed care reform is one in which we have just about Democrat and only a handful of Republicans, but on the issue of regulatory relief we have got virtually all the Republicans and only a handful of Democrats (quoted in McGrath, 2005, 256).

34. The experienced lobbyist learns that effectiveness and reputation depend in large part on an ability to cultivate and nurture long-term relationships, which generally precludes crude attempts to convert votes. One academic suggests that, “An attempt to persuade a legislator who is opposed to the interest group’s proposals risks … straining whatever bonds of trust exist between lobbyist and member…. personal contact by the lobbyist trying to change votes is virtually an exercise in stupidity as well as futility” (Holtzman, 1966, 81). In marketing terms, we might suggest that shared values constitute a lynchpin of a productive and lasting relationship.

35. Network theory constitutes a standard thread of modern marketing literature. It suggests that the bonds between the actors in a marketing situation are of crucial importance. As one article puts it, “A company’s products and organization are largely determined by its relationships with a particular set of customers and suppliers…. These bonds reflect the development of inter-connecting relationships between organizations” (Harris, 2002, 242). It is argued, for instance, that as a company and its customers become increasingly familiar with each other over time, a degree of trust (even self-identification with a particular product or brand) in the organization will build up among customers. In the realm of political marketing, this point has been made in relation to the recruitment and retention of members and activists by political parties (Bauer et al, 1996, 159), but the analysis has not yet been extended comprehensively to lobbying by interest groups.

36. Just as trust is an essential component of a successful company-customer relationship, it is a vital ingredient in effective lobbying. According to one academic, “When lobbyists are interviewed about a variety of subjects, no theme is repeated more frequently than their need to protect their credibility. It is the fundamental dogma of their religion” (Berry, 1997, 98). As Howard Marlowe (former President of the American League of Lobbyists) told one of the authors: “When I am talking to a Member of Congress or staff person, it is important that if I don’t have a piece of information I tell them so and say that I will get it for them. In other words those people have to come to rely on me. I am not just going to be there today; I am going to be there five years from now—maybe with a different client—but it is my long-term reputation which matters to me and to the politician” (quoted in McGrath, 2005, 264). Direct lobbying, to be effective, requires that long-term relationships can be established and nurtured between the lobbyist and policy makers; that in turn demands that policy makers can develop a strong degree of trust that the lobbyist is providing them with honest information and useful opinion.

37. Lobbyists themselves often say that it is important when making their position clear to a policy maker that they also deal with the contrary arguments. According to Jim Donofrio of the Recreational Fishing Alliance: “One reason we are so effective is that when we make arguments on Capitol Hill, we also make the argument for the other side. We explain to Congressmen that, “This is how the opposition see things, but we believe you should support our argument because it actually makes more sense in the long-term”. Presenting them with all sides of the argument, makes you much more effective” (quoted in McGrath, 2005, 247). The same point has been very explicitly made by Michael Burrell, a senior London consultant: “The single most important point is to tell the truth: it is surprising how often people don’t do that or are tempted not to do that. If you don’t tell the truth, you are finished, and will never be listened to or trusted again. Telling the truth means acknowledging that there are other people involved in this debate who don’t necessarily share your point of view” (quoted in McGrath, 2005, 308).

38. Another element of network theory also relates very directly to lobbying: the bonds or activity links between organizations which bring them together. One article states that, “Activity links are where businesses share common interests and relationships to their mutual advantage” (Harris, 2002, 245). Translated to lobbying practice, activity links can be seen in the proliferation of coalitions in which different interest groups come together in order to promote a particular policy position favored by all the coalition partners. Coalition building occurs when groups with a common interest in a particular policy outcome will co-operate with each other to work for its advancement. Defined by one academic as “joint advocacy efforts undertaken by interest groups for the purpose of influencing public policy on specific issues” (Heaney, 2003, 9), coalitions are one of the most common features of the lobbying landscape. It is generally agreed that coalitions play an important—often decisive—role in determining the effectiveness of a lobbying campaign: “It is impossible to underestimate the value of coalition building” (Nownes, 2001, 205). One study of the effectiveness of British lobbying campaigns expressed a stark conclusion on coalitions—“To be effective, lobbyists rely on coalitional lobbying” (John, 2002, 69), while another (Kovacs, 2001) highlights the importance of credible coalitions in the field of broadcasting policy.

39. Coalition partners very often decide to work together on a policy issue precisely because each partner brings to the united effort a very particular resource—information, membership, money, access to an influential legislator, and so on. In a coalition, organizations which may well be competitors on other issues choose to set aside those differences in order to maximize their joint impact on public policy by exchanging their individual
resources to mutual benefit. A coalition enables its members to argue more persuasively together than separately that the viewpoint being expressed represents the public interest, and moreover serves to minimize the undoubted cacophony which can result from a number of groups all lobbying individually on the same issue and all expressing largely similar views although each asking for something slightly different or emphasizing different factors. The connection between lobbying coalitions and political marketing theory is suggested by Kotler and Kotler (1999, 4 and 6) (although they are referring to election campaigns rather than lobbying efforts, their assertions are equally true in the lobbying arena):

Marketing strategy lies at the heart of electoral success because it compels a campaign to put together, in a relatively short period of time, a forceful organization that mobilizes support and generates a winning coalition of disparate and sometimes conflicting groups.... Building coalitions in the campaign world is not unlike the technical partnerships that computer companies form with other companies or that manufacturers form with suppliers and distributors; they are similar to the joint marketing alliances of for-profit firms such as Coca-Cola and Philip Morris with cultural organizations such as museums and performing arts organizations.

PERSUASION IN LOBBYING

40. One very striking component of both marketing and lobbying lies in the fact that at the heart of each activity is the notion of persuasion: a concept which can trigger an instinctive negative reaction. Funkhouser and Parker make the case for the prosecution when they suggests that: “practical persuaders’ such as salespeople, con artists, lawyers, street hustlers, and spoiled children concentrate not on changing attitudes, but on getting other people to do what they want them to do” (1999, 27). In common (mis)perception, lobbyists could be added to this unsavory roll-call. Yet it should be stressed that persuasion need not be about arm-twisting or causing people to act against their beliefs: we have already noted that this would be counter-productive in the case of lobbying. Rather, persuasion “entails modifying behavior by influencing its cognitive precursors” (Tylbout, 1978, 229). Effective persuasion seeks to cause its target to first internalize the need for some action and then to take that action based on that belief. A lobbyist will attempt to demonstrate some clear rationale to support their preferred policy outcome and thus provide a policy maker with a motivation to take the “correct” decision. That persuasion, though, may well be intended not to change attitudes but to reinforce them, strengthening the policy maker’s resolve to pursue his or her existing preferences.

41. One component of the persuasive communication utilized by those seeking to influence policy potentially offers a wealth of insight into the linkages between lobbying and marketing: that is, how political lobbyists use language consciously to frame policy issues in such a way as to position their organization and its policy preferences to greatest effect (McGrath, 2007). One paper by a group of American academics posed the question, “Why do politicians, media gatekeepers and vast segments of the population care about and devote their energy and attention to some social problems but not others?” (Salmon et al., 2003, 3), before concluding that the, “answers tend to rest less with the objective characteristics of social problems themselves and more with the power, resources and skills of those who seek to mold public sentiment about them” (Salmon et al, 2003, 3). Frames are essentially competing ways of defining a policy issue, and thus influence how that issue will be dealt with by policy makers: lobbyists (on all sides of any issue) will attempt to frame or define the issue in such a way as to suggest that their particular perspective is the correct one (Gerrity, 2010; Schaffner and Atkinson, 2010). So, for instance, one practitioner notes the importance of, “using exactly the right words to name or position the issue” (Jaques, 2004, 192), and gives the example of the way in which activists on both sides of the abortion debate have chosen to label themselves either “pro-choice” or “pro-life” rather than “pro-abortion” or “anti-abortion.” Indeed, abortion policy long has been a forum in which interest groups are keenly aware of the value of framing—Goldman (2006) asserts that the fundamental shift towards abortion reform in the United States came in the late 1960s as a result of the issue becoming framed as a human right rather than, as it had been until then, being centered around arguments to do with the health or welfare of the pregnant woman.

42. An important reason why lobbyists take care to construct the most advantageous issue frames is that the frame itself can define not only the problem but the solution. So, for instance, during the 1995 dispute between Greenpeace and Shell Oil over whether Shell should be allowed to dump the Brent Spar oil platform in the North Atlantic, one of Greenpeace’s key messages was to question why this ought to be acceptable when, “no one has been able to dump their rusty old car in the local pond for more than 30 years” (cited in Watkins et al., 2001, 175)—this frame won significant media and public support for not just the identification of the problem but also the solution (ie, that Shell should have to take the costlier route of dismantling the structure and disposing of it elsewhere). Murray Edelman suggests that a road safety public awareness campaign which encourages motorists to drive safely will tend to ignore other relevant factors such as poor design and manufacturing by car companies, high official speed limits, dangerous road construction, and so on. He notes that: “Whether or not a ‘drive safely’ campaign makes drivers more careful, it creates an assumption about what the problem is and who is responsible for it that can only be partially valid…. This form of cognition is helpful to car manufacturers and to the highway lobby” (Edelman, 1977, 36). A similar example is given by Leech et al. who discuss American legislation to exempt the sale of products over the internet from sales taxes: the Bill’s proponents argued that introduction such taxes would stifle the commercial growth and innovation of the internet; while its opponents asserted that to leave internet sales tax-exempt put traditional retailers—who did have to pass on sales taxes to their customers—at a competitive disadvantage, and moreover resulted
in lost revenue and hence reduced services for state and local government. One of the anti-tax lobbyists is quoted in Leech et al. (2002, 276) as saying that, “the other side has succeeded in reframing the debate away from taxpayer rights to government revenue and fairness issues.”

43. Lobbyists take care with the precise language they use to frame issues because they appreciate that at its heart lobbying is also an exercise in persuasive communication (Luntz, 2007). As such, the attempt by lobbyists to frame policy issues and define policy solutions represents an important component of the process by which policymakers approach complex issues. Key to this attempt is an understanding of how to communicate lobbying messages most effectively and persuasively.

44. Persuasive communication should, at its best, involve dialogue: lobbyists should listen as well as talk (McGrath, 2006), in order to frame their persuasive efforts so as to address the recipient’s perspective as much as possible. Thus, persuasion starts to take on a two-way nature. Lobbying has often been defined in the academic literature as involving communication with policy makers which is purposely designed to influence public policy in some way. An Italian academic asserts that, “Relations between lobbying and communication are close-knit because lobbying is about persuasion, and both operate in the field of influence” (Graziano, 2001, 3). Another observer compared lobbying to salesmanship because both rely upon persuasive communication:

Government relations is, in a sense, a specialized form of marketing. In that same sense, direct lobbying is often face-to-face selling. The same qualities required to be successful in sales are needed in a successful lobbyist: cordiality and charm, persistence, understanding of the product (ie, the position the “issue sales person” is advocating), and the persuasiveness needed to make the “purchaser” (the public policy-maker) want to buy the “product” (Mack, 1997, 98).

45. Philip Kotler (2004, 16) has commented that, “Marketing has moved from a focus on the mass market to a focus on one-to-one customer relations. Current marketing is moving from a transaction-orientated to a customer–relationship building orientation.” Marketing has been regularly updating its definition of itself, since the first one was coined in 1935. The most recent (2007) redefinition by the pre-eminent American Marketing Association refers to marketing as, “the activity, set of institutions and processes for creating, communicating, delivering, and exchanging offerings that have value for customers, clients, partners, and society at large” (cited in Hughes and Dann, 2009). This update emphasizes the increasing role of managing relationships, exchange theory, non-commercial actors—and the use of persuasion, which is at the core of lobbying. Extending a schema developed by Funkhouser and Parker (1999), unlike some forms of marketing communication (for instance, brand advertising or corporate public relations), lobbying messages generally are directed at very narrow or precise actors, have a very particular intended action, and operate to very specific timeframes. This short-term lobbying is not, however, incompatible with a long-term relationship; indeed, the persuasion and transaction occur within the context of a trusting and mutual relationship. It is worth noting here the distinction Duncan and Moriarty make between different meanings of transaction:

As marketing has shifted to a relationship focus (in which a series of transactions define a relationship), it also has become more concerned with the transactional dimensions of marketing, rather than just the transactions themselves. The focus of a transactional approach to marketing—as opposed to a transaction approach—is on close, long-term, interactive (two-way) relationships (1998, 4).

46. We suggest that political marketing scholars will find fruitful ways of considering lobbying if they begin to analyze lobbying activity in terms of just such a transactional approach.

Conclusions

47. Most political marketing theory to date has sought to explain electoral competition or party communication—as Harris says, “most writings in the area called political marketing have concentrated on electoral and political communications and have not looked at the management of pressure on the legislative process as part of marketing” (2009, 60). Lobbying offers political marketing specialists a wide variety of source material: future research may use case studies, interviews with lobbyists, questionnaires, and other methodologies to further explore the ways in which—and the extent to which—lobbying activities conform to standard marketing theories. We have sought in this article to illustrate how particular components of marketing theory can find expression in lobbying and advocacy efforts. Future research should subject this conceptual basis to more empirical investigation—and in particular might attempt to establish the degree to which the ideas presented here are complementary or mutually exclusive. Can evidence be found that lobbyists consciously draw on, for example, exchange theory alongside or instead of network theory? Are aspects of marketing theory more or less useful for lobbyists in one political system rather than another? Do lobbyists in specific sectors or organizational settings tend to adopt and adapt commercial marketing theory? Our primary assumption is that the answers to these questions will reveal a patchwork of professional practice, but that each such study could contribute to our understanding and that cumulatively a range of work would be built up over time which would significantly advance scholarly and practitioner knowledge of how lobbying is undertaken most effectively. As a starting point, we suggest that among the central issues to be explored are the following:

— What exactly is exchanged between lobbyists and politicians when they interact in different settings?
Political lobbying for competitive advantage is a large scale and increasingly important business activity, which is strategic. The levels and extent of lobbying activities have grown dramatically in the last decade and useful insight can be gained through the application of marketing communication theory. To date the role of strategic lobbying as part of the marketing process has only recently started to be researched and is in need of further study. Indeed, the global economic crisis may well accelerate these changes in the public affairs sector. Too often in the past, organizations have run very discreet lobbying campaigns aimed essentially at obtaining funding from government. In this more austere age, it will be increasingly incumbent upon groups and firms to demonstrate the value-for-money of their proposals. They will thus have to be more strategic, more business oriented, more persuasive. Chase and Crane (1996, 138) offer a thoughtful call for companies to pay equal attention to “strategic profit planning” and “strategic policy planning”. Chen (2007, 293) provides some empirical evidence from research into multinational corporations in China that there is a “positive relationship between the participation of government affairs in strategic management and excellence in government affairs.” Activist groups have recently challenged business to go further in aligning lobbying efforts with corporate strategy (AccountAbility, 2005). Lobbying underpinned by marketing is on the rise and can be expected to become more common yet in the future.

50. Political lobbying for competitive advantage is a large scale and increasingly important business activity, which is strategic. The levels and extent of lobbying activities have grown dramatically in the last decade and useful insight can be gained through the application of marketing communication theory. To date the role of strategic lobbying as part of the marketing process has only recently started to be researched and is in need of much further study. Further research into political marketing as it is manifested in the policy–influencing activities of interest groups would be fruitful indeed.

February 2012

REFERENCES


Written evidence submitted by Index on Censorship

POLICY PAPER: INTRODUCING A STATUTORY REGISTER OF LOBBYISTS

1. Index on Censorship welcomes the Government’s bid to increase the transparency and accountability of lobbyists in the interests of public trust.

2. However, the consultation as it stands outlines very limited options for regulation and falls short of the OECD’s “10 Principles for Transparency and Integrity in Lobbying”. If the Government is serious about making the buying of influence transparent, it will need to develop legislation that creates a statutory register of lobbyists, publishes the legislative footprint of lobbying, and considers the influence of foreign agents. It is also important to note that regulation should not create a gateway for the state to decide which parties can or cannot lobby; it should merely be a tool to allow transparency.

3. As an international NGO that lobbies government, we welcome the opportunity to make our dealings with politicians open and accountable. Our funding is transparent, with over 98% of our donations named on the Charity Commission website (the exception is for small individual donations). Yet, whilst we are lobbying to defend a fundamental human right—the right to freedom of expression—others, who are not transparent about their sources of funding or dealings with government, are able to lobby against our work. We believe this is detrimental to the promotion of fundamental freedoms and to the debate about these freedoms.

4. Regulation of for-profit lobbying cannot come soon enough. As this submission will demonstrate, London is now at the centre of the global lobbying trade. In recent years, the governments of Azerbaijan, Belarus, Kazakhstan, Russia, Sri Lanka, Bahrain, Mubarak’s Egypt, Saudi Arabia and others have all led their lobbying operations from our capital.

5. When approaching legislative changes, Index believes it should be recognised that lobbying by the charity sector, for aims already tightly regulated by the Charity Commission, is different in character from lobbying on behalf of a foreign government or private enterprise. Charities’ right and duty to influence decision-makers should not be made more difficult by burdensome regulations. The Government should consider that statutory registration may lead to a monopoly in which none but the largest charities can access Members of Parliament. Any statutory register must not interfere with the democratic right of charities to engage with decision makers, and particular care must be taken to ensure smaller groups are not discouraged from lobbying. The approach of the Government needs to be wider than the options outlined in the consultation; else the legislation will impose a regulatory burden on the third sector without making for-profit lobbying more accountable.

THE PROBLEM WITH THE LOBBYING INDUSTRY

Unfair access to politicians

6. Lobbyists pride themselves on their links to politicians. Lobbyist Derek Draper famously boasted “there are 17 people who count in this government ... [to] say I am intimate with every one of them is the understatement of the century.” In evidence to Index on Censorship, lobbyists admitted that their connections to politicians are a key part of the service they offer.

7. In a series of meetings with lobbying firm Bell Pottinger, the Bureau of Investigative Journalism’s undercover team posed as representatives of the Uzbek Government and discussed the possibility of collaborating with the firm. They filmed Bell Pottinger employees bragging of their connections with the

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16 Mike Harris, “Proceed with care”, Public Affairs News (September 2010).
Conservative Party, namely their access to Foreign Secretary William Hague and David Cameron’s chief of staff Ed Llewellyn.18

8. “I wouldn’t quite say I have him on my speed dial,” one executive said of Hague, “but I can get hold of him and talk to him.”

9. Without transparency over the access afforded to lobbying firms by leading politicians, organisations that may wish to present an alternative view (or even, understand the current policy position of the same politicians) may be limited. It is clearly detrimental to good governance, if politicians only hear one side of an argument.

“Fact-finding” trips

10. Thanks to the Declaration of Members’ Interests, we know of any gifts or hospitality enjoyed by parliamentarians. We do not know however the total cost of such lobbying operations, or the trips enjoyed by influential members of political parties.

