



House of Commons
Committee on Standards

**The Transparency of
Lobbying, Non-Party
Campaigning and Trade
Union Administration Bill**

First Report of Session 2013–14



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*Ordered by the House of Commons
to be printed 3 September 2013*

The Committee on Standards

The Committee on Standards is appointed by the House of Commons to oversee the work of the Parliamentary Commissioner for Standards; to examine the arrangements proposed by the Commissioner for the compilation, maintenance and accessibility of the Register of Members' Interests and any other registers of interest established by the House; to review from time to time the form and content of those registers; to consider any specific complaints made in relation to the registering or declaring of interests referred to it by the Commissioner; to consider any matter relating to the conduct of Members, including specific complaints in relation to alleged breaches in the Code of Conduct which have been drawn to the Committee's attention by the Commissioner; and to recommend any modifications to the Code of Conduct as may from time to time appear to be necessary.

Current membership

Rt hon Kevin Barron MP (*Labour, Rother Valley*) (Chair)
Sir Paul Beresford MP (*Conservative, Mole Valley*)
Mr Robert Buckland MP (*Conservative, South Swindon*)
Rt hon Tom Clarke MP (*Labour, Coatbridge, Chryston and Bellshill*)
Mr Christopher Chope MP (*Conservative, Christchurch*)
Mr Geoffrey Cox MP (*Conservative, Torridge and West Devon*)
Sharon Darcy (*Lay Member*)
Sir Nick Harvey MP (*Conservative, North Devon*)
Mr Peter Jinman (*Lay Member*)
Fiona O'Donnell MP (*Labour, East Lothian*)
Mr Walter Rader (*Lay Member*)
Heather Wheeler MP (*Conservative, South Derbyshire*)
Dr Alan Whitehead MP (*Labour, Southampton Test*)

The following were also Members of the Committee during the Parliament:
Annette Brooke MP (*Liberal Democrat, Mid Dorset and North Poole*)

Powers

The constitution and powers of the Committee are set out in Standing Order No. 149. In particular, the Committee has power to order the attendance of any Member of Parliament before the committee and to require that specific documents or records in the possession of a Member relating to its inquiries, or to the inquiries of the Commissioner, be laid before the Committee. The Committee has power to refuse to allow its public proceedings to be broadcast. The Law Officers, if they are Members of Parliament, may attend and take part in the Committee's proceedings, but may not vote.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at: www.parliament.uk/standards.

Committee staff

The current staff of the Committee are Eve Samson (Clerk), Margaret Mckinnon (Second Clerk) and Miss Christine McGrane (Committee Assistant).

Contacts

All correspondence should be addressed to The Clerk of the Committee on Standards, Journal Office, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 6615.

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Report

1. On 17 July 2013 the Government introduced the *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill*. The House rose for the summer adjournment on 18 July. The Bill is to have its second reading today, 3 September 2013, and its Committee stage is due next week.

2. The Political and Constitutional Reform Committee has conducted inquiries into lobbying in the past, and is inquiring into this Bill. The Chair of the Committee on Standards gave evidence to the Political and Constitutional Reform Committee in a personal capacity on 29 August. We do not wish to duplicate our colleagues' work. Nonetheless, the Committee on Standards has an interest in the way in which this legislation will interact with the Code of Conduct and the Guide to the Rules relating to the Conduct of Members, and we have some concerns over the drafting of the Bill. In normal circumstances, we would have explored our concerns with Government, and with the Political and Constitutional Reform Committee. In view of the limited time available to discuss the Bill we have decided to make this urgent Report to draw our concerns to the attention of the House.

