

Submission to Standards Committee Consultation on Lobbying the Scottish Parliament

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Introduction

The Stirling Media Research Institute has been engaged in an ongoing programme of research into the public relations and lobbying industry in Scotland, the UK and Europe since 1996 . We have been encouraged by the Standards Committee's recognition of the importance of lobbying as a matter of both professional and public concern, and we welcome the opportunity to respond to the consultation paper. Our contribution is offered in the spirit of independent academic analysis.

We have monitored the growth and development of the lobbying industry in Scotland and interviewed a wide range of lobbyists and public relations professionals ranging across the commercial (consultancy and in-house) and voluntary sectors. As part of our research activity, the SMRI has been a corporate member of ASPA since its inception. When we joined, it was made clear we were researchers and not in any way engaged in professional lobbying. Our research at the UK and European levels has also brought us into contact with commercial and voluntary sector lobbyists who work in other jurisdictions, and has broadened our perspective on the issues relating to lobbying.

What is a Lobbyist?

We accept that a wide variety of organisations engage in lobbying. But it is hardly a serious argument to say, as lobbyists sometimes do, that lobbying consultancies have nothing to do with lobbying. This is because many lobbyists are extremely keen not to describe themselves as lobbyists. They use all sorts of euphemisms such as 'political consultants', 'advocates', 'public affairs advisers', 'government relations counsel' etc. Whatever label they use, and however much they claim to help the democratic process by enabling dialogue and mutual understanding, it remains the case that they work for clients who hire them to pursue their own sectional interests.

We certainly accept that all organisations have a democratic right to lobby their MSPs and the Executive and that all organisations have a right to employ professional advisers. It is, however, fanciful to pretend (as some lobbyists do) that the ability to employ advisers is not systematically limited by resources. In fact lobbying consultancies overwhelmingly work for business interests, who also provide by far the largest proportion of their income.

The Lobbying Industry

It is worth noting that many of the bigger lobbying and public relations consultancies currently active in Scotland are themselves owned by large multinational communication conglomerates.

For example, most APPC Scotland member agencies have offices both in Brussels and London, and are

affiliated to, or owned by, communications conglomerates with a global reach. Scotland is merely a local outpost of the global communications economy. Of the eight lobbying companies with offices in Scotland who are members of the APPC, six are owned by multinational communication conglomerates with global reach:

Strategy in Scotland (part of Westminster Strategy, in turn part of the international Grayling group, owned by the Lopex communication corporation);

Shandwick (the Scottish branch of the Interpublic communication conglomerate);

GPC Scotland (part of the global GPC network, owned by the Omnicom group, which has other interests in Scotland through Countrywide Porter Novelli, who are members of ASPA);

Citigate Public Affairs (a branch of Citigate Dewe Rogerson, owned by the communications corporation Incepta);

GJW Scotland (the Scottish office of GJW Government Relations, recently acquired by BSMG Worldwide);

APCO Scotland (part of APCO Worldwide).

These corporations have their own interests across the media and communication industries. One of the key concerns for the future is the extent to which their activities in differing branches of the communication industries might involve a conflict of interest. This issue has not yet been of public concern in Scotland. But at the

UK and global levels communications conglomerates increasingly promote the sectional interests of their clients through lobbying and public relations activities while also owning news organisations which are supposed to report dispassionately on the same clients. For example ITN and the PR giant Burson Marsteller jointly own Corporate Television News which makes corporate videos and video news releases. There have recently been allegations that the priorities of CTN's clients can affect ITN reporting of public issues such as the role of Shell in Nigeria, Shell being a CTN client (Monbiot 1998; Whitehead 1998). Whether these particular allegations have substance or not, the issue of a potential conflict of interest is clear. As things stand in Scotland there are a number of prominent broadcast journalists who both work for organisations which provide media training to large Scottish and multinational corporations and who are also expected to dispassionately report the activities of those corporations.

Such potential conflicts of interest are currently not widely known or aired in Scotland and are likely to remain hidden in the absence of statutory regulation which would require the disclosure of clients and fees by both PR and lobbying consultancies.

Lobbying trade associations

Lobbying trade associations exist largely in order to defend the sectional interests of their industries. Both of the dedicated lobbying trade organisations in the UK (APPC, ASPA) have come into existence in the last six years as a result of journalistic exposure of alleged lobbying malpractice. One of their main aims in practice

is to resist proper democratic scrutiny of their activities. To this end they will attempt to portray lobbying as a harmless or democratically helpful activity or claim that they represent a wide range of opinion and interests and not simply those which are narrowly corporate. Both ASPA and the APPC engage in the former and ASPA in the latter. It is true that ASPA does have members who are not from corporations or consultancies, but these are very much junior partners in the enterprise. ASPA currently has around 25 paid-up members. Of these, around two-thirds are from corporate or consultancy backgrounds. In essence the trade associations (and the wider PR associations such as the IPR and PRCA) are self-interested actors in this debate.