11. With Azerbaijan’s notoriously poor human rights record, British MPs ought to be concerned about the propriety of any organisation lobbying and taking MPs on “fact-finding missions”. Yet, Mark Field MP has taken two trips from The European Azerbaijan Society (TEAS) worth GBP 6,000. In May 2011, he was joined on a delegation by Bob Blackman MP, Stephen Hammond MP, and former Sports Minister, Labour’s Gerry Sutcliffe MP at a cost to TEAS of GBP 3,500 per parliamentarian. At the end of 2011, a parliamentary Early Day Motion was tabled in the UK House of Commons congratulating Azerbaijan on the 20th anniversary of its independence with no mention of the country’s poor human rights record, or reputation for corruption. All bar one of the primary sponsors of the motion had received paid-for trips to Azerbaijan from TEAS.19

12. Bahrain is another authoritarian nation that is a significant spender on PR and lobbyists. It is estimated that since March 2011, Bahrain has paid £15 million to firms such as Bell Pottinger, Big Tent Communications, Gardant Communications, G3 Good Global Governance, Hill and Knowlton, M&C Saatchi and YouGovStone.20 It also spends considerable sums on taking British politicians over to Bahrain on “fact-finding” missions of questionable merit. A March 2011 survey by the Guardian found British parliamentarians took 18 trips paid for by the Bahrain Government, at a total cost of £42,700.21 Research by John Horne, Director of Community, EA Worldview found that in March 2009, The Gulf Policy Forum organised a trip to Bahrain sponsored by the Government. The delegation included Lord Lothain (Michael Ancram), Alan Duncan MP (then Shadow Secretary of State for Business, Enterprise and Regulatory Reform Minister) and Keith Simpson MP (then Shadow Foreign Affairs Minister). Two months later, opposition leader David Cameron registered gifts from King Hamad of cuff-links and a fountain pen.22 In August, Liam Fox MP took a three-day trip, also paid for by the Bahrain Government, “to meet with the King of Bahrain as Shadow Secretary of State for Defence”.23 In October 2010, Gardant Communications organised a trip to Bahrain, paid for by the Government, for three members of the UK-Bahrain All-Party Parliamentary Committee: Chair Conor Burns MP, Pritti Patel MP and Thomas Docherty MP.24 This list is by no means comprehensive.

13. Britain is not alone in attracting the attention of foreign governments. There is also a significant lobbying operation in Germany with the Azeri Government hiring the Berlin-based Consultum Communications public relations agency. The Director of Consultum, Hans-Erich Bilges is a former editor of Bild, Germany’s highest circulation newspaper. His firm has also advised the authoritarian governments of Belarus and Kazakhstan. On 29 September 2011, a German gala to celebrate Azerbaijan’s 20th year of independence was held at the Berlin’s German Historical Museum and attended by luminaries of the political scene including the wife of the then-President of Germany Christian Wulff, former Foreign Minister Hans-Dietrich Genscher (1982–1992) and former Economics Minister Michael Glos (2005–2009). The latter, Genschler and Glos, are board members of Consultum. “I wouldn’t have gone (to the event),” said Markus Löning, the German Government’s human rights commissioner. German MP Marina Schuster agreed: “Azerbaijan’s behaviour here borders on brazenness. This kind of lobbying work goes far beyond what is acceptable.”25

22 http://www.publications.parliament.uk/pa/cm/cmregmem/100412/cm100412.pdf
23 http://www.publications.parliament.uk/pa/cm/cmregmem/100106/memi10.htm
Spinning for regimes

14. There are various other ways that lobbyists help foreign regimes. Bell Pottinger executives told the Bureau of Investigative Journalism reporters that they had written Sri Lankan President Rajapaska’s speech to the United Nations in 2010 which “went a long way to taking the country where it needed to go”. They also said they had manipulated search engine results to boost Google rankings for money transfer company Dahabshiil, serving the Horn of Africa.

15. When asked by the Bureau of Investigative Journalism’s undercover reporter if there were ways of “dealing with” the Uzbek Government’s Wikipedia entry (which the president was said to be “unhappy with”), Bell Pottinger said they used “all sorts of dark arts” to create a more favourable image. Uzbekistan has been widely condemned for its human rights record.26 Opposition and dissent is routinely silenced, with activists and journalists frequently targeted by authorities.

16. Lobbyists also work closely with PR firms to place pro-government editorial pieces in the media, and even seek to silence their critics through legal action.

17. Index has revealed that Bahrain has not only been consistent in denying entry to human rights monitors wanting to assess the situation, but its government has also used Western PR machines to polish its image and silence critics. Both tactics work to suppress a narrative and silence free speech. Ahead of the first anniversary of mass protests on 14 February this year, journalists and human rights activists were refused visas to enter the country. Index also reported that Washington DC-based PR firm Qorvis receives a monthly stipend from the Bahraini Government of $40,000. The company operates by “attempting to influence journalists or opinion makers through the strategic placement of favourable reports defending the actions of the Bahrain Government. Their methods range from circulating articles on outlets such as PR Newsire, to emailing journalists directly in order to defend the actions of the regime.” British intelligence firm Olton is also said to carry out “reputation management” work for Bahrain’s Ministry of Interior, and their software is reported to be able to identify “ringleaders” through using social media such as Twitter and Facebook.27

18. When the Guardian criticised the Government of Bahrain, its advisors demanded a right to reply putting forward the influential former ambassador to Bahrain Sir Harold Walker to write the piece. Another figure of influence, former Sunday Times political editor David Cracknell, now employed by Big Tent Communication, forwarded the influential former ambassador Sir Harold Walker to write the piece. Another figure of influence, former Sunday Times political editor David Cracknell, now employed by Big Tent Communication, wrote directly to the Guardian to firmly request a right to reply. He wrote:

19. “Despite what those who do not know Bahrain well sometimes think, freedom of expression and right to assembly is entrenched in the constitution—hundreds of demos go ahead each year without trouble.”

20. The Guardian suggested that Sir Harold could post a comment on the article like anyone else.28

21. Alongside a revolving door between politics and the industry, many journalists are now working for lobbying firms. George Pascoe-Watson, former political editor of the Sun, left the redtop in 2009 to work at lobbying firm Portland Consultancy. American-owned PR and lobbying firm Edelman has recruited former journalists such as Richard Sambrook of the BBC and the Financial Times’ Stefan Stern.29

How to make lobbying more transparent

22. Index on Censorship believes that in order to ensure transparency a broad series of measures are required including a requirement for ministries to publish the legislative footprint of lobbying, a code of conduct and a statutory register of lobbyists working in the UK.

(a) Statutory registration of lobbyists

23. We agree with the principle of statutory registration to increase the transparency of the lobbying industry. Registration should not be a “gateway” to allow or prohibit lobbying (as this would have an impact on free expression) and must allow retrospective registration within a sensible timeframe.

What should a statutory register cover?

A statutory register should be comprehensive, so that the public can obtain sufficient information about lobbying activities. It should include:

(i) the names of clients and individuals lobbyists;
(ii) the issues lobbied on;
(iii) details of political donations made either to political parties or individuals by the client, lobbying firm, or lobbyist;

26 Human Rights Watch, “No-one left to witness: Torture, the Failure of Habeas Corpus, and the Silencing of Lawyers in Uzbekistan”, http://www.hrw.org/reports/2011/12/13/no-one-left-witness-0 (December 2011).


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(iv) a record of gifts and other forms of hospitality that exceed 50 GBP; and
(v) the contract between the client and lobbyist.

24. A statutory register would raise the standard of transparency of for-profit lobbyists to that already engaged by charities. Index notes the NCVO position on the registration of charities:

“The current proposed register is simply bringing multi-client agencies up to the level of transparency already exercised by charities and in-house lobbyist, by making clear who these agencies are representing. While this is a positive step, it does not add anything to the safeguards and requirements already in place for charities.”

25. Moreover, charities are subject to additional regulation. If a charity chooses to lobby for a short period of time, this must be in line with the Charity Commission’s guidance.

26. If statutory registration is implemented it needs to create a level playing field between the highly regulated framework charities operate in, and the for-profit lobbying sector. The register ought to include an element of detail around the contractual relationship between the client and lobbyist (as detailed above), without creating an onerous bureaucracy or creating a “gateway” that will allow the UK Government to create who can or can’t lobby.

(b) The legislative footprint of lobbying

27. The inclusion of the footprint of lobbying in any published legislation is necessary to guarantee the probity of Acts of Parliament. A footnote appended to the end of draft legislation would outline all representations made to government, or ministers, by third parties and in particular whether any representations had changed draft clauses of the legislation.

The Digital Economy Act

Index on Censorship raised concerns over the role of lobbyists in the formulation of the Digital Economy Act. One MP described the lobbying by the entertainment industry over the then Digital Economy Bill as “unprecedented and relentless”. Lord Clement-Jones tabled an amendment (120a) which was almost word for word identical to a draft amendment written by the BPI, a lobby group for the British music industry. The amendment, if passed, could have banned access to sites such as Youtube—a clear infringement of the right to freedom of expression. Lord Clement-Jones at the time was paid £70,000 a year for “parliamentary lobbying” for law firm DLA Piper whose “Intellectual Property and Technology practice is one of the largest groups of IP lawyers in the world”. A legislative footprint would have made open and transparent any representations by third parties to the Government on this issue, and allowed parliament to assess the Bill in this context.

28. The footprint should include a full disclosure of parliamentarians’ interests that may pertain to the Bill and whether they had made representations to either civil servants or ministers on this issue. Increasingly, former lobbyists (with paid relationships with particular clients and interests) are elected as MPs. 28 Conservative prospective parliamentary candidates (PPCs) in the 2010 general election were lobbyists; of Labour’s PPCs 7 were lobbyists and for the Liberal Democrats, 3. Of those elected that year, a number of high-profile private sector lobbyists entered Parliament. Aviva’s head of public affairs Tracey Crouch became Conservative MP for Chatham & Aylesford; former Hanover associate Penny Mordaunt won Portsmouth North. Finsbury Group partner Robin Walker in Worcester won as did former Portland partner George Eustice in Camborne and Redruth; former PLMR director Conor Burns won in Bournemouth West; whilst Weber Shandwick director Priti Patel won Witham, former EDS lobbyist Mike Dugher took Barnsley East. There is no question that former lobbyists can make excellent constituency MPs, but legislation should be clear if MPs have made representations on behalf of former clients.

(c) A code of conduct for lobbyists

29. A code of conduct would set out clear expectations of how interested parties should interact with the Government. Australia established a lobbying code of conduct alongside a register in 2008. It adds that lobbyists will use “all reasonable endeavours” to satisfy themselves of the truth and accuracy of the information provided to them by the clients they represent; and shall not make “misleading, exaggerated or extravagant claims about, or otherwise misrepresent, the nature or extent of their access to government representatives, members of political parties or to any other person.”

30. The code also requires lobbyists to keep their work as lobbyists and any involvement on behalf of a political party strictly separate. They must inform government representatives that they are lobbyists or employees of lobbyists; whether they are listed on the country’s register of lobbyists, the name of any relevant client(s) and the nature of matters their client wishes them to raise.

(d) Transparent international lobbying

31. While a statutory register with the features Index proposes would go a long way to creating a much more transparent environment for lobbying in the UK, it will not add to transparency in other countries around the world and towards intergovernmental bodies (such as the UN, OSCE, Council of Europe, EU). Many other countries and organisations—including the Council of Europe—do not even have voluntary lobbyist registers. London—like Washington—is one of the global hub countries for international lobby companies. Many of these received funding from and have clients who are governments of other countries, who in a number of cases are funding lobbying that undermines or intends to undermine fundamental freedoms in their countries or in the assessments and actions of intergovernmental organisations. Lobbyists based in the UK have in recent years worked for some of the world’s most autocratic governments including Azerbaijan, Belarus, Kazakhstan, Russia, Sri Lanka, Bahrain, Mubarak’s Egypt and Saudi Arabia (to name but a few).

32. Other countries have far more exacting standards. For 70 years, Americans have been informed of the activities of lobbyists working on behalf of foreign governments through the Foreign Agents Registration Act (FARA). The Act is a statutory registration system that shows who is lobbying government, discloses their spending and activities in significant detail, and is open to the public.

33. Just as with bribery and corruption, the lack of transparency in international lobbying can and should be tackled both at source and at destination. Index considers wider consideration is needed of how to promote transparency of lobby organisations based in the UK but lobbying abroad whose activities—or all of whose activities—will not be captured by the UK statutory register. While the UK statutory register should represent an important step forward within the UK, the next step must be to consider how best to promote international transparency of UK-based bodies.

Conclusion

34. Index on Censorship welcomes the Government’s consultation on a statutory register of lobbyists. A statutory register if comprehensive and enacted alongside a strong code of conduct and a commitment to detailing the legislative footprint of lobbyists, would make transparent the relationship between lobbyists, politicians and civil servants. This would help reduce scepticism and public distrust of the political process and help the main political parties move on from recent scandals. With London increasingly at the centre of the international lobbying trade for foreign governments, consideration should next be given to how to make this trade more accountable abroad. Reform cannot come soon enough.

April 2012

Written evidence submitted by the Institute of Economic Affairs

Introduction

1. A statutory register of lobbyists is unnecessary, unhelpful and risks acting as a barrier to civic engagement in the political process.

2. The coalition seems unclear as to the precise problem it is trying to solve and therefore risks imposing an expensive burden on lobbyists (and others) for no obvious public gain.

3. In terms of transparency, the burden surely sits with elected representatives and public officials to properly report the nature and the content of the meetings they conduct as part of their ongoing business. Therefore, any possible gains from a statutory register could as easily be provided by appropriate protocols applying to those being lobbied rather than by those conducting the lobbying.

4. The consultation document (in section 3) makes plain that ministers are already obliged to report who they meet but this does not make it clear the interests which may be represented by a lobbyist. If this is the totality of the problem, then ministers, MPs and appropriate others should perhaps carry a greater, statutory obligation to report the nature and content of the meetings they conduct with lobbyists.

5. Nevertheless, the consultation document makes it plain that the coalition is committed to the introduction of a statutory register of lobbyists, so this response is written with that in mind. Notwithstanding the author’s view that a statutory register is unnecessary and problematic, this response limits itself to the scope of the register—and, in particular, why a narrow definition of lobbying is necessary in order to avoid a number of pitfalls which the consultation highlights as a concern.

Definition of Lobbying

6. The definition of a lobbyist is set out on page 11 of the document, the three point definition clearly includes certain activities and clearly excludes others, but leaves a substantial “grey area” for which classification is required.

7. Those caught by the definition clearly include those who work for public affairs agencies. They are paid for by third parties, are almost exclusively “for profit” enterprises and could be said to be the least transparent
of lobbyists (in that a note of record that a minister met people from “Bloggs Communications” gives no indication of the interests represented by “Bloggs Communications”).

8. Individuals lobbying on their own behalf are clearly excluded—such that a constituent raising an issue at a constituency surgery is not caught by the definition.

9. This leaves a large number of companies, organisations, charities and unincorporated organisations possibly caught and possibly excluded by the definition.

A. Groups of citizens with an explicit policy interest

10. It seems an individual who lobbies their MP to protest about, for example, a new road that may be built in the constituency is not a lobbyist. However, as soon as two or more individuals in the constituency combine together and form the “Stop the Bypass” campaign, they may be categorised as lobbyists. This would be particularly the case if the group has an identified spokesperson who might be said to be representing a “third party client” (namely, other constituents who are opposed to the new road).

11. The reasons the members of the group have to oppose the bypass could be many and varied. Some people may be opposed to the compulsory purchases that would be required. Others may be worried about the effect on the natural habitat. Still others might have concerns about noise pollution. There is no basis to suppose that those who hold one set of objections are in anyway motivated by or persuaded of another set of objections. They are merely united in opposing the construction of the bypass itself.

12. The group may select from amongst their number a spokesperson or chairman in order to represent their combined opposition to the bypass. It could well be the case that this individual is opposed to the bypass for only one set of reasons, but agrees to represent all the reasons members of the group have raised against the new road. In such circumstances, it seems difficult to escape the conclusion that the spokesperson is “undertaking lobbying activities on behalf of a third party client”.

13. It would be sophistry to argue that the spokesperson is not acting on behalf of a third party client as he is actually a member of the group. Clearly, a local action group could be an umbrella body comprising various sub-groups, “Greens Against the Bypass”, “Local Business Against the Bypass” etc. In such a circumstance, the chief spokesperson of the umbrella group would clearly be acting for third party clients and it cannot possibly be the purpose of the statutory register to distinguish between citizens’ campaign groups and confederations of citizens’ campaign groups. The legislation therefore needs to be constructed to exclude all these sort of groups from the burden of registration and sanctions for failure to register unless there is to be a substantial chilling effect on civic activity.

B. Think tanks, national campaign groups etc

14. There are no strict definitional distinctions between the sort of local activist group outlined above and groups formed by citizens on a national scale to promulgate and promote certain policy interests.

15. In practice, nationally based groups are more likely to have paid staff and will tend to have higher turnovers than local campaigns, but this is a tendency not a certainty.

16. To limit the list of lobbyists to those remunerated in conducting their work would tend to capture many in think tanks and campaign groups, but would also leave open various substantial questions of interpretation and would almost certainly create easily exploitable loopholes.

17. For example, a national campaign group committed to saving the whale could employ all its staff through one corporate entity (“The Whale Saving Foundation”) but conduct all its lobbying through another (“Save the Whale”) and allow all staff as much time as they wish to work for the second entity. The second entity (“Save the Whale”) would be likely to exhibit all sorts of features in common with the “Stop the Bypass” local campaign—for example, a low annual turnover, no permanent staff etc.

18. Any register which sought to include “Save the Whale” but not “Stop the Bypass” would run into severe difficulties. For example, suppose a generous local employer allowed the chief spokesperson some paid time off work to act for “Stop the Bypass”. Is the spokesperson now caught by the rules governing the register? If not, why not? If the individual acting as the anti-bypass spokesperson is running their own company, and uses some of their own working time to work on the local campaign, does this render them a lobbyist?

19. In the last two cases, the “Stop the Bypass” campaign is now in receipt of corporate support—albeit as an “in kind” donation rather than as a direct financial transfer. Does this suggest or imply that the individual is acting for a third party corporate interest? If not, would this change if the company involved in granting the spokesperson time off had a direct interest in stopping the bypass? For example, suppose the company giving the spokesperson time off to campaign was located in an area threatened by compulsory purchase should the bypass go ahead?

20. These examples show the inherent difficulties in drawing any clear lines between a thriving civil society and lobbying as a professional activity. Nevertheless, it may be possible to find ways in which to ensure that campaign groups, think tanks and community groups are not typically included in the register.
RECOMMENDATION FOR A NARROW DEFINITION

21. All of these citizen groups are likely to hold in common the following features:

1. They are run on a not-for-profit basis (irrespective of their precise corporate structure).
2. They are of a relatively modest turnover.
3. They have a relatively modest number of employees.