Principle

3. The House of Commons has long been concerned about lobbying. As early as 1695, the House resolved that "The Offer of any Money, or other Advantage, to any Member of Parliament, for the promoting of any Matter whatsoever, depending, or to be transacted, in Parliament, is a high Crime and Misdemeanour, and tends to the Subversion of the Constitution." Successive resolutions have restricted what Members are permitted to do. The current Code of Conduct states that "No Member shall act as a paid advocate in any proceedings of the House." Indeed, the *Guide to the Rules relating to the Conduct of Members* makes it clear that the prohibition on advocacy is not limited to proceedings in the House or approaches to Ministers but extends to approaches to colleagues, and to any servants of the Crown.

4. Consultant lobbying as it is normally understood consists of the acceptance of money in direct return for lobbying activity. As the Code of Conduct is currently written this would almost certainly be a breach of the advocacy rule. We also note that the requirements for registration of Members' financial interests are far more detailed than the Bill's requirements for entries on the register of consultant lobbyists.

5. Although Members are permitted to have outside interests, a Member who carried out "consultant lobbying" would be breaking the current rules of conduct of the House. Nonetheless, we recognise that the House could change its rules to permit such activity, even though we consider this extremely unlikely. Members are not immune from the general law, nor should they be. If the advocacy rule were ever rescinded, a Member who acted as a consultant lobbyist should be subject to the same rules as any other such lobbyist.

The definition of consultant lobbying

We are confident that the Government does not intend that a Member's activities as a Member of Parliament should be caught by the definitions in the Bill. When the Chair raised the drafting of the Bill with the Leader of the House he responded:

I know that there has been some misunderstanding about whether the normal activities of Members of Parliament would be captured under the definition of consultant lobbying as set out in the Bill. I would therefore like to be quite clear that it is absolutely not the intention of the Bill to do so.¹

We welcome this assurance but continue to have reservations about the way in which the Bill is drafted.

6. The Bill prohibits lobbying by those who have not entered in the register of consultant lobbyists. Clause 2 states that a person carries on consultant lobbying if:

- (a) in the course of a business and in return for payment, the person makes communications within subsection (3) on behalf of another person or persons, and
- (b) none of the exceptions in Part 1 of Schedule 1 applies.

7. Subsection (3) of that clause specifies that the communications covered by the Act are oral or written communications made personally to a Minister of the Crown or permanent secretary relating to any government function (the Bill specifies legislation, policy, contracts, grants or licences as well as this catch-all).

8. As the Leader of the House says "Performing one's public role as a Member of Parliament does not amount to carrying on a business and is therefore exempt". It is to be hoped that the courts will decide that a Member making normal representations to a Minister or permanent secretary, outside Parliamentary proceedings, would not be doing so "in the course of a business". But the fact that there is a specific exception in Schedule 1 for Members' communications on behalf of constituents counts against this commonsense approach, since it will be argued that if Parliament considered a Member was not acting "in the course of a business" there would be no need for the exception.

The exceptions

9. Paragraphs 1 and 2 of Part 1 of Schedule 1 contain the exceptions relating to Parliament.

10. The first of these paragraphs is largely about jurisdiction:

1. Nothing in this Act—

- (a) affects the application of any enactment or rule of law preventing the freedom of speech and debates or proceedings in Parliament being impeached or questioned in any court or place out of Parliament, or

1 Appendix, Letter from the Leader of the House of Commons, 30 August 2013

(b) otherwise affects the scope of the exclusive cognisance of Parliament.

11. This provision is presumably intended to assert the continuing force of Article 9 of the Bill of Rights, and the right of the House to have its own disciplinary rules and processes, including the current rules by which consultant lobbying is prohibited. It should be unnecessary, since the protection of Article 9 of the Bill of Rights is absolute, and the *Bradlaugh* case in the nineteenth century established the House's right to govern its own proceedings. It is intended to be helpful in the context of this Bill, given that Members are expressly mentioned, and parliamentary rules prohibit Members from undertaking activities which would be allowed by this legislation, provided they were properly registered.