Additionally, they are likely to share in common with a fourth feature with in-house lobbyists, namely:

4. Their lobbying objectives are explicit or easily presumed.

22. Furthermore, those campaign groups or think tanks which do not exhibit the first three criteria are likely to be better able to comply with the burdens of registering and complying than those which do.

23. Consequently, I would recommend that individuals are excluded from the register if they exhibit all of the following features:

1. They are employed exclusively by not-for-profit organisations. AND
2. These organisations have a combined turnover of less than £5m per annum. AND
3. These organisations employ a total of less than 50 staff (on a full time equivalent basis).

24. An individual who did not meet these criteria and was considered to be a lobbyist could still remove themselves from the register and its accompanying obligations by establishing to the appropriate authorities that their lobbying objectives were clear, public and transparent. This would be presumed to include all lobbyists who were exclusively employed “in-house”—whether for a publicly listed company or for a major campaigning organisation.

25. As stated at the outset, this is a second best option—as I am opposed to a statutory register. Nevertheless, exemptions along these lines would at least mitigate the damage that might accrue to a properly functioning, inclusive and democratic process.

April 2012

Written evidence submitted by Justice in Financial Services

LOBBying IN ACTION: A CASE STUDY

PREFACE: a RETREAT

1. During the election campaign, the Prime Minister said:

   “Now we all know that expenses has dominated politics for the last year. But if anyone thinks that cleaning up politics means dealing with this alone and then forgetting about it, they are wrong. Because there is another big issue that we can no longer ignore.

   “It is the next big scandal waiting to happen. It’s an issue that crosses party lines and has tainted our politics for too long, an issue that exposes the far-too-cosy relationship between politics, government, business and money.”

2. The Coalition agreement contained a commitment “to regulate lobbying through introducing a statutory register of lobbyists and greater transparency”.

3. Nothing happened for a while but then a lobbyist called Collins made a series of claims about his excellent contacts in government to a person he thought was a potential client but actually was a journalist. It became too embarrassing to do nothing.

4. So last week a consultation document was issued.

5. Section 3 of the consultation document—Purpose of the UK Statutory Register—makes it abundantly clear that the Government does not propose to do more than the barest minimum to honour this commitment. There is no assessment of the mischief being done at present, no analysis of what is and is not compatible with democratic institutions and Parliamentary government.

6. JFS offers a case study of lobbying in action: Capita and Quiller.

AN FTSE 100 COMPANY and its LOBBYIST: THE CASE STUDY in THIS PAPER

7. We look at a current case of an FTSE 100 Company (Capita) seeking to minimise the sum that it should pay in compensation to those who have suffered losses thanks to its bungling incompetence.

8. From 2007, Capita Financial Managers Limited was ACD (Authorised Corporate Director) to OEIC funds into which some 20,000 individuals invested about £400 million. Under the regulatory system, the ACD and another firm, called the Depositary, invariably a bank, have responsibilities to ensure that funds are invested in conformity with rules made by the Financial Services Authority (FSA).
9. In March 2009, these funds were suspended.

10. This happened because Capita and the banks acting as depositaries had failed properly to supervise the management of the funds entrusted to them. As ACD, Capita should have exercised proper control and given clear instructions to the advisers making day to day investment decisions. It did not do so—incridibly despite having very large funds under management and being allowed to run a highly innovative and unusually opaque major fund, it had no investment director. Capita had also issued accounts that materially failed to meet accounting standards.

11. Suspension of funds of this type and size is rare. In 1996, funds of a similar size were suspended. The regulators acted promptly and decisively and the equivalent of the ACD and the Depositary paid compensation within weeks. If Capita and two banks involved in the Arch cru debacle had been compelled to pay compensation on the basis that the regulators had insisted on in 1996, Capita and its associated banks would have had to find around £350 million in cash and take a loss of over £200 million onto their balance sheets.

12. Capita's accounts disclose that it has spent millions to safeguard shareholder interests—ie to evade paying. Capita spent £1.4 million between 1 January and 31 December 2010 alone on this exercise. We may be given figures for 2011 in due course. The figures for 2009 are included in a larger item. Most of this money will have been paid to Capita's lawyers, but during the year it (and another firm involved in this scandal, HSBC) appointed the lobbying firm Quiller to act for it.

13. It is reasonable to assume that Quiller was recruited to deal with the crisis threatening Capita.

14. By any standards, Quiller has done a superb piece of work. One of Quiller’s boasts is that it keeps adverse publicity to a minimum. It has certainly succeeded in that—only the Mail on Sunday has given extensive coverage and even the FT has given less than a half page. There was no debate in Parliament until October 2011.

15. In July 2011, the Financial Secretary to the Treasury wrote to MPs endorsing a decision to limit the amount Capita and the banks have to pay to £54 million.

16. Subsequently he defended the settlement in favour of Capita in a Westminster Hall debate and refused to set up a formal inquiry under S14 of FSMA into what had gone wrong. He has subsequently written letters defending his position and Capita that contain materially false statements, including letters to fellow ministers and shadow cabinet members. The Prime Minister has been drawn into this row, first signalling that he wanted more to be done and then endorsing the refusal to set up a proper inquiry.

17. So far Capita has avoided the embarrassment of a report from independent inspectors.

18. This has come at a price. A large number of individuals have found their savings and livelihoods threatened. They find it incredible that Capita (and the banks) should be let off paying by the FSA when the FSA's predecessor, IMRO, dealt with an indistinguishable situation in 1996 by making the fund manager (equivalent to Capita) and the bank behind it pay ever penny due within weeks. If Capita and two banks involved in the Arch cru debacle had been compelled to pay within weeks. If Capita and two banks involved in the Arch cru debacle had been compelled to pay compensation on the basis that the regulators had insisted on in 1996, Capita and its associated banks would have had to find around £350 million in cash and take a loss of over £200 million onto their balance sheets.

19. Suspicions about what the lobbyists are up to has entirely destroyed the confidence of those affected in the decision making process on this matter and has led them to allege that there is corruption at the highest level. That this allegation is almost certainly mistaken does not detract from the conviction with which it is held. Huge damage is being done. And although the allegations now being made of corrupt practices by ministers and the Conservative Party are almost certainly false, there is an appalling stench emanating from the Board Room of Capita.

TRANSPARENCY

20. “Transparency” does have a role to play in good government. It is often foolish to try to legislate or make detailed prescriptive rules. Public outrage at an obvious abuse—outrage echoed and amplified in Parliament—is often a better way of deterring wrong doers.

21. Members of Parliament and campaigning journalists, not to mention a growing blogosphere can cause wrong doers embarrassment. As the late Auberon Waugh observed, if you are in public life and are doing something of which you are ashamed, you have three choices: to stop doing it, to stop being ashamed of it or to hope Private Eye does not find out.

22. Unsurprisingly, some lobbyists offer as a service “counselling those wanting to stay out of the glare of publicity and media scrutiny” (Quiller website).

23. So regulation by ensuring disclosure of information is by no means a bad strategy. In some circumstances it may be the best. But it will only work if adequate information is provided. On that test, the proposals seem woefully inadequate. Capita—and its lobbyists—currently disclose all that they would be required to disclose under the new regime. Yet there are widespread suspicions—and entirely reasonable suspicions—that by spending huge sums Capita has not only been able to evade its liabilities but to get the state in the shape of the FSA to hound people who have done no wrong.
24. We investigate the shortfalls in disclosure under three headings:

(1) Disclosure of the amount spent by a firm with a lobbyist and who is meeting who.

(2) The need for proper disclosure of benefits given to a target of lobbying when this exceeds the cost of reasonable provision at a proper event (where the case is not Capita and Mr Hoban but Capita and the chief executive of the City of Birmingham).

(3) The need to prevent hidden gifts to political parties (where Capita has as they say form but the originator donor of moneys paid over by Quiller’s parent company cannot be traced.)

DISCLOSURE OF SPEND ON LOBBYING AND OF MEETINGS

25. The consultation document comes down against disclosure of the amount spent on lobbying. Some of the reasons presented are good but none compelling. We argue that the Quiller/Capita case shows that disclosure of who is lobbying, who is being lobbied, and how much is being spent is necessary.

GENERAL PRINCIPLES

26. When a relatively small amount is being spent in pressing for a change, then it is unlikely that the lobbyist and its client will succeed in drowning out or overwhelming the other side of the argument. When large sums are being spent, this is a very real danger and the concept of equality of arms comes into play.

27. Likewise if the activity only contributes a small proportion of a lobbyist’s income and no firm or individuals have a large financial interest in securing the income stream from the client then it is less likely that there will be a departure from ethical norms than when the future of a firm or individual employees (or perhaps their bonuses) depend upon that income stream.

28. Both of these considerations point to a requirement to disclose when total spend on a project exceeds a threshold and also when a firm or individual’s earnings would be significantly diminished but for that contract.

29. Conditional fee agreements, success fees and such like should always have to be disclosed.

30. There is also a clear case for disclosure when there are particular sensitivities—which may of course imply a more extensive disclosure regime to avoid judgments having to be made on whether a matter is sensitive.

31. When we look at what Quiller appears to have done for Capita, we might conclude that a high level of financial disclosure is essential and that the Consultation Document’s proposals fall well short of what is needed.

QUILLER AND CAPITA

32. Quiller’s clients include both Capita and HSBC. Both firms appear to have become clients at some date between June and August 2010. This is disclosed in existing public registers—and it seems as if the Government is not proposing to require any further information to be disclosed. In particular there is no proposal to require either a disclosure of meetings or of money spent.

33. Quiller’s principals include some high powered individuals who had worked in senior positions during the Thatcher and Major years and had worked closely with a number of individuals who now hold senior positions in the Coalition Administration as well as a number of heavyweight backbench MPs including former ministers. Quiller was thus an extremely good choice for a pair of financial service companies anxious to evade their liabilities to investors. The firm could be certain of access at the highest levels of the Cameron administration and knew exactly how to craft an argument to appeal to the senior individuals and backbench MPs who would have to acquiesce in anything that the fabulously expensive but massively competent Herbert Smith could persuade the rather less well resourced FSA to swallow.

34. As has become increasingly clear, one of the major messages to the Cameron administration was that Capita simply could not afford to pay compensation on the scale that the IMRO precedent required. This argument surfaces in a number of places—notably the letter that Hector Sants sent to the Chancellor of the Exchequer on 3 August 2011 and some later letters sent out by the Financial Secretary to the Treasury. The published accounts of Capita Group show the improbability of Capita being able to find over £100 million in cash. Statements by Capita and information in published accounts fixes Capita’s share of the capped payment of £54 million at £30 million-£35 million. Capita can at present afford this and indeed has negotiated a bank overdraft large enough to allow it to keep this sum as a positive balance with a bank—probably not a bank that has provided overdraft facilities.

35. The average amount invested in the CF Arch cru funds was £20,000. Investors have so far only received a few thousand pounds back. By about 2016, the lucky ones will have got back around 65% of what they put in—unless they are able to bring claims against their advisers. Even if they are able to, several hundred people will suffer heavy losses—much of this is likely to be in pension funds.

36. In addition up to 1,000 people who work for advisers—many of whom will have had nothing to do with the advice—stand to lose their jobs as their firms are closed thanks to the failure of the FSA to make Capita
pay what it owes and its vigorous attempts to portray advisers as responsible for gross incompetence by Capita and the Depositaries.

37. The idea that there is transparency when all that is placed in the public domain is the bald statement that Quiller acts for Capita and HSBC is risible. The proposals in the Consultation Document are utterly inadequate. With millions of pounds involved and thousands of jobs we need to know what is going on, who is seeing who, and how much is being spent.

Bungs—Sorry, I Mean “Hospitality”

38. Capita provides evidence of two further weaknesses in the proposals. Lobbyists deal with a variety of entities but the Register does not propose to cover local government or many public bodies. There is also no requirement to disclose spending that directly benefits the target of a lobbyist. I develop this weakness further.

39. While one can understand the absurdity of having to record a cup of tea for an MP who came on a factory visit, some hospitality clearly is on a scale that influences and most people would think stinks of corruption.

40. The conduct of our friend Capita shows that the idea that there is no need for any financial disclosure of what is provided to persons in public life or public employment whether by external or internal lobbyists is risible. Take this citation in Private Eye (23 December 2011) for a Rotten Boroughs Award 2011: “Services to the Hospitality Industry” Birmingham city council chief exec Stephen Hughes said he would ensure that everything had been “above board” when Capita was awarded a £700,000 contract despite a local firm crying foul when the tender specification was changed at the last minute in Capita’s favour. Brum’s hospitality register showed that, on at least four occasions in 2011, Hughes accepted the hospitality of Capita for luxury hotel stays in London, Cardiff and Stratford upon Avon, slap-up dinners and champagne receptions. Trebles all round.”

41. We need those who give hospitality costing more than a modest sum (say £75) to register and record this.

42. The suggestion that registers run by government departments are adequate is also ludicrous. It is the provider of hospitality who knows the cost of what is provided, not the recipient. And it is all too easy for a recipient to treat something as “social”. A requirement to register any hospitality or gift worth more than £75 provided to any politician or official and the entry of this information on a readily searchable online database would be a real step towards transparency. A firm that engaged in extensive “generosity” whether to a local authority or government department or to politicians would soon find itself facing unwelcome publicity that even Quiller could not save it from. And we can be sure that a number of people would cross-check departmental and local authority registers of recipients with the proposed register of donors.

Shielding Donors to Political Parties From Being Known

43. Donations to political parties have to be revealed in company reports under the Companies Act and to be disclosed to the Electoral Commission that publishes a register of all donations on the internet.

44. The annual report and accounts of Huntsworth PLC—the parent company of Quiller—contains a section disclosing donations, and the accounts for the year ending 31 December 2010 disclose only a donation to the Conservative Party of £1,000. This disclosure is for a sum that falls to be disclosed under the Companies Act 2006.

45. In contrast, the Electoral Commission website contains the following information:

<table>
<thead>
<tr>
<th>Recipient</th>
<th>Donor name</th>
<th>Type of donation</th>
<th>Value</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labour Party</td>
<td>Citigate</td>
<td>Cash</td>
<td>£11,750.00</td>
<td>01/09/2005</td>
</tr>
<tr>
<td>Conservative Party</td>
<td>Huntswroth</td>
<td>Cash</td>
<td>£12,100.00</td>
<td>10/10/2008</td>
</tr>
<tr>
<td>Conservative Party</td>
<td>Huntswroth</td>
<td>Cash</td>
<td>£9,500.00</td>
<td>03/08/2009</td>
</tr>
<tr>
<td>Labour Party</td>
<td>Square Peg</td>
<td>Cash</td>
<td>£6,770.00</td>
<td>15/03/2010</td>
</tr>
<tr>
<td>Wallasey CLP</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conservative Party</td>
<td>Huntswroth</td>
<td>Cash</td>
<td>£8,500.00</td>
<td>18/08/2010</td>
</tr>
<tr>
<td>Conservative Party</td>
<td>EHPR</td>
<td>Non Cash</td>
<td>£2,596.00</td>
<td>28/11/2003</td>
</tr>
<tr>
<td>Cities of London &amp; Westminster</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conservative Party</td>
<td>Huntswroth</td>
<td>Cash</td>
<td>£15,500.00</td>
<td>24/08/2011</td>
</tr>
</tbody>
</table>

46. There is no immediate way of reconciling the two disclosures relating to 2010. This implies an unhappy failure to align statutory obligations.

47. We can be quite certain that the donations recorded by the Electoral Commission do not originate in a desire by the owners of the firm to support a particular Political Party—or (because of the dates) donations to support the political process generally, with the sums given to each party determined by individuals loyalties. No. Perhaps we are looking at donations on behalf of clients that wish “to stay out of the glare of publicity and media scrutiny”.
The first observation is that there is no transparency here. If these sums are donations made by clients of Huntsworth or its subsidiaries, this is a tactic to prevent a donor being identified.

Second, this sort of transaction can—and indeed has—given rise to suspicions of corruption. JFS learned about these donations from an angry IFA who believed that Capita was using Huntsworth to reward the Conservative Party for Mr Mark Hoban’s support for the FSA agreeing to limit its liabilities to investors in CF Arch cru. The sum is almost exactly 1% of the amount Capita has been protected from paying.

I personally do not believe that this is a bung to the Conservative Party—the sum is too small: if the donation of £15,500 on 24 April 2011 actually were a doceur for the Capita/FSA deal, Conservative ministers are selling their party pretty cheap. This is not a mistake, we may recall, that the previous leadership of the Labour Party made. A former chief executive of Capita had to resign after he was exposed for “lending” Labour £1 million. That is real money.

The problem becomes partially serious given what has been revealed to the Leveson inquiry of the use of text messages and emails to maintain a level of pressure and frequency of communication that lobbyists, say, the Major Government could not possibly have achieved. Almost all calls would have been on landlines and monitored by officials; although email had started to become available by 1997, it was much later that it became a medium for chatter rather than a substitute for fax or even telex. The volume of communication between, for instance, Mr Marcel and Mr Smith would have been inconceivable—and cabinet ministers would not have used text.

But the lack of transparency has real consequences. Ministers are becoming victims of innuendo and gossip. Confidence in public life is undermined. This surely demonstrates the need to insist on the full and complete disclosure of any payments made to political parties and to politicians, civil servants and other public employees and to prevent a client sheltering behind its PR company.

CONCLUSION: MUCH MORE IS NEEDED

The Parliament elected in May 2010 made an excellent start in undoing the damage inflicted on the entire concept of Parliamentary Government by the Rotten Parliament. It had the huge benefit of the work done by Dr Tony Wright and his colleagues on the Reform and Public Administration Committees. It was fortunate in having as Leader and Deputy Leader of the House two Parliamentarians of the first rank. It promptly implemented the most important reform of all—the creation of the Backbench Business Committee.

Now this excellent start is being threatened by the failure to tackle the scandal of lobbying.

For much of the last seven centuries, Members of the House of Commons have had as a primary duty the effective representation of the counties and towns and cities that have sent them to Parliament. When an MP rises to his feet in Business Questions or an Adjournment Debate to demand action on some local problem, what she or he was doing would be instantly recognised by the Member from the same area six or seven centuries ago.

In the last two centuries, the Government of the United Kingdom has been taken away from a Venetian oligarchy descended largely from the men who engorged themselves on the dissolution of the monasteries to an administration that is under a measure of control by a House of Commons elected by the nation.

All of this is threatened by the power of money and the influence that money can buy. There is indeed an issue of image, but there is also an issue of substance. The proposals in the Consultation Document Introducing a Statutory Register of Lobbyists fail.

February 2012

Written evidence submitted by Dr Conor McGrath

INTRODUCTION

It may be helpful if I briefly outline my career experience, as I approach the issue of lobbying regulation with the dual perspective of having been both a lobbyist and an academic researching lobbying. From 1991 to 1999, I was a public affairs consultant in Westminster, first at a small agency and then as a self-employed freelancer. Between 1999 and 2006, I was a lecturer in political lobbying and public affairs at the University of Ulster and course director of an MSc programme of the same title. I have recently established a new consultancy—Conor McGrath Public Affairs—based in Dublin (though the marketing efforts I will begin shortly are likely to focus primarily on clients based in the UK and US). In the interests of full disclosure, I am a member of a number of relevant professional associations:

— Chartered Institute of Public Relations: I have been a full member since 1999, and a member of CIPR Public Affairs (formerly its Government Affairs Group) since 1991. As a requirement of my CIPR membership, since establishing my own consultancy I have also signed up to the register of lobbyists held by the UK Public Affairs Council.
2. I should stress that while my views on the regulation of lobbyists are certainly informed by my academic work, they are fundamentally rooted in the fact that as I prepare to become a lobbying practitioner again, I will myself be subject to whatever system of registration and regulation is ultimately enacted. I firmly believe that it is in my professional self-interest for regulation in the UK to be as rigorous as possible, and indeed hope that the Government will take this opportunity to go well beyond its existing proposals and further strengthen the system which emerges from this consultation exercise. Some of those engaged in this debate would prefer that the issue of lobbying regulation is placed squarely within the sphere of the political elite. The Chartered Institute of Public Relations, for instance, has asserted that: “It is in the interests of the public affairs profession itself, and of Parliament alike, for self-regulation to work” (PASC, 2009b, p 146). This, though, utterly ignores the question as to whether self-regulation by lobbyists is in the public interest. Lobbyists must begin to recognise that the role they play in the policymaking process makes their activities a legitimate subject of public concern; they can no longer avoid exposing themselves to greater transparency and accountability. The Government—to say nothing of clients and employers—should be wary of any lobbyist arguing for weak or non-mandatory regulation in order that they may seek to serve their own supposed self-interest rather than the public interest.

3. I have written extensively on aspects of lobbying regulation, and would be more than happy to provide the Committee with any of the following work if that would be helpful:


4. Before I address the detail of the consultation paper, I would like to offer a few general points to place my particular suggestions in context. Lobbying has matured into an important and vibrant industry; however, it remains a long way from achieving public recognition and acceptance as a profession. One of the key challenges for the industry today is to meet the legitimate public and official need for greater transparency and accountability. The reality is that lobbying remains secretive and closed to external scrutiny, even at the same time as it exerts a significant influence over the formulation and implementation of public policy. I would suggest that the Government keeps at the forefront of its consideration a number of fundamental questions which go to the heart of the industry. Is access to the policymaking process available on an equitable basis? Are relationships between government and outside interests conducted appropriately? How can we be confident that influence does not become undue influence? The public, media and academics are largely excluded from the lobbying world, and thus find it difficult to assess its scale, effectiveness and probity. By contrast, the regulatory system which operates at the federal level in the United States “enables interested parties to discern trends and patterns of interest representation,” and thus provides “a relevant and reliable tool that enables proper scrutiny of the role of lobbying and thus helps to improve the quality of democratic decision-making” (Spinwatch evidence at PASC, 2009b, p 223). Academics are somewhat divided over the effect of lobbying regulation—some rational choice theorists (Brinig et al, 1993; Ainsworth, 1993) suggest that regulation here as in other fields of activity should be regarded as constituting a barrier to entry, so that as lobbying regulation increases in severity some interest groups will as a result decide that the costs of regulation are such that it is
preferable not to lobby and thus rule themselves out of any registration scheme. Others (see Hamm et al., 1994) argue that the more rigorous a regulatory model is, the more lobbyists will be “captured” by it and so there should be increased levels of registration. My own view is informed more by research conducted by Gray and Lowery (1998) pointing towards a middle ground—regulation appears to have minimal impact upon the number of groups which register lobbying activity, but rather serves to provide a fairly reliable census of the lobbying community and thus contributes to making lobbying more transparent and accountable. The perfect lobbying regulation does not exist anywhere, but some regulation is always better than none—and a well-crafted framework which provides for meaningful disclosure by all lobbyists is the least that a transparent democracy demands.

5. I believe it is appropriate to take this opportunity—as indeed all lobbyists should seize every opportunity—to assert the view that lobbying is an honourable and legitimate activity. Too often, lobbyists fail to defend and promote their industry and thereby allow others to define lobbying as unsavoury or corrupt. I personally see one of the great benefits of regulation as being that it offers lobbying a necessary first step on the path towards enhanced public acceptance and recognition of their work. Misperceptions about the nature and role of lobbyists make it difficult for lobbyists themselves to explain what they do and how that work contributes to democratic policymaking. Lobbyists should from now on be willing to become more vocal in articulating the value of their services—not simply to their client or employer, but to policymakers and the wider public policy arena. It is through the effective representation of socio-economic interests that we enjoy vibrant and pluralistic public policy discourse. The formulation of sensible and well-balanced policy absolutely depends upon the provision of insightful data and perspectives from those groups which are most affected by any particular legislation or regulation. The opening paragraph of the PASC report acknowledges the important role played by lobbying: “The practice of lobbying in order to influence political decisions is a legitimate and necessary part of the democratic process. Individuals and organisations reasonably want to influence decisions that may affect them, those around them, and their environment. Government in turn needs access to the knowledge and views that lobbying can bring” (PASC, 2009a, p 5). Lobbyists are central to the debates which shape all our lives, and ought to demonstrate leadership in framing public attitudes towards the industry.

QUESTIONS POSED BY THE COMMITTEE

6. If I may, I should like to outline only very briefly here answers to the specific questions which the Committee has posed regarding the consultation process, although I then go on below to detail at greater length my views about the substance of a future regulatory scheme:

— **Does the Government's consultation paper represent a balanced approach to the idea of a statutory register?** Frankly, I take the view here that the Government’s consultation exercise has been mishandled throughout. The written evidence already presented to the Committee by SpinWatch details the one-sided nature of the Cabinet Office’s engagement with interested parties up to this point. I do not believe that the Government has an open mind on what legislation will result at the end of this process; I do not believe that the Government’s clearly preferred options are the correct ones; and I do not believe that the path which the Government intends to take will do a great deal to meet its stated objective of enhancing transparency.

— **Does the consultation paper contain the right questions?** The Government has unfortunately chosen to frame the issues in such a way as to entirely skew the outcome. It focuses on a small number of supposed problems and solutions which bear little relation to the reality of the lobbying industry. The Government repeatedly seeks to narrow debate on the central questions around who should be regarded as a lobbyist, what material they ought to disclose, and how the regulatory system should operate.

— **Which lobbying contacts are of greatest legitimate public interest?** Personally, I find it difficult to comprehend why the Government is so insistent that it is only necessary for perhaps one-quarter of the lobbying industry to be registered. What is needed if regulation is to have any impact on public confidence in the integrity of the policymaking process is for all lobbying contacts to be registered. Incidentally, I should stress now—although this point will be evident throughout my submission—my view that the debate ought to be about regulation of the lobbying industry not merely registration. What is important is that mechanisms are developed by which to enhance ethical standards; what the Government proposes is little more than a marketing directory.

— **How should the Government deal in policy and practice with how it might be lobbied on the issue of a statutory register of lobbyists?** How should the Government analyse the consultation responses, and seek to balance the weight of opposing argument? Unfortunately, the Government’s record to date of listening to opposing views on this issue has been disgraceful. If its consultation process is to be credible, the Government will need urgently to begin demonstrating that it is willing to at least engage with alternative perspectives.

— **Do you have any comments on how any proposals emerging from the consultation should be implemented?** If the Government presses ahead with its current proposals, it will hardly matter how this is implemented—it will scarcely differ from the existing system of voluntary self-regulation which is virtually worthless. However, I discuss below how I believe an effective and useful registration and regulation system could be managed.
RED HERRINGS TO BE GUARDED AGAINST

7. The consultation paper provides some evidence that the Government has already allowed itself to be persuaded by various red herrings offered by those who seek the weakest possible form of regulation:

— *Regulation could impinge upon the ordinary right of the citizen to contact their elected representatives.* This is something of a smokescreen in my view—I know of no evidence from any nation with lobbying regulation that this has actually occurred. All that is required is that the statutory definitions of “lobbying” and “lobbyist” are written clearly (perhaps by including a reference to lobbyists being paid or employed to lobby) so that citizens acting on their own behalf rather than as a function of their employment are explicitly excluded from the scope of regulation. The consultation paper is concerned not to impede the “essential flow of communication” between external interests and government (Cabinet Office, 2012, p 9). We have here an example of the sort of irregular verbs with which Bernard Woolley was so adept in *Yes, Minister*—“I engage in the essential flow of communication; you are a lobbyist; they are corrupt despoilers of democracy.” Any direct communication between a lobbyist and a policymaker must constitute lobbying: there ought to be absolutely no difficulty here.

— *Registration is burdensome and bureaucratic.* Many lobbyists privately assert the danger of creating an “expensive bureaucracy”, and the consultation paper talks of regulation as “an obstacle … and undue burden” and as “costly and unnecessary” (Cabinet Office, 2012, pp 9 and 10). This ignores the fact that lobbyists in other jurisdictions apparently are able to register without undue difficulty. Most lobbying organisations presumably already hold the records of their lobbying activities and expenditure in the normal course of their internal operation and accounting. It is likely that the time involved in preparing this information in whatever form would be specified by a new regulatory regime would not be onerous—and certainly the benefits to wider accountability and transparency disproportionately outweigh the costs to each lobbying organisation.

— *Voluntary self-regulation can adequately provide for the imposition of penalties against those who breach internal codes of conduct.* In its consultation paper, the Government asserts that the setting of ethical standards is “a matter for the industry itself, not for the operator of the register” (Cabinet Office, 2012, p 15). The groups representing lobbyists can argue that self-regulation is not merely a pragmatic compromise or necessary evil, but rather that it represents a sincere attempt by professionals to uphold consistent and appropriate standards of behavior. The establishment of the APPC was a commendable and responsible reaction to scandals by those consultancies which were keen to defend the ethical conduct of lobbying. The APPC is in large part the reason why the political consultancy sector in the United Kingdom is as effective as it is, and for that it deserves credit. Self-regulation, however, is inevitably problematic—it applies only to those firms or practitioners who choose to join the groups which make up UKPAC; it is self-regulation by the lowest common denominator; it is essentially toothless in terms of enforcement; and it creates little new information accessible by the general public. As the APPC itself notes, “The activities of political consultants account for only a very small part of the lobbying world” (PASC, 2009b, p 139). Why then should a regulatory scheme be built around the self-regulation model preferred by the APPC/UKPAC rather than introducing a mechanism capable of encompassing all lobbyists?

ESTABLISHING THE PURPOSE OF LOBBYING REGULATION

8. It would be helpful if the Government clearly and explicitly stated what problem a system of lobbying registration is designed to address. From this, all else then follows. If the problem is illegal/corrupt behaviour, that suggests one set of answers. If the problem is that some lobbyists are regarded as less worthy than others, then an alternative system may be more appropriate. In my view, the fundamental problem is a lack of public transparency and the regulatory mechanisms which are established should be directed towards the following formulation:

> “Who is attempting to influence whom, on whose behalf, over which public policy issue, through which means, and using what resources?”

If we end up with a model of regulation which enables the citizen to answer that question, the UK will then have a system which is fit for purpose by making lobbying more transparent and policymakers more accountable.

9. That sort of level of disclosure would in my view be entirely appropriate and benefit all stakeholders (Cohen-Eliya and Hammer, 2011; Holman and Luneburg, 2012):

— *Policymakers* can more easily determine which groups have lobbied on a particular issue and are thus in a better position to assess whether an equitable range of views have been taken into consideration during the policy formulation process.
— Lobbyists currently spend a great deal of time simply trying to discover which of their competitors have been active on an issue, and would more easily be able to determine whether it was necessary to attempt to counteract such lobbying which would otherwise be conducted in secrecy.

— The public could be better reassured that policymaking was conducted in an open and legitimate manner free from any appearance of corruption.

**THE SCOPE OF LOBBYING REGULATION**

10. If the experience of lobbying regulation in other nations has any lessons applicable to the UK, the first of these is surely that neither voluntary regulation nor self-regulation are effective. In the United States, the 1946 Regulation of Lobbying Act established that those whose principal purpose was to influence legislation were required to register with congressional authorities, providing fee income and lobbying expenditure as well as details of the specific legislation which was being lobbied on. The obvious weakness here was that most lobbyists simply decided that lobbying was not their principal purpose, but merely secondary to whatever other services they provided, and as a result only perhaps one-quarter of all lobbyists chose to register. Similarly, only a minority of Brussels lobbyists voluntarily register under the European Transparency Initiative scheme.

In the UK, the consultancy sector has made what I regard as a genuine effort to provide for self-regulation through the formation of the Association of Professional Political Consultants (APPC). However, it undeniably suffers from the reality that not all consultancies choose to join the APPC, and even if all did, they would represent only something in the region of one-quarter of the total industry.

11. Universal coverage of the lobbying industry is essential to the public interest going forward into the future. The benefits of regulation—to policymakers, to the public, and to lobbyists themselves—should encompass the entire industry, and that is simply not possible through voluntary self-regulation. It can only be achieved by creating a common system which encompasses all those who engage in lobbying, irrespective of the type of organisation at which they work: not just commercial consultants, but also dedicated in-house lobbyists; not just business interests but also law firms, management consultants, trade unions, campaigning bodies and pressure groups, churches, charities, NGOs and public sector bodies. If it is appropriate for consultants to be subject to some form of regulation, it is clearly appropriate for all others who are engaged in lobbying to similarly be regulated. As the Committee on Standards in Public Life puts it, “to be properly effective, cross-industry self-regulation standards … need to apply to all main players” (PASC, 2009b, p 188).

The difficulty here is that only a mandatory system can realistically encompass all lobbyists. Pross asserts (2007, p 33) that: “while it may be possible to mount a lobby registration scheme on a voluntary basis, in the final analysis its success will depend on a level of enforcement that can only be achieved at the governmental level. Only government has the authority to require lobbyists to divulge information. Only government can require officials to report the failure of lobbyists to comply with the rules. Only government can investigate such failures and prosecute breaches of the rules. Only government can impose sanctions such as the denial of access.”

12. If the purpose of a lobbying register is indeed as I have defined it in para. 8 above, then that objective can only be met through a statutory—mandatory—register of all professional lobbyists. The Government would do well to heed the PASC report, which thoroughly dismissed the idea of a voluntary register on the grounds that unless registration is compulsory then those “who wish to hide the nature and scale of their activity” (PASC, 2009a, p 52) could continue to do so. Anything short of full coverage would result in “uneven and partial information of no real benefit to those wishing to assess the scale and nature of lobbying activity” (PASC, 2009a, p 52). The public interest in exposing lobbying to the glare of publicity requires that all lobbying is conducted under equal conditions of transparency. It is vital, in my view, that the Government focus its attention on “paid lobbyists” rather than on “paid consultants”. I believe it would be a tragic mistake if the Government were to arbitrarily decide that some lobbying (by commercial consultants) is “bad” and other lobbying (by firms and civil society) is “good”. Frankly, many charities are better resourced in terms of public affairs than many companies. The true value of a register is that it could record all lobbying activity across all policy issues by all those interests which seek to influence government on a professional basis. Anything less than that will inevitably drive lobbyists to find ways of avoiding registering, and will fatally undermine any chance that regulation can help to promote public confidence and trust in the wider political system.

**DEFINING “LOBBYING” AND “LOBBYIST”**

13. What particular activities, then, should be regarded as constituting “lobbying” and thus subject to registration? It should be noted that there is scope for a legitimate and honest debate around this point, and that such debates have indeed stalled efforts at lobbying regulation in other jurisdictions in the past. As Greenwood and Thomas (1998, p 489) note, “Many legislative attempts to regulate lobbying have foundered on definitional terms.” Any system of regulation which aims to be both meaningful and fair must apply to all those who seek to influence public policy on a professional basis. Analyzing a range of definitions used in various jurisdictions, Pross (2007, p 15) notes that definitions are the foundation of a regulatory regime, and must be “clear and unambiguous… and robust enough to support legal challenges.” One clear lesson to be learned from the experience of the European Transparency Initiative derives from the evident mismatch between an academic analysis on the one hand showing that the system is almost at the bottom of a “league table” of worldwide regulatory regimes in terms of its severity or rigor (Chari et al, 2010), and on the other
hand the experiences of many Brussels lobbyists who have genuinely struggled to know how best to register. Both perspectives are correct—ETI is relatively lax in that it is voluntary and is associated with only weak incentives to register, but equally the fact that the European Commission chose to leave it up to practitioners to decide what information to register means that lobbyists in Brussels must arrive at their own methodologies for determining what to count and not count. Perhaps, even if counter-intuitively, the more tightly-defined a regulatory regime is the easier in practice it is for lobbyists to comply with.

14. It is of course worth noting that the challenge of formulating acceptable legal definitions of “lobbying” and “lobbyist” is one which a number of other jurisdictions have already managed to overcome, and naturally the Government will want to examine these carefully. Most lobbyists work in-house rather than in consultancies; most do not have the word “lobbyist” in their job title; many will have other functions in addition to lobbying. Many people will spend only a small fraction of their time on lobbying activities, yet their interventions could be crucial to the outcome of a policy decision. In my view, the most crucial issue is to arrive at an explicit statement of what constitutes “lobbying”—once that is established, then all those who undertake “lobbying” on a professional basis can be regarded as “lobbyists”. The Government has considered a range of definitions employed in the United States, Canada, the EU and Australia. Perhaps it might be useful if I draw the Committee’s attention to the discussion around this issue which is currently taking place in the Republic of Ireland. The coalition Government in Ireland consists of two parties—Fine Gael and Labour—both of which have in the past published detailed proposals on the regulation of lobbying; Fine Gael (2010) has published a draft Open Government Bill which includes provision for lobbying regulation, while the Labour Party (2008) did unsuccessfully introduce a Registration of Lobbyists Bill. The Irish Department of Public Expenditure and Reform has held a consultation exercise which closes on 29 February 2012, and intends to introduce legislation later this year.

15. Lobbying is defined as either “communication with a public official” or “arranging a meeting or other form of communication between a public official and any other person” in an effort to influence policy (Fine Gael, 2010, p 76). This narrow definition, in my view, excludes too much activity. I would suggest that UK legislation ought to recognise that “lobbying” can also include the whole range of preparatory work which all lobbyists undertake prior to actual direct communication. One of the clichés of lobbying—but no less valid for that—is that every hour of direct contact first requires 10 hours of background research. For instance, the UK Public Affairs Council’s (no date) definition of public affairs states that it includes the provision of “lobbying or advice on lobbying” and “services with intent to assist lobbying, including the provision of monitoring, public affairs and programme support, strategic communications advice, profit raising, decision-making analyses and perception auditing services”. Any legislation which is ultimately introduced would be significantly strengthened if its scope was widened such that this type of activity was captured by the definition of “lobbying”. Communication with a public official is defined in the Fine Gael draft Bill (2010, p 76) as lobbying if its purpose is “an attempt to influence” a legislative proposal by a Minister, TD or Senator; or the “introduction, defeat, passage or amendment of any Bill or resolution” in the Dáil or Seanad; or the “making, revocation or amendment” of a statutory instrument; or the “development or amendment of any policy or programme of a public body” ; or “the awarding of any contract, grant, contribution or other benefit by or on behalf of a public body”. Public officials are said to be (Fine Gael, 2010, pp 75 and 76–77) Ministers, TDs, Senators, the Attorney General, staff employed by TDs, Senators or political parties, ministerial special advisers, and the directors of public bodies. One glaring omission from this list is that civil servants are not defined as public officials and thus communicating with them would not constitute lobbying under the terms of the draft Bill. By contrast, the Labour Party Bill included the phrase “a person who occupies a position of employment in a public body” and defined public bodies as including government departments (2008, p 4), so that civil servants were included.