12. Nonetheless, we note Lord Judge's evidence to the Joint Committee on Parliamentary Privilege:

If, on day one, you say, "This Act applies to Parliament," and, on day two, you do not say anything about it, it will be assumed that it does not apply to Parliament. And the other way round: if, on day one, you say, "This Act does not apply to Parliament," and, the next time, you leave it silent, somebody will say, "Well, they didn't say the Act didn't apply to Parliament. Last time, they said it didn't. This time, it looks as though it must."²

The exception may have the unfortunate effect of calling into question whether or not other legislation relating to Members without such explicit provision does affect privilege.

13. While formal proceedings in Parliament are important, much of a Member's work consists in communicating with Ministers and officials outside such proceedings. The main mischief in the way the Bill is drafted is paragraph 2 of schedule 1, which contains the other exception for Members of Parliament.

2(1) A Member of Parliament who makes communications within section 2(3) on behalf of a person or persons resident in his or her constituency does not, by reason of those communications, carry on the business of consultant lobbying.

(2) In sub-paragraph (1) "resident" has the meaning which it has for the purposes of section 4 of the Representation of the People Act 1983 (entitlement to be registered as a parliamentary elector).

14. We welcome the confirmation that the Government did not intend this exception to cast doubt on whether other aspects of Members' work might fall within the scope of the legislation and the recognition that Members may legitimately approach Ministers or permanent secretaries on behalf of their constituents. We note Members may also make approaches to such people about national policy matters, or on behalf of those who are not eligible to vote. They may wish to press for changes to policy or legislation, or government support for particular sectors of industry or even particular companies. As we have said, the Government did not intend to cast doubt on the propriety of Members intervening on behalf of minors, asylum seekers or former constituents now held in prison, for example. It

is an “abundance” of caution that has introduced this ambiguity. Paradoxically, the scope of the legislation would be clearer without this exception.

The Role of the Registrar of Consultant Lobbyists

15. It appears that the Government recognises that it may be desirable to clarify what is or is not consultant lobbying and what is caught by the exceptions. Clause 21 of the Bill gives the Registrar power to issue guidance on the exercise of the functions in Part I. Such guidance includes guidance “as to cases which the Registrar would, or would not, regard as falling within any of the exceptions in Part 1 of Schedule 1” and “otherwise as to the circumstances in which the Registrar would, or would not, consider that a person is carrying on the business of consultant lobbying”. There is no provision for consultation on, or parliamentary approval of, such guidance.

Conclusion

16. **We accept the Leader of the House’s assurance that the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill was never intended to capture the normal work of Members as Members. Nevertheless we consider the approach the Government has taken to drafting the definition of consultant lobbying is unsatisfactory. The Bill is unclear in its definition of consultant lobbying and, in particular, about the way in which its provisions would apply to Members. The sweeping powers to refine this definition delegated to the Registrar of Consultant Lobbyists are unacceptable. It is perfectly possible that the courts and the Registrar of Consultant lobbyists will clarify that the definition does not extend so far. But primary legislation should be unambiguous about such matters.**

17. **In our view, the difficulties about the way in which this legislation applies to Members of Parliament would be swept away if paragraph 2 of Schedule 1 was removed. We consider it is necessary to make clear that Members’ ordinary work is not caught by the Bill. A new subparagraph should be added to paragraph 6, stating that a reference to payment does not include a reference to the salary an MP receives as a Member of the House of Commons. We would be happy to work with the Government on this. We anticipate amendments at the Committee stage in the House of Commons.**

Appendix: correspondence between the Chair of the Committee and the Leader of the House of Commons

Letter from Rt Hon Kevin Barron, Chair of the Committee on Standards to Rt Hon Andrew Lansley, Leader of the House of Commons, 18 July 2013

I note with interest the publication of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill. I would appreciate clarification of the way in which Clause 1 and Schedule 1 are to be interpreted in relation to Members of Parliament. The definition of consultant lobbying is extremely wide, namely if

- (a) in the course of the business and in return for payment, the person makes communications within subsection (3) on behalf of another person or persons, and
- (b) none of the exceptions in Part 1 of Schedule 1 applies.