16. The Fine Gael text defines a “lobbyist” as “a person who engages in, or assists a person who engages in, lobbying” (2010, p 76). That would seem to suggest that, for instance, a lobbyist’s secretary who types their letters to TDs is assisting in lobbying and therefore is also considered to be a lobbyist, which presumably is not what the party actually intends. It may be that substituting the word “advises” instead of “assists” would better capture the sense of including those who actively engage with the policymaking process. So, for example, the UK Public Affairs Council (no date) defines lobbyists as “those who, in a professional capacity, work to influence, or advise those who wish to influence, the institutions of government”. The UK Government argues that the UKPAC definition is insufficiently rigorous as it would unnecessarily capture those who advise lobbyists (Cabinet Office, 2012, p 22). However, the Government reaches this view by quoting only part of the UKPAC definition. In the consultation paper (Cabinet Office, 2012, pp 21–22) the Government fails to note that UKPAC defines advisors not simply as “those who provide any services to lobbyists” but much more tightly as those who provide “services with intent to assist lobbying” (UKPAC, no date). Legislation could certainly be framed so as to include those who advise lobbyists in respect of lobbying, but exclude those who advise lobbyists on non-lobbying matters.

17. Fine Gael has also said that the system “applies only to those individuals that are paid to lobby. People who are lobbying on a voluntary basis are not required to register” (Fine Gael, 2010, p 27). However, the text of that draft Bill does not specifically include language which would exempt volunteer lobbyists or citizens lobbying on their own behalf by defining “professional lobbyists” in part as those who receive some payment for their activities. It would be useful to insert language similar to that contained in the Labour Party Bill which explicitly dealt with paid professionals rather than volunteers or citizens—contract lobbyists were those...
who lobbied “for payment or any other consideration, on behalf of another person” (2008, p 5), and in-house lobbyists were those for whom “a significant part of [their] functions as an employee is to engage in lobbying activities with public officials on behalf of the employer” (2008, p 7). In its consultation paper, the UK Government seeks views on possible thresholds of activity which could trigger registration. If one of the defining characteristics of a lobbyist is the amount or proportion of their time which is spent on lobbying activities, then legislation ought to be explicit on this point. A phrase like a “significant part” is not sufficiently precise, and will inevitably result in some lobbyists deliberately avoiding registration. One option would be to introduce a relatively low threshold, such as if 10% of working time is spent on lobbying activities. More straightforward may be to state that all who spend any time lobbying must register. Those groups which lobby infrequently will presumably not have many contacts with policymakers and thus should not find registration problematic.

18. The Government has also asked for views on the provision of financial information. My own view is that some indication of fee income or lobbying expenditure would be useful in the interests of transparency. However, I do not believe that it should be used as a means by which who is defined as a lobbyist and who is not. One of the lessons of the European Transparency Initiative in Brussels is certainly that if insufficient guidelines are given on precisely what activities are to be registered, it then becomes very difficult for organisations to know what to count and what not to count. Unless every registrant is able to use a single, clear method of calculation, then the registered information does not enable observers to make safe assumptions about an organisation’s lobbying activity or to compare the level of activity across a range of organisations. Registration risks becoming meaningless—or worse, misleading—unless it provides a fair representation of who does what and with what resources. On the other hand, though, it cannot credibly be argued that financial disclosure would hinder the competitive development of the lobbying market—we need only look to the US to see that lobbying organisations are perfectly able to supply financial information without undermining the industry. For a regulatory scheme to operate with no reference whatever to financial issues ensures that critics will continue to be dissatisfied with the extent of transparency and accountability it provides. More importantly, though, the absence of any financial information may make it more difficult for the wider public to have confidence in the regulatory framework. Unhelpful, and frankly inaccurate, myths about lobbying can develop when what appears to most people to be relevant information is not available. A total lack of financial disclosure would therefore hinder the industry in the future as it seeks to engage more positively with public opinion and to build a reputation for openness and accountability.

**Lobbying Information to be Disclosed**

19. The register should be framed in such a way as to require only that information which can be provided with relative ease, and only that which is “of genuine potential value to the general public, to others who might wish to lobby government, and to decision makers” (PASC, 2009a, p 52). In my view, the information which should certainly be disclosed would include:

- The individual lobbyist’s name and address and those of the client or employer on whose behalf lobbying was undertaken.
- The public bodies which were lobbied: the names of all policymakers with whom a lobbyist communicated should be disclosed in the interests of helping to hold the Government to account. Publication by government departments of their meetings with external groups is not an adequate substitute for lobbyists being obliged to be open about their activities.
- The issue which was lobbied on: it would be useful if the language used in the Government’s legislation is clear that lobbyists must record as precisely as possible the specific issue being lobbied on (such as identifying the particular Bill or regulation) rather than allowing lobbyists to simply record a broad policy area. Just as consultancies have multiple clients, so too do many firms, charities and other organisations have multiple issues on which they lobby. Transparency requires that we know as precisely as possible the subject matter bring lobbied on.
- Details of any public funding received by the organisation being lobbied on behalf of.

20. In addition, it would be sensible to include in the legislation some phrase such as “any other matters as may be prescribed by the regulator for the purposes of enhancing transparency and accountability in the policymaking process”, so that the capacity for the system to evolve over time is built into the law. Other jurisdictions compel lobbyists to disclose information about either their fee income (for consultancies) or their lobbying expenditures (for other organisations). My own view on balance is that this sort of disclosure has not proved to be excessively commercially sensitive in the United States, and it is an area where perhaps the Government could consider a range of options. It would, for instance, be reasonable to allow a lobbyist to indicate specifically those clients for whom work was being undertaken on a pro bono basis. Other items of information which could usefully be included in any list of the material to be disclosed include: listing any public offices the lobbyist has formerly held; listing any trade associations, professional bodies or advocacy coalitions through which the organisation undertakes any of its lobbying activities; a summary of the lobbyist’s position on the policy item which was the subject of the lobbying; details of any expenditure by lobbyists on secondary bodies or individuals; copies of all submissions made to policymakers; and a record of all meetings and correspondence between lobbyists and policymakers (see the written evidence of the National Union of Journalists at PASC, 2009b, p 220; and that of Spinwatch at PASC, 2009b, p 221).
21. One interesting proposal in the House of Commons Public Administration Select Committee report was that a register should go beyond providing the bare details of contacts between lobbyists and policymakers, by using “diary records and minutes of meetings” so that the public can “see what contacts are taking place, and to reach a reasonably informed judgement as to whether decision makers are receiving a balanced perspective from those they are meeting” (PASC, 2009a, p 54). The idea is further developed in the US context by Lee Drutman who has proposed that the Library of Congress could set up an online database of lobbying material (similar in nature to the THOMAS system which the LoC already operates as a legislative database). Drutman suggests that each piece of new legislation would have its own section on the system—lobbyists would state on whose behalf they were acting and the organisation’s position on the Bill, and could additionally upload supporting documentation and position statements. He foresees the system also being used by constituents who wish to record their opinions, and by members of Congress to explain their position on the legislation. In this way, congressional staffers, journalists and lobbyists could easily learn about the full range of views being expressed on any Bill. Drutman notes (2011, p 9) that, “In defending their profession, lobbyists frequently argue that much of what they do is to make government more effective by providing valuable policy expertise. If that is indeed the case, lobbyists should welcome the opportunity to participate [in this database].” Moreover, they could be encouraged to participate if congressional staffers and members decided only to meet those lobbyists who were already publishing their argumentation on the database so that it could be publically supported and challenged by others.

22. The Irish Labour Party’s Bill included one particularly innovative proposal which has the potential to significantly expand the value of the information disclosed. It would have required lobbyists in Ireland to “identify any communication technique (including appeals to members of the public through the mass media or by direct communication that seek to persuade members of the public to communicate directly with a public official in an attempt to persuade the public official to endorse a particular opinion) that the person has used or expects to use in an attempt to influence that matter” (Labour Party, 2008, pp 6–7). If such a proposal was actually enacted in the UK, it would throw considerable light on the process of grassroots lobbying and I urge the Government to include this in the legislation it produces.

23. I would particularly highlight one further idea which would significantly increase the value of disclosure. During the PASC inquiry, the Association of Professional Political Consultants argued that comprehensive regulation would need to “cover people who lobby on an ad hoc basis, such as the company director who has a lunch with his local MP” (PASC, 2009b, p 142). A corporate CEO may typically spend only a few days a year lobbying policymakers, but the APPC is correct to highlight the potential importance of such interactions. The opportunity exists now for the UK to implement a truly original element of lobbying regulation. I would suggest that any organisation which is obliged to register its lobbying activities must record all such contacts between the organisation and policymakers. If anyone in an organisation meets the definition of a lobbyist, then all lobbying undertaken by everyone in that organisation ought to be recorded. In practice, this could be done quite simply: for those groups which register multiple lobbyists, one would be designated as the primary respondent (and naturally if an organisation only registers one lobbyist then he or she is by default the primary respondent) who has the responsibility of ensuring that all contacts between non-registered employees and policymakers are recorded in the register.

The Management of a Regulatory System

24. While it is obviously important how legislation is framed, it is equally vital that the introduction of lobbying regulation means more than simply ticking a box to say that one of the pledges contained in the coalition agreement has been met. Unless the Government demonstrates as firmly as possible that regulation will be continuously enforced over the long-term, then some lobbyists will seek to evade it. I would suggest that the most appropriate process by which to ensure this is: 1) that the Government prioritise the introduction of legislation establishing which body will be responsible for overseeing the regulatory system; 2) that once the legislation is enacted the register comes into effect with lobbyists disclosing whatever fundamental items the Government considers essential to transparency; and 3) at the same time, the new regulator holds a time-limited open consultation period with all interested stakeholders intended to inform him or her in the task of drawing up more detailed rules concerning the practice of lobbying and operational procedures.

25. The register must be available for public inspection, and indeed it would be helpful if legislation specified that it must be freely accessible on the internet. The regulator should be required to produce an annual report on the operation of the register, given adequate powers to investigate suspected breaches of the legislation, and obliged to publish a report on each investigation which was undertaken. The draft Bill published in Ireland by Fine Gael’s states that a criminal offence would be committed if “an unregistered person [engages] in lobbying on behalf of a commercial undertaking” (2010, p 77), which may be a useful provision in UK law. Legislation must also specify any penalties which an offence under the law would attract, and this ought to range up to imprisonment and/or substantial fines for the most serious transgressions. One interesting idea which the regulator may consider relates to the current self-regulatory requirement that lobbyists are honest and do not mislead policymakers: while none have yet passed, Bills which would make it a criminal offence for a lobbyist to lie to a legislator have been introduced in a number of American states, including Arizona (KTAR News, 2009) and Georgia (Savannah Now, 2008). The Government could consider giving the regulator power to levy specific penalties on those found to have provided policymakers with false or misleading information.
26. In its consultation paper, the Government proposes that lobbyists should update their registrations on a quarterly basis. Personally, I can see no reason given existing technological capability why registration should not happen as close to real-time as reasonable, but certainly within 10 working days of any material change. Indeed, Lanny Davis (a former White House adviser to Bill Clinton) has suggested harnessing technology to make US lobbyists’ registration entirely current. Under his proposal (Davis, 2008), in advance of every meeting with a policymaker, every lobbyist should have to register their name and that of their client or employer, the specific reason for the meeting and the legislation or policy issue to be discussed, the lobbyist’s position on that issue, the specific action which the policymaker will be requested to perform and details of all campaign contributions which have flowed from the lobbyist and/or client to that policymaker. Then, as the lobbyist arrives for the meeting, he or she would be obliged to sign in to a real-time computerised log to confirm that the meeting is actually taking place. In Davis’ view this “total transparency” would be burdensome but he suggests that US lobbyists would simply have to learn to live with it as they have learned to live with current rules, and that any bureaucracy is more than outweighed by the public benefit provided by such blanket accountability.

27. Five points regarding the regulatory system are absolutely crucial in my view and should be highlighted:

   — To be as useful as possible, the register ought to be internet-based and be easily searchable so that all citizens have access to the information, and it does need to be based upon a reliable IT platform. One of the lessons of the current register of the UK Public Affairs Council is surely that this is not something which can be done cheaply if it is to function properly. The Government will need to invest significant resources to get such a system established, but we will all derive benefit from having an effective register. Lobbyists should be required to file their registrations and other material electronically.

   — Pross has stated (2007, p 39) that “the autonomy of the [regulator] is essential to ensuring the continued integrity of lobby regulation.” The regulator should be independent of both the Government and the lobbying industry if it is to have the credibility required to help enhance public confidence in our policymaking process.

   — A range of penalties—from censure to more substantial measures—must be available to the regulator and/or the criminal courts for non-compliance with the system, on a sliding scale so that minor offences can be reasonably dealt with and serious transgressions are liable to significant punishment.

   — Clearly, there will be a financial cost attached to the establishment and maintenance of any regulatory system—particularly in terms of IT and staffing. To some extent, this is part of the price of an open and vibrant democracy and the Cabinet Office should not shy away from making the case for public investment. Equally, though, I believe that it is appropriate that lobbyists themselves contribute to the cost of the register, through an annual registration fee of perhaps £200–300 per individual registrant.

   — It is important that the legislation grants wide-ranging power to the regulator to modify and update the rules concerning the practice of lobbying in as flexible a manner as possible. No regulatory model is perfect, and some lobbyists will certainly seek to identify any possible loopholes. The regulator needs to be able to close these quickly, and to learn from the evolving lessons of his or her counterparts in other jurisdictions. What the loopholes in UK legislation will prove to be is almost impossible to predict, but there will inevitably be loopholes and the regulator must be in a position to respond to them. For instance, in 2010 lobbyists in Texas began to avoid lengthy queues to enter the state Capitol by applying for firearms permits so that they could then make use of a separate entrance (Ward, 2010). That will not be an issue here, but the underlying point remains that some lobbyists are adept at finding new ways around existing rules.

28. One of the more innovative elements of the report of the Public Administration Select Committee was the recommendation that lobbyists should establish a “single umbrella organisation with both corporate and individual membership, in order to be able to cover all those who are involved in lobbying as a substantial part of their work” (PASC, 2009a, p 42). The purpose of the organisation would be centred around the promotion of “ethical behaviour by those involved in lobbying” (PASC, 2009a, p 42). The new body should be funded by lobbyists, but its management should be undertaken at least in part by “people from outside the lobbying world with a track record in regulation and in business ethics” (PASC, 2009a, p 42) both so that an element of external expertise can be injected into the group and to guard against a tendency to defend rather than punish any members found guilty. The Committee proposed that the group must apply more rigorous external expertise can be injected into the group and to guard against a tendency to defend rather than punish any members found guilty. The Committee proposed that the group must apply more rigorous external expertise can be injected into the group and to guard against a tendency to defend rather than punish any members found guilty. The Committee proposed that the group must apply more rigorous external expertise can be injected into the group and to guard against a tendency to defend rather than punish any members found guilty. The Committee proposed that the group must apply more rigorous external expertise can be injected into the group and to guard against a tendency to defend rather than punish any members found guilty. The Committee proposed that the group must apply more rigorous external expertise can be injected into the group and to guard against a tendency to defend rather than punish any members found guilty. The Committee proposed that the group must apply more rigorous external expertise can be injected into the group and to guard against a tendency to defend rather than punish any members found guilty. The Committee proposed that the group must apply more rigorous
29. I would urge the Government to consider again whether such a body might be useful in the lobbying industry, and if so how to encourage the industry to begin to take the idea forward. I have previously urged the industry to take the initiative itself to establish an organisation of this nature, stressing the need for “a single trade association, capable of speaking for the industry with a single voice” (McGrath, 2005b, p 174), and describing the lack of a body open to individual rather than corporate membership which is specific to lobbyists rather than to the general public relations industry as “a serious gap which needs to be closed by lobbyists themselves establishing their own group” (McGrath, 2005a, p 131). One of the benefits of a mandatory register is that we would have a comprehensive list of all professional lobbyists in the country; perhaps it would be possible to devise a means whereby the annual registration fee included a component which would be taken as a membership fee for a mandatory trade association representing lobbyists and focusing on driving up ethical standards. Such a body has the potential to drive the whole industry forward positively and to boost public confidence in the lobbying industry. Peter Bingle (Chairman of Bell Pottinger Public Affairs) told the PASC Committee that: “One of the issues for the industry is to have somebody talk on its behalf who is a skilled communicator, who can actually get across what we do and be proud of our industry and that would encourage a higher quality of person coming into it” (PASC, 2009b, p 71). That sort of proactive promotion of the industry would surely be a key function of such a trade association.

30. Among the challenges facing the industry are: a need to communicate more effectively to the public about the proper role of lobbying in a democracy; the development of rigorous ethical standards; the ability to offer some form of redress to lobbying clients serviced by shoddy or substandard consultants; and the creation of a training scheme for lobbyists. The third of these items reflects a concern over what Norton (1991, p 65) terms “consumer accountability”—on what basis should a potential client or employer hire someone and how will they judge the quality of the services they receive? Charles Miller (a senior UK lobbyist who would later become a driving force in the Association of Professional Political Consultants) argued (1991, p 166) that lobbyists have a “duty to be properly qualified for the work at which they are representing professional expertise.” This area alone could provide a large work agenda for a new umbrella organisation. An inclusive trade association would enable lobbyists to begin to exercise vocal and vigorous leadership of their profession. It could begin to educate both policymakers and the general public about the valuable and legitimate role which interest representation plays in policy formulation. A strong professional association representing all lobbyists could institute a mandatory ethics training programme, and cooperate with higher education and in-career training providers to both accredit relevant degree courses and provide programs of continuing professional development for lobbyists. It could instil in individual lobbyists a strong sense of professional identification and an appreciation of why membership of a representative body is important. It could undertake a series of strategic media relations and of targeted outreach to civil society; it could work with academics to produce best practice guides for practitioners; it could cooperate with other professional groups in other jurisdictions to ensure that lobbyists in the UK are better able to network with their counterparts internationally; and it could establish a mentoring scheme whereby younger professionals could benefit from the experience of more established colleagues. An agenda of this type would enable lobbyists acting together to make substantial progress towards gaining greater public acceptance of the industry (McGrath, 2005a).

31. It is surely not credible for lobbyists to argue—though some continue to do so—that there is no reason to believe that the industry has a reputational problem. There may be no empirical evidence for this in the UK, but that is likely to be simply because the public here have not been polled on their attitudes to lobbying and lobbyists. By contrast, this is a question which is asked in the United States, and even given the many differences between the US and UK political systems the results are enlightening and should be troubling for UK lobbyists. The most recent annual opinion poll conducted in the US by Gallup (2011) into how various professions are perceived by the public revealed—as usual—a profound distrust of lobbyists. Only 7% of respondents at the end of last year rated lobbyists’ honesty and ethical standards as high or very high, while 27% considered lobbyists to be average, and 62% rated them as low or very low. By contrast, the scores for nurses—the top ranked profession—were 84%, 15% and 1% respectively. Lobbyists had almost exactly the inverse rating of high school teachers who had a positive score of 62%, an average rating of 29% and a negative score of 8%. Lobbyists have always performed badly in this survey, which has been conducted annually since 1990. Of the eight worst ratings historically, three of those slots were obtained by lobbyists. The sole bright spot for lobbyists in 2011 was that although they generally get worse scores than any other profession, last year they were only second worst as Members of Congress are held in slightly less esteem—7% of respondents believe their honesty and ethical standards are high or very high, 27% gave them an average rating, but fully 64% said that Members of Congress have low or very low ethics. Prior to the 2011 survey, lobbyists were the “most despised profession Gallup has ever tested” with a combined low or very low score of 64% in 2008, but this unenviable record has now been tied by Members of Congress.

32. One additional function of an umbrella organisation could well be that an inclusive trade association would provide a forum through which the regulator could seek the views of industry on potential amendments to the rules concerning the practice of lobbying (though, of course, this should be no more than a purely advisory role).

33. One misplaced assumption is that lobbyists themselves oppose regulation. There is in fact some evidence that individual lobbyists may be more willing to embrace reform than are the leaders of the groups which claim to represent the industry. A survey of 100 UK in-house practitioners in 2005 revealed that 70% of them would support a new professional body specifically for public affairs, with over 60% also backing the
introduction of an industry-wide recognised training program and more than half favouring the development of a public affairs qualification (Hawkins, 2006, p 35). Chari et al (2010) found that the lobbyists they surveyed in Canada, the United States, the EU and Germany were quite happy to register, believing that it brought some benefits (such as good PR and increased legitimacy) to them at relatively little cost. In a similar vein, Holman and Luneburg (2012) found that 26% of US and Brussels lobbyists favoured voluntary registration and 66% preferred mandatory registration, with only 8% opposing registration at all.

34. In its consultation paper, the Government asserts that the setting of ethical standards is “a matter for the industry itself, not for the operator of the register” (Cabinet Office, 2012, p 15). My own view is that such a code does not need to be included in legislation: if one is included it runs the risk of being somewhat anodyne and bland, imposing on practitioners only the most basic obligations. It also becomes set in stone and necessitates a relatively cumbersome process if amendments are required. It may be better to leave the drafting of any code of conduct to the regulator (following a separate consultation process) so that it can be both rigorous and flexible. I would in addition urge the Government of the importance of any code of conduct being directed towards the general public as much as it is towards the lobbying industry. For instance, the APPC’s code of conduct does not even mention the public. Lobbyists must disclose to policymakers the identity of their client, but there is no mechanism by which the public is entitled or enabled to learn who is lobbying whom on whose behalf. The code treats ethical lobbying standards solely as an internal matter for the industry, over which the general public has no right to information. Nothing in the code obliges any lobbyist to make any information at all available to the public, and thus it does nothing whatever to increase general transparency or public confidence in the lobbying process. Hence the APPC code, while well-intentioned, fails to enhance the public acceptability of lobbying or public trust in the policymaking process.

Conclusion

35. I hope that this submission has been helpful to the Committee as it considers how best to respond to the Government’s consultation paper. I strongly support the Government’s commitment to introducing statutory regulation of lobbyists, and urge that this be achieved through the mandatory registration of all lobbyists from all types of organisation. The PASC Report notes that there will always be some resistance from lobbyists to reform: “Commitment to transparency in the world of lobbying is, and always will be, a relative concept. What this suggests is that a degree of external coercion will be required to achieve sufficient transparency across the board” (PASC, 2009a, p 15). Regulation should not be seen as a means by which to attack lobbyists, but rather as a spur to enhance the industry’s standards and reputation. Society has a reasonable need to be able to trust that lobbying is a legitimate activity carried out in a fair and responsible manner. This need can only be met though a combination of transparency, regulation, and education of the public by lobbyists of the valuable role lobbying plays in articulating interests to policymakers. For their own self-interest, if for no more compelling reason, lobbyists should encourage government to develop a rigorous regulatory scheme, as without one they will find it impossible to raise the industry’s standards and its public reputation.

February 2012

References


Written evidence submitted by Political Lobbying and Media Relations (PLMR)

1. Please find below the written submission of Political Lobbying and Media Relations (“PLMR”) in relation to the above. PLMR is a public affairs and media communications agency. We work with organisations across the private, public and voluntary sectors, from SMEs, to large FTSE and NYSE listed firms and major institutions. We specialise in a wide range of sectors, from retail to construction, from the life sciences to IT and green energy, from education to health and social care.

2. We are also unique in having been recognised nationally for giving 5% of net profits to charity. We believe the breadth of our experience makes PLMR well qualified to offer our expertise and assistance to this inquiry.

3. I am the relevant PLMR contact for this matter. I am currently Britain’s top lobbyist (UK Public Affairs Consultant of the Year 2011), was a Lambeth Councillor for nine years 1997 to 2006, and a Parliamentary Candidate in 2005.

4. As requested the main body of PLMR’s submission is less than 3,000 words with numbered paragraphs. Lobbying companies are incredibly misunderstood in this country. Not all are the same. Some think there is nothing to fear from transparency and are proud of what they do. A Statutory Register that is practical and
Executive Summary

Political and Media Relations Submission

1. A simple statutory register that lists clearly the activities of organisations engaging in lobbying activities is now urgent.

2. Political Lobbying and Media Relations (“PLMR”) already meets these requirements and transparency remains at the core of our organisation. There are no longer any excuses for similar measures not to be incarnated across the Public Affairs industry.

3. It is pivotal that government acknowledges that large swathes of the lobbying industry are not confined to third party agencies. Subsequently any upcoming regulation must not only strive to best define with a lobbyist is, but also that it ensures government seeks to avert a situation in which lobbyists are driven to practice their trade through other professional outfits not subjected to the same regulatory impositions. Examples of this include law firms, management consultancies and in-house organisations. If this does not happen, the whole process will lose any credibility, despite the cries of anguish that may be forthcoming from some quarters.

4. The commercial sensitivities of clients must remain protected. The confidentiality between client and lobbyists does not represent a smokescreen to underhanded lobbying practices. It serves to protect commercial interests. Financial disclosure would only serve to drive the lobbying industry underground.

5. Registration must be legally enforced. The statutory register represents a new dawn for the lobbying industry and we must discard the “same old” approach of multiple registers. Bodies such as the APPC, UKPAC, CIPR and PRCA do some great work. But the punishment for contravening the ethical codes of these bodies is losing their respective accreditation. This is not enough. PLMR calls for a simple body, regulated by Parliament, which has set penalties and guidelines.

6. The funding of this register should come from within the Public Affairs industry and at no cost to the taxpayer. Simplicity must be at the heart of this process and bureaucracy has to stay at a bare minimum. It is not unreasonable to ask organisations that lobby to dedicate a set amount calculated via formula to the administration of the Register. This information for Private Companies is readily available for public consumption through Companies House.

7. It is not realistic to record every interaction between lobbyists’ and politicians. This must be placed into context. Politics is an industry like any other, and by the very nature of our work, we come into contact with political figures via political, personal, social, and charitable contexts to name but a few. PLMR’s consultants come from backgrounds in the House of Commons and the Civil Service and have many such contacts with politicians. It would be unworkable and almost farcical to expect every meeting to be logged. In the vernacular what should be achieved is that one “knows where a person is coming from” and by whom an individual is paid for lobbying objectives (within all proper Charity Commission boundaries), supporting educational institutions, and philanthropic ventures, and conveying their messages to government. Alongside the purely commercial lobbying, which is equally valid this cannot be allowed to stop. A key framework must be put in place that allows this fundamentally important work to continue. Lobbying in Britain is a key part of a strong creative industries sector.

8. Lobbying is a noble profession and it does not deserve the opprobrium currently attached to it. There are a large number of companies working in the sector carrying out work that makes a real difference to people’s lives, fighting tobacco, improving health, pushing charitable objectives (within all proper Charity Commission boundaries), supporting educational institutions, and philanthropic ventures, and conveying their messages to government. Alongside the purely commercial lobbying, which is equally valid this cannot be allowed to stop. A key framework must be put in place that allows this fundamentally important work to continue. Lobbying in Britain is a key part of a strong creative industries sector.

9. PLMR draws its staff from a number of backgrounds and we conclude that in our experiences the lobbying industry operates more often than not with the utmost ethical intent. The activities of the more questionable bodies and individuals that lobby, currently operating outside of any form of professional code, should not be used to disgrace the wider industry. A well-considered, all inclusive, and transparent, statutory register that requires universal membership would be a considerable step forward to restoring the confidence of the general public in the Public Affairs industry, and allow us to showcase our work and the positive outcomes it has. Also we urge further consideration of the role of Members of the House of Lords and lobbying, an area that needs further review.

10. PLMR has extensive experience in the sector and this qualifies us to say that compliance is not difficult. An effective consultation process that harnesses the experiences of respected consultancies should reveal the merits of a fully-inclusive lobbyists’ register.
INTRODUCTION

6. Political Lobbying and Media Relations (“PLMR”) was set up in 2005 and provides consultancy services to clients across political lobbying, media relations, crisis management, political and media monitoring, select committee preparation, community consultation and media training.

7. PLMR currently employs 23 staff and is located in Lambeth, London. We work across the UK, including Scotland and Wales, and the European Union, with a further global network of like-minded companies.

8. PLMR is a member of UKPAC (UK Public Affairs Council), the APPC (The Association of Professional Political Consultants), CIPR (Chartered Institute of Public Relations) and PRCA (Public Relations Consultants Association). We apply the UKPAC, APPC, CIPR and PRCA codes to all aspects of our work. PLMR is pleased to respond to the Political and Constitutional Reform Select Committee’s inquiry into “Introducing a statutory register for lobbyists”. We recognise that lobbying is crucial to the democratic process and welcome this investigation as an important step forwards towards finding a solution that restores both public faith and wider credibility in the Public Affairs industry.

The Government’s proposals for a statutory register

9. PLMR recognises that there is need to regulate the Public Affairs industry and that the Government’s proposals are a step forwards towards creating a legally-binding register. However, we feel that the register must be inclusive of all lobbying activities, regardless of whether these are conducted by an agency, charity, trade union or through other in-house operations. Accordingly we feel it is appropriate for government to broaden their definition of a lobbyist.

10. According to UKPAC statistics, currently only 36.3% of all lobbying activity is conducting by a third-party consultancy, and if the register is to be fully inclusive of all lobbying activity, all parties that form an engagement programme with government must adhere to the proposed regulations. An inherent danger remains in only enforcing a register upon Public Affairs Consultancies with this creating an opportunity for organisations to move their lobbying operations in-house, which in-turn creates further complications towards enforcing efficient and effective regulation.

11. We are in agreement with the Government that detailed financial information should not be included on the register. To include this would be to over-simplify the nature of the lobbying industry. Different clients across different sectors require different services, and these vary markedly in delivery when comparing the approaches of various Public Affairs Consultancies.

12. It is paramount that the commercial sensitivities of clients are protected. The system of banding the value of the work carried out in our view undermines confidentiality between lobbyists and their clients. Transparency must remain at the heart of any statutory register and financial disclosure threatens to undermine this by creating a vacuum in which unregistered lobbying practices can flourish.

13. The Government is correct to identify that the issue of transparency has to be addressed. It is important that government goes onto clarify how it intends to enforce registration as to make all lobbying activities compliant to new regulations.

14. We also believe that no current international system offers a “best practice” model and as a consequence government must heed caution when considering the relative merits of these and ensure this consultation considers the implications of any lobbyists’ register. Canada provides an excellent example of this. In 2008, the Lobbying Act was rushed through the Canadian Parliament upon Stephen Harper’s election. One huge implication of this has been disbaring organisations that receive money from government from lobbying activities. In the case of a charity, this fundamentally underpins their ability to best represent and promote the interests of their members.

15. Further clarification must be sought on the interaction between ministers and lobbying firms. It is suggested by organisations keen to restrict the activities of lobbying firms that explicit information on the details of meetings between lobbyists and ministers should be published. This is a breach of confidentiality, and removes the right of privacy to individual organisations who often have sensitive information that should not be available in the public domain.

16. This is not to state that PLMR disagrees that the main purpose of the register should not be transparent. The public has the right to see a list of who is lobbying, and what organisation employs their services. Flexibility should lie at the heart of the register. Clients rarely lobby on “single issues” and consultations are across different ministries, and at regional, as well as national, level. As the Rt Hon David Heath MP recently stated in the House of Commons:

“Some people would take an all-encompassing definition, which would require every one of our constituents who comes to see us in an advice surgery to register as a lobbyist before attending. I think that that would be an over-extensive definition.”

17. It is important to focus on how the Government intends to regulate any register. Currently, PLMR are required under the APPC code to list its clients. Any statutory register should follow a similar approach. The Government must consider what sanctions it will enforce for lack of compliance. To again cite the Canadian...
example, there is little deterrent to lobbying activities which are deemed illegal. PLMR takes issue that if this remains the case, there is little reason for companies that currently do not adhere to the APPC code to continue unsolicited, illegal lobbying practices.

18. Furthermore, we need to stress the importance of this being a fully inclusive register. As previously stated from UKPAC statistics, currently in the United Kingdom, 63.7% of all current lobbying activity is not conducted by a Public Affairs Consultancy. It is our view that if regulation is enforced onto Lobbying companies exclusively, this will merely steer practices in-house and encourage law firms and management consultancies to create unregulated practices that serve the same function.

19. It is also difficult to exact a definition of what constitutes an in-house lobbyist. PLMR urges government to look more closely at this definition. The current proposals will create a two-tier system that to some degree would mirror the current system employed in the United States and fuel unsavoury lobbying practices.

20. Fundamentally, government has approached its consultation in a balanced way by asking lobbyists, and concerned opposition, questions that will hopefully lead to consensus in how to best regulate the industry.

21. We believe that government must be careful of turning the statutory register into a list of “approved lobbyists”. This would create a negative view that certain individuals have privileged access to policy makers, a move the industry can ill-afford in the face of growing public cynicism.

22. There should be some consideration as to the relationship between former office holders and their employment in Public Affairs consultancies. The Canadian Lobbying Act of 1998 stipulates that there should be a three year period between former elected officials entering lobbying work. Although this idea is fine in principle, it again is poorly enforced. A period of prohibition, with the appropriate sanctions, should be given consideration.

**CONCLUSION**

23. PLMR welcomes the Government’s consultation on a statutory register for lobbyists and appreciates that at this early stage its proposals are broad. To restore the credibility of the industry it is vital that efficient regulation around the lobbying industry is created, and we welcome the consultative process.

24. It is pivotal to remember that lobbying is a complicit part of the democratic process and a fundamental part of informing government decisions. It is in the public interest to be aware broadly of these meetings.

25. The Government must define what a lobbyist is. This definition should reflect anyone who seeks to influence government on behalf of a third party organisation, and as such should include in-house, trade union and charity operations in addition to bespoke Public Affairs Consultancies.

26. The Government should also clarify what sanctions it imposes, and how it intends to fund the register.

*February 2012*

**Written evidence submitted by the Taxpayers’ Alliance**

**RESPONSES TO THE ISSUES RAISED IN THE CONSULTATION**

1. The Government is right to point out in the Consultation Paper that lobbying—whether it be by individuals, charities, campaign groups, think-tanks or businesses—is not only a legitimate activity but also one which over the years has done, on the whole, a great deal of good. Lobbying ensures that those drafting laws and regulations are better informed than they otherwise would have been about the potential consequences of their actions, and thereby paves the way for improved legislation.

2. The Consultation Paper goes on to assert that the Government does not want to create obstacles for those involved in necessary interaction with policymakers, nor to regulate (and potentially deter) “the essential flow of communication between business leaders and Government, civil figures, community organisations and Government”, and we welcome these reassurances.

3. The Government could deal with the regulation of lobbying in a number of ways, ranging from the lightest-touch approach to the most heavy-handed system of regulation. In our view, there are four possible approaches, and we discuss the merits of each in turn.

   — Approach 1: No register of lobbyists.
   — Approach 2: A register of those lobbying for third parties.
   — Approach 3: A register of those lobbying for third parties and businesses.
   — Approach 4: A register of everybody lobbying for third parties, businesses and civil society.

4. We support Approach 2, in line with the Government’s position in the Consultation Paper.
Approach 1: No register of lobbyists

5. Some might argue that as long as there is full disclosure of who ministers have been meeting, there is no need for everyone potentially involved in lobbying to be included on a register. The Consultation Paper states that “information about which stakeholders are meeting Ministers to put forward their views on policies is... already in the public domain” by virtue of the publication of quarterly information on ministers’ meetings.

6. But that does not necessarily ensure maximum transparency about “who is lobbying and for whom”, since there are many professional lobbyists who represent a number of different clients. The Government has rightly identified as problematic the fact that some meetings between ministers and representatives of lobbying firms are being recorded without anyone knowing on whose behalf the lobbyist is lobbying.

7. So no register is not an option, especially since the Government is now “committed to introducing a statutory register of lobbyists” as part of its drive towards making politics more transparent.

Approach 2: A register of those lobbying for third parties

8. The second approach—and the one which the Government appears to have judged to be the right one, based on the Consultation Paper—is for any register to cover those companies and individuals paid to undertake lobbying activities on behalf of third party clients.

This is the approach which the TaxPayers’ Alliance favours

9. This means that there is complete transparency when it comes to those companies or individuals who represent a variety of clients, but no unnecessary burden for those who engage in lobbying activities exclusively for a single charity, campaign group, think-tank, community group, trade union, business etc.

10. The Government appears to accept in the Consultation Paper that whenever anyone is employed exclusively to lobby on behalf of one organisation, it is clear whose interests they are representing. To have them sign up to the register would be potentially costly, time-consuming and bureaucratic—and without any additional transparency being achieved.

11. Moreover, if any of those in-house lobbyists are attending meetings with ministers, those encounters are still going to be declared by the minister in the usual way.

Approach 3: A register of those lobbying for third parties and businesses

12. The pressure for a statutory register of lobbyists has largely come about because of concerns about the influence of business interests on the policy process. So it could be argued that the statutory register should also cover those lobbying on behalf of profit-making enterprises. Were this third approach to be taken, for-profit organisations would be covered and not-for-profit groups and individuals (‘civil society’) would be excluded from the need to register.