The first of those exceptions is that “a Member of Parliament who makes communications within section 2 (3) on behalf of a person or persons resident in his or her constituency does not, by reason of those communications, carry on the business of consultant lobbying”.

The implication of this might be that any other policy intervention made by a Member to a Minister or Permanent Secretary, other than in proceedings in Parliament, would count as consultant lobbying, even if that Member received no payment other than through his or her salary as an MP. For example, it raises questions about a Member’s actions in intervening on behalf of an asylum seeker.

I am writing in haste, before the rise of the House, and it may be I am mistaken, but if I am correct, it would be a matter of great concern. Would it not be better to approach the issue in a different way, and specify that receiving a salary as a Member is not considered as being “in the course of the business and in return for payment” for the purposes of the Act? Then it would not be necessary to have the saving for proceedings in Parliament in paragraph 1 of Schedule 1, which might be thought to imply that the absolute freedom of speech in Parliament, and of exclusive cognisance, might be lifted by implication in statutes without such a saving?

This may well be something I discuss with my Committee on 3 September, and I would appreciate a reply by 27 August.

Letter from Rt Hon Andrew Lansley, Leader of the House of Commons to Rt Hon Kevin Barron, Chair of the Committee on Standards, 30 August 2013

Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill

Thank you for your letter of 18 July regarding the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill. My apologies for missing your deadline for a response; I understand that there was an administrative error that caused this.

I know that there has been some misunderstanding about whether the normal activities of Members of Parliament would be captured under the definition of consultant lobbying as set out in the Bill. I would therefore like to be quite clear that it is absolutely not the intention of the Bill to do so.

In order to be required to register under the Bill a person must lobby “in the course of a business” and “in return for payment”. Performing one’s public role as a Member of Parliament does not amount to

carrying on a business and is therefore exempt. This is equally true of anyone holding an elected office such as an MEP or councillor.

Out of an abundance of caution the Bill also includes a specific exemption for Members of Parliament to make this absolutely clear. Only if an elected official went beyond their official representative role and say in some private arrangement took money to make a lobbying communication on behalf of a particular person would they be caught by the register.

I hope this clarifies the matter and should the current drafting be found wanting I would be very happy to consider this further in collaboration with the House Authorities.

Letter from Rt Hon Kevin Barron, Chair of the Committee on Standards to Rt Hon Andrew Lansley, Leader of the House of Commons, 3 September 2013

Thank you for your letter of 30 August on the Transparency of Lobbying, Non-Part Campaigning and Trade Union Administration Bill. Your assurance that the provisions are not intended to capture the normal work of MPs is welcome, as is your readiness to revisit the drafting.

The concern is that if MPs’ work does not and should not fall within the definitions of the Bill providing explicit (and unnecessary) exceptions increases uncertainty rather than reducing it.

We look forward to amendments to put this right at the Committee stage of this House.

Formal Minutes

Tuesday 3 September 2013

Members present:

Mr Kevin Barron, in the Chair

Sir Paul Beresford

Mr Tom Clarke

Mr Geoffrey Cox

Sharon Darcy

Mr Peter Jinman

Fiona O'Donnell

Heather Wheeler

Dr Alan Whitehead

The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration

The Committee considered this matter.

Draft Report (*The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill*), proposed by the Chair, brought up and read.

Ordered, That the Chair's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 7 read and agreed to.

Paragraph 8 read, amended and agreed to.

Paragraphs 9 to 16 read and agreed to.

Paragraph 17 read, amended and agreed to.

Correspondence between the Chair of the Committee and the Leader of the House of Commons was appended to this Report.

Resolved, That the Report, as amended, be the First Report of the Committee to the House.

None of the lay members present wished to submit an opinion on the Report (Standing Order No. 149 (9)).

Ordered, That the Chair make the Report to the House.

[Adjourned to Tuesday 10 September 10.00 am