13. However, it is possible to imagine difficulties with this third approach:

— Imagine Widgets R Us is a successful widget manufacturer in a town in North Wales and the local MP has the Minister for Widgets visiting his constituency and is keen to show off a local success story. The MP and minister tour the widget factory with the Managing Director, who uses the opportunity to lobby the visiting minister for tax breaks for widget manufacturers. Should he be required to register as a lobbyist prior to that extended opportunity for high-level lobbying?

— Likewise, the Association of Corner Shop Owners has tens of thousands of members and a small staff in its London HQ, representing the interests of its members (who run profit-making enterprises). Should all those staff need to register as lobbyists for seeking to do the job they are employed to do, i.e. represent their members’ views to those in power? And what about when an individual member accompanies the staff to meetings in Whitehall: does he or she have to register as a lobbyist as well?

Approach 4: A register of everybody lobbying for third parties, businesses and civil society

14. If the Government were to reject all of the approaches described above, it is hard to see any other remaining viable option except a broad brush catch-all approach that forced anyone involved in lobbying to sign up to the register.

15. We are very concerned that to adopt this fourth approach would be to open a veritable Pandora’s Box of those who would potentially fall foul of the need to register—a move which would have the potential to dissuade some from engaging in public policy debates at all. Consider the questions raised by the putative situations in the following examples:
A think-tank employs a full-time Parliamentary Affairs Manager to take a lead on dealing with government relations who, some might suggest, should be on the register of lobbyists. But what about the organisation’s Director General, who also regularly meets with politicians to push her think tank’s arguments: should she have to register too? And what about the think-tank’s army of researchers with specialist knowledge, each of whom might be called upon to accompany the Parliamentary Affairs Manager to meetings with ministers when their area of expertise is being discussed: would each of them really be expected to register as well?

A teenage boy is outraged at one of the announcements in the Budget and sets up a Facebook page and website for a campaign to reverse the decision. The campaign—let’s call it “Scrap the Window Tax”—hits a nerve, gathers massive momentum and the young man is quoted in the media and ends up securing a meeting with a Treasury Minister to press his case. He has proved himself to be a very successful lobbyist: but wouldn’t he have fallen foul of the law if he had failed to register himself as a lobbyist before embarking on his campaign?

The Government announces plans for an onshore wind farm near a village, so the residents’ association in the village is fired into action to oppose the plans. The Chairman of the association takes a lead in organising meetings with local council leaders and ministers at the Department for Energy and Climate Change, among others, as well as taking charge of briefing journalists and other opinion formers. He doesn’t take a salary but the residents’ association covers all his expenses and travel. Will he be expected to have registered as a lobbyist?

A female pensioner runs a small animal welfare charity in her spare time as a labour of love. She has become well known to the national media who use her as a commentator on animal welfare issues and is a regular protester outside DEFRA, where ministers have got to know her and occasionally engage with her formally on animal issues. Does she need to register as a lobbyist?

The political editor of a tabloid newspaper has strong views on a whole series of issues and regularly runs campaigns in her pages during which she enjoys access to the relevant government ministers to press her case. It is extraordinarily high-level lobbying, so does the journalist need to register as a lobbyist?

**Conclusion**

16. The point we seek to make above is that there are tens, hundreds of thousands, if not millions of “lobbyists” around the country. All kinds of people have reason or desire to try and influence those in power: some are paid to do it, others are not; for some it is part of a day job, for many more it is merely a private passion. Yet we live in a time when many are unwilling to engage with the political process and it would be irresponsible in the extreme to do anything that would hinder or deter that engagement in any way.

17. Any attempt to introduce a lobbyists’ register that goes further than that tightest definitions (Approach 2 and, at a stretch, Approach 3) could result in increasing numbers of people disengaging from the policy-making process altogether, put off by the cost or red tape involved in joining a lobbyists’ register. The unintended consequence of such a move could in fact be a higher concentration of lobbyists acting for third parties dominating the policy space, or the criminalisation of scores of people trying to get their point of view across to those in power.

18. One need only look to the US to see the consequences of heavily-regulated lobbying. The Lobbying Disclosure Act (LDA) has burdened legitimate policy organisations with considerable bureaucracy (forcing them to track how much of each individual’s time is spent lobbying, for example) whilst other groups have restructured to navigate their way around the regulated set-up. Meanwhile, non-partisan think-tanks have effectively been politicised, whilst the net effect of the LDA has been to make it harder for lawmakers to get the advice and counsel of experts who want just that: advice, not favours in return. This cannot be a good thing.

19. In terms of other questions raised in the Consultation:

— We agree there is no justification for demanding that those signing the register should have to declare how much they are paid by the third parties they represent.

— Returns on a quarterly basis seem sensible.

— Those individuals and companies having to sign the register should have to fund it. Assuming that either Approach 2 or 3 is taken, those signing up are from the business community, so taxpayer-funding should not be necessary.

— The register’s operator should have no additional functions besides accurately reproducing and usefully presenting information provided by the registrants.
Assuming that those needing to sign up can provide the relevant details by entering them on a website, the register itself should be relatively cheap to run and there is certainly no justification for creating a mass of associated bureaucracy for the administration of a mere set of online lists. We don’t see why this could not be put within the remit of a Cabinet Office civil servant, rather than creating a new quango to be headed by some grandly-titled appointee earning a six-figure sum, which past history sadly shows us is so often the result of the introduction of a burdensome new set of regulations.

April 2012

Written evidence submitted by UK Deans of Science (UKDS)

1. UK Deans of Science (UKDS, www.deansofscience.ac.uk) is a national body that seeks to represent the individuals, usually formally designated as Deans, who are responsible for science in HEIs across the UK and who generally hold the budgets for science including any research budgets. Its primary aim is to ensure the health of the science base through the promotion of science and scientists and of scientific research and science teaching in the UK.

2. While individual UKDS members have clear views on the issue of lobbyists and lobbying, we feel that many of the questions asked by the Committee overlap into areas of regulation and the political agenda. As a purely scientific and non-political organisation we will therefore restrict our response to a limited part of the call for evidence. We will also make a separate submission to the Government on its consultation.

3. We believe that the Government’s consultation sets out the issues and evidence in an appropriate way and asks broadly the right questions about the introduction of a statutory register of lobbyists. The proposals are expressed in a balanced way and it does not appear that the Government has already reached final and detailed conclusions. However, this leads us to have some concerns, which are explained below in relation to the definition of lobbyists, which affects all aspects of the Government’s proposals.

4. The current proposed definition of lobbyists describes them as being: “those who undertake lobbying activities on behalf of a third party client or whose employees conduct lobbying activities on behalf of a third party client. It may also include certain other categories of person following consultation. It should not mean those who engage in lobbying activities on their own behalf rather than for a client”. We believe that the first and third sentences are sufficient and appropriate to define the type of lobbyists who would be expected to register and whose activities might be kept as part of such a register. However, we are really concerned that following the consultation the middle sentence has the potential to open up the definition to a wide range of individuals and organisations whose inclusion would stifle the democratic process. The Committee may wish to consider our own position as an example of this.

5. The primary aim of the Deans of Science Committee is the promotion of science and scientists within Universities and other Higher Education Institutes in the UK. In the words of its constitution this aim is to be achieved by:

- seeking to secure high standards of provision of resources, including equipment;
- promoting science and science education in member institutions and other educational establishments including schools and colleges;
- raising public awareness of the importance of science and science education;
- promoting interactive links at senior level with Government Departments, Government Agencies, Funding Councils, Research Councils, the Royal Society, appropriate Professional Bodies, Learned Societies, Industrial Organisations and other organisations with a major interest in Science and Science education;
- liaising with complementary Committees such as Heads Groups in Scientific subjects;
- collecting and coordinating data from member institutions; and
- holding meetings of members of the Group to discuss particular issues, such meetings enabling members, as a result of shared experiences and information through contacts with other bodies, more effectively to fulfil their roles as persons with prime responsibility for science and science education in their own institution.

6. In order to achieve some of these aims UKDS makes responses to numerous consultations including those from government, White Papers, etc. It has given oral evidence to House of Commons committees and has, on occasions, proactively produced statements intended to support, or to encourage changes in, government policy. It invites individuals, including serving politicians, to its meetings and attends other meetings (including the Parliamentary and Scientific Committee, of which it is a member) where it uses the opportunity to argue the case for science and scientists.

7. What is of concern to UKDS is that what we consider as legitimate efforts to influence government and any or all political parties could, with a change in definition following the Government’s consultation exercise, put our organisation on a par with professional, paid, lobby companies, thus requiring it to register, possibly pay a registration fee and to be listed alongside those who lobby for a living.
8. We appeal to the PCRC to ensure that its advice to government is to ensure that, for the purpose of producing a system that makes the lobbying of politicians more transparent, and however the definition of a lobbyist is expanded, it does not embrace organisations such as UKDS or charities, Professional and Statutory Bodies, universities (or groups of universities), etc, but focuses on professional lobbyists.

February 2012

Written evidence submitted by Unlock Democracy

ABOUT US

1. Unlock Democracy is the UK’s leading campaigning organisation for democracy, rights and freedoms. A grassroots movement, we are owned and run by our members. In particular, we campaign for fair, open and honest elections, a stronger Parliament and accountable government, and a written constitution. We want to bring power closer to the people and create a culture of informed political interest and responsibility. Unlock Democracy is a founding member of the Alliance for Lobbying Transparency, set up in 2007 with a number of organisations including Spinwatch, Friends of the Earth and Greenpeace.

EXECUTIVE SUMMARY

2. Unlock Democracy welcomed the Government’s commitment to introduce a statutory register of lobbying interests. However, we are disappointed that proposals that took so long to produce are so limited in scope. The Public Administration Select Committee published its report recommending a register in 2008 and it was part of the Coalition Agreement and yet two years into the new Parliament we are only just at the green paper stage. We are particularly concerned that the lack of senior ministerial leadership on this issue had allowed the policy area to drift.

3. Unlock Democracy is not opposed to lobbying—indeed we lobby Parliament, the UK and devolved governments and local government. Lobbying is a part of the democratic process, the problem is when it’s done in secret so the public have no way of knowing who has been putting pressure on the Government to do what, or how much money they are spending on exerting that pressure.

4. The perception that companies and wealthy individuals can buy access and influence is undermining trust in our political system. There have been a number of scandals in recent months that have demonstrated this, from the Fox/Werrity affair, to the allegations of Bell Pottinger boasting about their access to the Prime Minister and McKinsey’s alleged influencing of the Health and Social Care Bill.

5. We believe that the Government’s proposals are fundamentally flawed and will do little to promote transparency in lobbying. Our main concerns are that the definition of lobbying is too narrow and that the level of information recorded in the register would reveal little about the network of relationships between government and those who lobby.

6. Unlock Democracy wants an open and transparent lobbying system. We believe that the purpose of any lobbying register should be to capture lobbying activity rather than individual lobbyists. This means that both in-house and agency lobbyists should be covered by the register and that the register must include information not just on who the lobbyist’s client is, but also who is being lobbied, the policy area that is being lobbied and the amount of money that is being spent on lobbying. This does not have to be an arduous or overly bureaucratic process. Unlock Democracy has completed a mock registration form for the first quarter of 2012 to demonstrate how this could be achieved without putting an undue burden on the organisations concerned.

7. The proposed register of lobbying interests only covers lobbying activity at Westminster. While we think this is the necessary and appropriate place for a new regulatory framework to be developed, in the longer term we believe it would be appropriate for this system to be introduced for the devolved Parliaments and local government as well.

COMMITTEE’S QUESTIONS

Does the Government’s consultation paper represent a balanced approach to the idea of a statutory register?

8. No, it doesn’t. The proposals essentially extend the current voluntary regulation system to all third party lobbyists and puts the register on a statutory footing—they would do little to open up the industry and allow voters to scrutinise who is seeking to influence the Government.

9. The Prime Minister has said that “we want to be the most open and transparent government in the world.”

36 David Cameron 2010 http://www.opengovpartnership.org/countries/united-kingdom
We welcome his commitment to this agenda and believe that the register of lobbyists is an fundamental aspect of this policy programme. For the register to be a meaningful step forward in transparency, it is essential that the focus is on capturing lobbying activity rather than individuals who lobby.

10. The fundamental flaws in the Government’s proposals stem from both how they define lobbying and lobbyists. The Government takes the view that only those lobbying on behalf of third party clients should be required to register. Unlock Democracy strongly disagrees with this approach. We believe it is unfair to multi-client lobbyists as it excludes the in-house lobbyists who account for a significant amount of lobbying activity in the UK.

11. Unlock Democracy lobbies Parliament and the Government—employing four staff who spend part or the majority of their time on lobbying activities. We estimate that our expenditure on lobbying in the first quarter of 2012 is approximately £21,600. Under the Government’s proposals we would not be required to register because we employ our own lobbyists in-house. However, if we paid for a self-employed lobbyist or an agency to do this work for us they would have to register. Unlock Democracy takes the view that what matters is capturing the lobbying activity, not whether the person doing the lobbying is working for one or many clients.

12. Mark Harper MP has argued that in-house lobbyists do not need to be included in the register because, “When an in-house representative from a company comes to see me, the public knows what’s happening and that is transparent. If someone from an agency comes to see me, no-one knows who they’re advocating for—and that’s not transparent”.37

13. We do not believe that is the case. Unlock Democracy is currently lobbying the Cabinet Office on a number of different policy areas. If we were to have a meeting with Mark Harper it could be about individual elector registration, House of Lords reform, lobbying, boundary changes or other democratic reform issues that we may wish the Government to pursue. This would not be apparent just from the fact that he was meeting us.

14. Lobbying is an important part of a democratic culture, it allows different views and experiences to be heard, but we need to be open and honest about who lobbies and what they are lobbying for. This means acknowledging that it is not just large agencies who lobby, but also charities, voluntary sector organisations, trade bodies, companies, trade unions, media organisations and universities.

15. We are aware that there may be concern about including smaller businesses or charities in a new regulatory system. We are sympathetic to the desire to reduce bureaucracy for organisations and Unlock Democracy supports ALT’s recommendation that small businesses and charities should be exempt from registering. ALT has provisionally defined small as organisations that do not employ the equivalent of one full time public affairs person or spend £6,000 or less per quarter on lobbying activity.38 We are working with bodies such as the National Council for Voluntary Organisations to ensure that the right balance is reached between capturing lobbying activity and light touch regulation.

16. However, we believe that a comprehensive lobbying register does not have to be an undue burden. We have completed a draft filing that includes the level of information we would want to be captured on a register to demonstrate how we think this could work in practice. It took us approximately 20 minutes to complete and as some of the information is unlikely to change each quarter we would expect this to be less for subsequent filings.

17. The assumption in the consultation paper seems to be that in-house lobbyists do not need to be covered because they account for very little of the lobbying activity in the UK. This is a mistaken assumption and we believe that the figures quoted in the White Paper grossly underestimate the number of in-house lobbyists working in the UK. The consultation cites figures suggesting that there are between 320 and 450 in-house lobbyists employed in the UK,39 which is fewer than half the number of those working for agencies. However, in a paper published in 2009 the lobbying industry cites academic evidence suggesting that there are four in-house lobbyists for every agency lobbyist.40

18. Also, the figures in the impact assessment state that there are 100 in-house lobbyists working for companies which again we think is an underestimate. We know for example, that Tesco alone employs six in-house lobbyists and they are certainly not the only company to do so. It is standard practice on the telecommunications industry to use in-house lobbyists for example.41 The industry’s 2009 figures also put the total number of dedicated lobbyists working in the UK at between 3,500 and 4,000.42 This is 2,000–2,500 more than the figure in the Cabinet Office’s Evidence Base. We believe the Government’s current plans would exclude an estimated 2,500–3,000 lobbyists, working in organisations from Tesco to Barclays, CBI to Greenpeace.

40 Towards a Public Affairs Council PAC working party May 2009
42 Towards a Public Affairs Council PAC working party May 2009

19. Unlock Democracy believes that it is essential that in-house lobbyists, including those working for trade associations, charities, voluntary sector organisations, trade unions and companies are covered. Although we take this position on a matter of principle and not simply on the basis of the numbers of people employed, we are concerned that the Government’s evidence base is poor and may have led them in an erroneous policy direction. Law firms, management consultants and accountancy firms also lobby on behalf of clients and must be included in a transparency register to create a level playing field with dedicated lobbying agencies. However, lobbying of the Government by a member of the public, which is unpaid, or lobbying of an MP by a constituent, should be exempt.

20. We also note that at present it is only proposed the register of lobbyists should apply to Westminster. Whilst we think it is necessary and appropriate that the new regulatory regime should begin at Westminster, in the longer term we believe that similar schemes should also be brought in for the devolved Parliaments and local government.

Which lobbying contacts are of greatest legitimate public interest? Does the consultation paper envisage the capture of appropriate information about these contacts, as opposed to other kinds of contact?

21. The other fundamental flaw in the Government’s proposals is the lobbying activity that they seek to capture is very limited and would reveal very little new information. Indeed, the Government’s proposals would essentially mean that the current system of voluntary registration would continue but all lobbying agencies would be required to join. The only additional information the proposed statutory register would provide is that agencies would have to publish their client lists. Whilst this information should certainly be in the public domain, it does not go nearly far enough to bring transparency to lobbying.

22. Unlock Democracy believes that for a lobbying register to be effective it must include who is lobbying whom, what they are lobbying for and crucially how much money is being spent on lobbying. The specific information that we think should be included in the register and that we have included on our draft filing is:

- The organisation lobbying.
- The name(s) of individual lobbyist(s).
- Information on any public office held by the lobbyist in the past five years (the so-called “revolving-door”).
- The public body being lobbied.
- The name of public official with whom contact has been made (senior civil servant and above).
- A summary of what is being lobbied on, whether legislation, regulation, policy or government contract.
- The amount of money spent on lobbying (a good faith estimate).

23. This goes considerably further than the Government’s proposals but is the level of information necessary to bring transparency to lobbying. The ultimate purpose of a lobbyists’ register is to increase government accountability, by putting lobbyists’ dealings with officials in the public domain. Therefore, it must include information on who is being lobbied in government and what issues they are being lobbied on. The amount of money that is being spent on lobbying is particularly important. This would bring out into the open the different amounts being spent by businesses and civil society organisations for example. After all, lobbying is an investment for organisations; US figures suggest that for every dollar spent on lobbying, a company can expect a $100 return, while in the UK it is estimated that for a lobbyist knowing a Cabinet minister is worth £113,000 a year.43

How should the Government deal in policy and practice with how it might be lobbied on the issue of a statutory register of lobbyists?

24. Unlock Democracy is gravely concerned about the way the policy development process has been handled. While it is entirely appropriate for civil servants to meet with members of the lobbying industry to discuss the proposals, there has been a distinct lack of balance in the views sought.

25. The Alliance for Lobbying Transparency, of which Unlock Democracy is a member, requested a meeting with the Minister responsible for lobbying policy, Mark Harper MP. This was refused on the basis that it would be inappropriate before the consultation had been published. Specifically, he stated that:

“I do not think at this stage in the process a meeting would be appropriate, but I look forward to receiving your contribution to our consultation, which we hope to launch in the coming months... I think it is helpful to be clear that the Government intends to consult fully on proposals for a statutory register of lobbyists. We will take note of the voluntary register run by UKPAC, and no doubt UKPAC will wish to respond to the consultation paper and provide the benefit of their experience in this area.”

26. This letter was received in October 2010, yet it is clear that at this stage senior civil servants were meeting with UKPAC to discuss their approach to the proposed register. Minutes from a UKPAC board meeting in September 2010 reveal that:

“A letter from Mark Harper to the Chairman had been received acknowledging receipt of the UKPAC’s progress and plans to date. He agreed his officials meet monthly with the [UKPAC] Secretary.”

27. UKPAC also had regular meetings with senior civil servants working on developing the lobbying register proposals. UKPAC describes its discussions with Eirian Walsh Atkins as “productive and positive”. According to minutes from one UKPAC meeting:

“Ms Walsh Atkins outlined the timetable for the introduction of legislation for a statutory register… She made clear that the Cabinet Office would be working closely with the Department for Business, Innovation and Skills to draft the consultation and legislative framework, including discussions on the possible sanctions for non-compliance. Ms Walsh Atkins and the Secretary will have close contact to discuss progress, meeting at least once a month.”

28. It should also be noted that the Cabinet Office initially refused to disclose information on its dealings with lobbyists. In December 2011, the Information Commissioner ruled in favour of disclosure, some 17 months after the request was first submitted. In the year and a half that the Cabinet Office fought to block the release of information, it broke ICO guidance on the time it took to process the request (its internal review process took five months instead of 20 working days), it was threatened with contempt of court proceedings by the ICO (for not providing the Commissioner with the information necessary to make a judgement) and was found in breach of the Act (for withdrawing its original exemptions and applying a second set of late exemptions without informing the requestor).

29. Whilst we do not think it was necessarily inappropriate for ministers or civil servants to meet with UKPAC or other representatives of the lobbying industry, we are concerned that there does not seem to have been any attempt to balance views sought. We believe that this has led directly to the imbalance in the proposals that have been brought forward by the Government.

30. As the Committee may be aware, it was revealed in the Sunday Times the civil servant in charge of the lobbying proposals resigned after it was revealed that she had tweeted that she wished Unlock Democracy would “die”. The comment was a response to us asking our members to write to their MPs about the delay in publishing the proposals for a lobbying register. As an organisation we have not pursued any disciplinary action over this incident and, following the receipt of an apology from Ms Walsh Atkins, consider the matter closed.

31. We are not concerned about an inappropriate remark on Twitter but we are worried about the close links between lobbyists and civil servants and the fact that the proposed register would do nothing to shed light on those relationships.

32. These close relationships with lobbyists are not restricted to one policy area. There were reports in the media recently of companies paying up to £1,800 to attend networking events hosted by the Chemistry Club at which senior government officials frequently attend. In this case there is absolutely no suggestion that civil servants and ministers were paid to attend these events, but there is equally no denying that companies would not pay such exorbitant amounts if they didn’t feel they were getting something out of it. There is no reason for such events to exist: if government officials feel they need to network with industry they are perfectly capable of setting up such events themselves and thus avoid being open to the accusation that people are having to pay for access or that civil servants are sourcing out their judgement to private firms out to make a fast buck.

33. This neatly demonstrates both the need for a register of lobbying interests and why the Government’s conceptualisation of lobbying is flawed.

Do you have any comments on how any proposals emerging from the consultation should be implemented?

34. Unlock Democracy believes it is essential that any lobbying register is administered by an independent body and not the industry itself as is currently the case. We would be happy for it to be added to the remit of an existing body, such as the Electoral Commission, which already maintains registers on donations and loans to political parties. This would help to minimise both the costs and bureaucracy associated with the new regulatory regime, whilst at the same time reassuring the public that the register signals a new era of independence, openness and transparency in lobbying in the UK.

Are there any important questions that are not asked?

35. This consultation focuses on those who lobby government. In terms of the openness and transparency agenda, one issue that this Committee and Parliament may wish to consider is the criteria for issuing parliamentary passes. Those who have a parliamentary pass have privileged access to the parliamentary estate and those who work in it, including MPs. UKPAC have already highlighted this as an area of lobbying activity

44 Minutes of the Second meeting of UK Public Affairs Council, held on 16th September 2010 at the PRCA offices http://www.publicaffairscouncil.org.uk/en/governance/minutes.cfm

45 Minutes of the Second meeting of UK Public Affairs Council, held on 16th September 2010 at the PRCA offices http://www.publicaffairscouncil.org.uk/en/governance/minutes.cfm

46 http://www.thestundaytimes.co.uk/zt/news/uk_news/Technology/article864434.ece (E) accessed 21 February 2012

that needs to scrutinized—they don’t allow people who use parliamentary passes to be registered. This is to minimise the “revolving door” phenomenon whereby former MPs or parliamentary staff use passes for lobbying purposes.

36. The lobbying register that operates in the European Parliament includes provisions whereby if a lobbyist breaches the terms of the register then their pass is removed. This is considered a considerable sanction. While it would not have been appropriate for the Government consultation to explore this issue, as the Committee is already examining these proposals, it may be something you wish to consider.

February 2012

Written evidence submitted by the Whitehouse Consultancy

INTRODUCTION

1. The Whitehouse Consultancy is a specialist political consultancy, advising clients how best to identify and approach key decision-makers in Westminster, Whitehall, the devolved nations and the institutions of the EU. Current clients include global corporations, leading European and national businesses, trade associations, education campaigning alliances, charities and other third sector bodies, media groups and environmental organisations.

2. The Whitehouse Consultancy is a member of the Association of Professional Political Consultants (APPC). We act at all times in accordance with its Code of Practice. We remain dissatisfied with the conflict of interest which the APPC has developed in seeking to be responsible both for self-regulation and at the same time promoting as a trade body the commercial interests of its sector. We would, therefore, like to see established an alternative mechanism for registration and regulation so that we can achieve our long-held ambition of resigning from the APPC.

3. As a matter of company policy, we have called for some years for the introduction of a Statutory Register of multi-client lobbying agencies and welcome the Government’s commitment to move ahead with such a Register.

4. We do, however, have profound reservations about the decision that has clearly been taken that such a Statutory Register will not be linked to a Statutory Code of Practice. We are also deeply concerned about the flawed manner in which officials have prepared for this consultation and the completely inappropriate and inflated status that has been afforded to the inefficient, ineffective, incompetent and now completely discredited so-called “UK Public Affairs Council” (UK PAC).

5. In answering below the questions posed by the Committee’s very welcome inquiry, we hope that the following remarks are helpful to the Committee in its important work.

THE COMMITTEE’S QUESTIONS

Does the Government’s consultation paper represent a balanced approach to the idea of a statutory register?
— Does the paper present the evidence in a balanced way?

6. No. The paper for example gives disproportionate weight to the views and experiences of the so-called “UK Public Affairs Council” (UK PAC), failing to mention that the leading national organisation, the Public Relations Consultants Association, resigned in despair at the serial incompetence of UK PAC and that many in the industry, including the Whitehouse Consultancy, consider UK PAC to be inefficient, ineffective, incompetent and overall to be thoroughly discredited.

7. UK PAC does not have and has never in fact had any mandate to speak for the industry, for the professional bodies in the industry, or for individual companies or consultants in the sector. It is quite wrong for it to have assumed and/or been afforded that status in its dealings with officials.

8. Furthermore, the Consultation Paper (Annex A, page 21) states that:

“UK PAC’s register is operational but is not fully populated. It is updated on a quarterly basis”

9. That statement is untrue on several counts. At the time of publication of the Consultation Paper the UK PAC register was not available as it had been withdrawn as a result of the outcry over the number of errors, omissions and redactions it contained. It has never been properly updated quarterly and even now publishes information in a substantially redacted format since it omits the additional information supplied by registrants to explain the real relationships behind collective and joint ventures, alliances, committees, and all-party groups. It also lists, in a potentially misleading manner, pro bono clients along with commercial clients, causing potential embarrassment for registrants and for their pro bono clients who in many cases would not wish those consulting the register to assume that they were using budget to pay for public affairs advice. The UK PAC register also publishes data in registry entries for the wrong quarter causing confusion and distress in equal measure.

10. The paper suggests that a proportionate approach is necessary and that only those who lobby on behalf of others should be included in the requirement to register. The paper fails to mention, for example, that this
would leave outside the scope of the register individuals such as media moguls lobbying directly to achieve results designed to increase their already massive fortunes. The paper also fails to mention that the definition would also leave outside the scope of registration those clients to whom public affairs advice, rather than lobbying activity is provided. The Committee should be aware, as officials should have been in preparing this paper, that for multi client public affairs consultancies, this would remove from the register the overwhelming majority of their clients since clients are generally encouraged to do their own actual lobbying. Thus, unmentioned by the Consultation Paper, the introduction of a register based on this definition would dramatically reduce transparency and will infuriate those who have campaigned for greater openness.

11. The Minister, Mark Harper MP, speaking on 21 February at the Royal Institution of Chartered Surveyors (RICS), stated that he would wish to see a situation whereby any registrant omitting a client from the register would be “thrown off the register”. This would be understandable in the case of deliberate and intentional omission, but would be disproportionate in the case of administrative error, oversight, or technical problems (by which all industry registers currently in existence have been plagued).

12. Furthermore, such an approach would lead to a bizarre situation that failing to register a client could lead to serious damage to a registrant’s business as a result of a technical glitch, but the rejection in advance of a requirement that the Register be underpinned by a Statutory Code of Practice could mean that thoroughly unethical, though not otherwise technically illegal behaviour, would go completely unpunished. The Consultation Paper fails to explore how the Government might deal with the media explosion of outrage were an agency to be caught acting in a flagrantly unethical manner yet continue to benefit from the implicit kudos of statutory regulation.

13. The paper, in discussing deadlines for registration of new clients, suggests a 3 month deadline and although it quotes overseas examples of other timelines, fails to mention for example the timelines for Members of the House of Commons and the House of Lords to register their own interests. Specifically the 28 day deadline imposed by the House rules for All-Party Parliamentary Groups to register outside benefits is a glaring omission which would have framed debate in a substantially different paradigm.

14. Finally, it is unclear whether by oversight or deliberate omission, but the failure to mention the role of the Information Commissioner as a potential holder of the proposed Statutory Register does appear odd. The current Chair of the so-called UK PAC, Elizabeth France, is a former Information Commissioner, and whilst she has personally lost all credibility through her mishandling of the UK PAC register, those individual and organisational failings should not rule out the current or future incumbents of the position of Information Commissioner being given responsibility for maintaining the proposed Statutory Register. This could be done at only moderate cost, within an organisation experienced in dealing with registration issues, and able also to bring experience of the application of tests of proportionality, public interest, and prospects of success to the consideration of the most appropriate way to deal with allegations of transgression against the rules of registration and/or of a Statutory Code of Practice.

15. In short, officials in preparing this Consultation Paper have produced a thoroughly distorted picture of the current situation in the industry and the practical implications of the specific proposals being brought forward.

Are you confident that the issues covered are ones on which the Government has an open mind?

16. No. Specifically, the Consultation Paper demonstrates that the officials who drafted it have taken a firm view that there should be no Statutory Code of Practice underpinning registration. We fully accept that the views of the Whitehouse Consultancy in supporting the introduction of a Statutory Code of Practice are in a minority within the lobbying profession, but this is a debate which needs to be had, and to be seen to be had publicly, not sidelined.

17. Furthermore, the proposed definition of lobbying would allow multi-client lobbying agencies, business consultants, lawyers and others, to decline to register the majority of their clients on the basis that they provide to them advice on how best to improve the effectiveness of their own lobbying, rather than lobbying on their behalf.

Is the Government clear wherever it has a preference for a particular option, and is this preference in each case a reasonable one?

18. No. Whilst officials have drafted the Consultation Paper in such a way as to appear that many issues are still open for discussion, the fundamental principles (rejection of a Statutory Code, a misplaced trust in UK PAC, a naive respect for industry self-regulation, a narrow definition of lobbying etc) have clearly been decided in advance and in many cases are not sensible for the reasons already set out above.

Does the consultation paper contain the right questions?

19. No. For the reasons set out above.

Are there any important questions that are not asked?
20. Yes. There is no question about whether the Statutory Register should be linked to a Statutory Code of Conduct in, for example, a similar way to which registrants in the European Transparency Register are required to abide by a minimum set of standards of behaviour in a Code of Practice.

Which lobbying contacts are of greatest legitimate public interest?

— Does the consultation paper envisage the capture of appropriate information about these contacts, as opposed to other kinds of contact?

21. If media moguls whose employees are caught up in criminal activity are not required to register when lobbying government at even Prime Ministerial level, one has to wonder why a charity (whose activities are already regulated in detail by the Charity Commission) simply taking advice on Parliamentary procedure, communications techniques, and consultation best practice and then being supported by professionals in lobbying meetings would have to be registered as a client of those advisors. Which, we wonder, has the greater implications for democracy?

How should the Government deal in policy and practice with how it might be lobbied on the issue of a statutory register of lobbyists?

— How open should the Government be about such lobbying contacts?

22. The Government should be open and transparent about all lobbying it receives on this issue, declaring all such contact online. The Minister is to be greatly commended for his willingness to participate “on the record” at the recent meeting at RICS, but one can only wonder why the audience, the lobbying industry itself, was allowed to benefit from participation under the Chatham House Rule.

23. In 2010, the Whitehouse Consultancy sought repeatedly by email and telephone message to seek a meeting with officials handling the preparation of this consultation document, but received no response whatsoever to those repeated approaches. We are deeply disillusioned by that failure on the part of officials to engage with those holding a wide spectrum of views.

24. We are also appalled by reports that an organisation exercising its legitimate right to campaign for openness and transparency has been publicly commented upon by the official leading on this project in a most peculiar and, in our experience, unprecedented manner which, if the reports are accurate, undoubtedly brings the Civil Service into disrepute.

How should the Government analyse the consultation responses, and seek to balance the weight of opposing argument?

25. The Government should consider the response to this consultation with an open mind and should specifically stimulate further debate about the questions upon which officials appear to have taken a prejudicial view (Statutory Code of Conduct, definition of lobbying etc). It should cease to afford any weight whatsoever to the views of UK PAC which is thoroughly discredited in the eyes of the industry and transparency campaigners alike, and which has no further standing in this important debate.

Do you have any comments on how any proposals emerging from the consultation should be implemented?

26. Yes. A Statutory Register underpinned by a Statutory Code of Practice, funded by industry, and with a 28 day deadline for registration of new staff and clients should be implemented forthwith.

Conclusions

27. The Coalition Government and its ministers appear genuinely to want to deliver a new era of openness, transparency and accountability to the relationships (whether perceived or real) between government and lobbyists. This is to be welcomed. However, they have been badly let down by officials who have had an unhealthily close relationship with one discredited body, UK PAC; have failed to take a wider range of views into account in identifying options for consultation; have demonstrated an antagonistic and prejudiced view about some individual campaigners and the organisations for whom they speak; have sought to avoid the inevitable debate about whether a Statutory Register should be underpinned by a Statutory Code of Practice; and have in so doing created a very superficial and intrinsically distorted consultation paper.

The Key Tests:

28. What public policy objectives would be advanced by a new regulatory environment which saw a substantial reduction in the number of clients required to be registered by multi-client public affairs agencies; which allowed agencies demonstrating flagrantly unethical behaviour to continue to benefit, without the application of any sanction, from the implicit kudos of inclusion in a statutory register; and which failed the test of whether lobbying at the highest level by the likes of Rupert Murdoch should be registered?

February 2012
Written evidence submitted by Ed Williams, Chief Executive Officer, Edelman UK

1. Please accept this letter as Edelman’s response to the Political & Constitutional Reform Committee’s inquiry into the proposed Statutory Register of Lobbyists.

2. Edelman is the world’s largest independent public relations company, with 4,000 consultants in 60 offices globally. In the UK, we have nearly 400 consultants offering the full range of public relations services including corporate communications, marketing communications and digital communications, as well as public affairs or lobbying. Our public affairs division represents less than 20% of our total UK business, although it should be noted that a large number of public affairs clients also receive other communications services from Edelman as part of an integrated offer. We have been a member of the APPC (Association of Professional Political Consultants) since 2003 and as such our list of public affairs clients, and those consultants that work on those clients, is already freely available at

3. Edelman supports the proposal for a statutory register of lobbyists. We agree with the Government’s assertion that lobbying makes an important contribution to public policy-making, but believe a Register is required to improve transparency and build public confidence.

4. There are, however, a number of issues that the Committee and the Government need to consider carefully as they scrutinise and develop the proposals. The remainder of this letter sets out these issues.

5. It is important to recognise that multi-client public affairs agencies represent only a small part of the lobbying industry. It is vital that the Government clarifies that all those who do lobbying (an act defined in the consultation paper as communications with government or Parliament in an effort to influence decision-making) on behalf of others are covered by their registration proposals. An illustrative but not exhaustive list of the types of organisation which also carry out lobbying on behalf of others are law firms, accountancy firms, management consultants, planning consultancies, think tanks, trade associations, NGOs, trade unions and charities. There are also a very large number of individual consultants and freelancers in the sector, who offer public affairs services to clients. At present, we believe the Government’s proposals are ambiguous as to whether the above organisations would be covered by the proposals as they stand. Should they not be included we believe the proposal would fail to meet the objectives of improved transparency and public confidence.

6. We believe that the present definition of lobbying in the consultation paper requires further clarification. The vast majority of the work of public affairs agencies involves advising clients on dealings with the Government, rather than in communicating directly with government on clients behalf. The definition of lobbying as proposed includes only direct communications with government and Parliament. It is unclear whether the act of advising others on such communications would be a registerable activity. It is vital that the Government clarify their intent in this regard.

7. It is also important to recognise that for agencies such as Edelman, public affairs is just one of many public relations services we provide to clients. The boundaries between, for example, activity which influences the political environment and activity which influences a broader media and stakeholder environment is increasingly blurred. The advent and growing primacy of digital communications complicates this matter still further. Other markets with similar registration requirements such as Washington DC and Brussels do not have this complication in that they are PR markets in which public affairs is dominant, unlike London where public affairs is only a small proportion of a sophisticated and complex PR marketplace.

8. The remainder of this submission briefly considers a number of other points raised by the Government consultation.

9. We support the proposed level of information to be included in the register, the quarterly reporting requirement, and the proposed level of penalties for non-compliance. We also accept that the costs of registration should be met by the companies who register. However, we do suggest the Government look at the very modest cost of running the APPC register and use that as a benchmark for overall costs.

10. We do not believe that the inclusion of financial data would be practical. For the majority of Edelman clients, public affairs is offered as part of an integrated service to clients. It would be very difficult or impossible to try and define how much of a budget was allocated for “lobbying” as defined by the legislation.

11. I hope this submission has been useful for the Committee. Should the Committee have any further questions or clarifications about our evidence, we would be happy to respond to them.

February 2012