The case for regulation

At present the system of regulation in Scotland is very similar to that of Westminster. The rhetoric of an open Scotland distinct from Westminster has not so far been achieved in practice. Statutory regulation of lobbying in Scotland would be a significant departure from the practice at Westminster and could provide a model to be followed in London.

The Standards Committee has already devised a code of conduct governing the actions of MSPs. This was a welcome first step in providing for probity in Scottish public life. However, it is our view that only statutory regulation of all lobbyists in Scotland would guarantee the highest standards of behaviour of all those involved in the political process. Moreover, it could provide the public with important information about the political

process and increase public confidence in the Parliament as an institution.

Objections to a statutory register of outside interests tend to focus on the difficulty in defining lobbyists and the impracticality of maintaining a register of outside interests. There is in fact much evidence to suggest that these objections are misplaced. If a statutory register of lobbyists includes all those who lobby then the difficulty of distinguishing between different types of lobbyists (commercial consultants, in-house corporate, voluntary sector) becomes less problematic. Many states in the US have managed to produce systems of registration which can cope with the variety of outside interests who seek to shape public policy .

There is also evidence that these systems are practicable and, according to evidence to the Neill Committee, that they can make important information available to the public Ôcheaply and effectively by electronic information gathering, storage and retrieval, providing easy access to all who wish itÕ (Neill Committee 2000: 86). Contemporary experience from the State of New York (which has recently enacted, and implemented, the New York State Lobbying Act 1999) suggests this. It is inaccurate to claim that all statutory regulation is cumbersome and ineffective.

Statutory regulation can work and would help to improve the transparency of governance and accessibility of the Parliament. But statutory regulation is not a panacea for all the ills of democracy in Scotland. It is only the first step in ensuring sound standards in Scottish public life. Our research suggests that there is a need to make

significant reforms of the whole culture of governance, especially in a small country like Scotland where personal networks can be so important (as was highlighted during 'Lobbygate'). Statutory regulation could be conceived as the beginnings of a rolling programme of reform of the culture of secrecy which affects both lobbying and the civil service in Scotland.

In the US, corporations have tried to by-pass statutory regulation by setting up 'citizens groups' which do not have to be registered, or by supplying 'free' entertainment and leisure opportunities (Silverstein 1998: 221-227). This suggests the need for all lobbyists to be covered by a statutory register if they repeatedly contact MSPs or officials a significant number of times a year. In addition, there is the question of fundraising dinners and other events organised by political parties which are attended by significant numbers of lobbyists and their clients and of donations to political parties. All of these lobbying activities should be public, transparent and, above all disclosed in a central register.

The targets of lobbying: Parliament and Executive

We note that the consultation paper mentions lobbying only in relation to Parliament. The survey carried out by the Committee was of MSPs only. The Parliament certainly is a target for commercial and other lobbyists, but lobbying takes place anywhere that public policy is made. In Scotland, lobbyists predominantly target the Executive.

It is many years now since MPs in Westminster were the major targets of lobbying activity. The cash for questions case in 1994 did show that lobbyists still target MPs

(Leigh and Vulliamy 1997). But more important is the targeting of ministers and civil servants by lobbyists and their clients. This to some extent lay behind the cash-for-questions affair as some of it took place when Neil Hamilton was a government minister. Access specifically to ministers (and not MPs or MSPs) was also central to both the "Drapergate" and "lobbygate" scandals.

It is crucial, therefore, that the deliberations of the Committee take the lobbying of ministers and civil servants into account in considering regulation. It may be argued that this is beyond the remit of the Committee. We would point however, to the Neill Committee and its recommendation that a clear written record of all contacts with outside interests be kept by government departments:

We do not think that compliance with a new requirement to the record would be burdensome for departments, and we believe that it would encourage high and uniform standards. (Neill 2000: 91)

Of course, such a record would have to be regularly and publicly reported for it to be of any use in promoting transparency or accountability. The key point for us, then is that for any system of regulation to work it would have to apply to MSPs, ministers and their staff (i.e. civil servants, including those in public bodies, quangos, NDPBs, nationalised industries and the like.) It should also apply even where there may be some current or future exemption under Freedom of Information practice or legislation (Scottish Executive 1999). The blanket exemption in the Freedom of Information consultation document for commercial confidentiality, should have no

place in obscuring the use of lobbying, public relations, hospitality and other gifts in kind. This is particularly the case where corporations or others stand to gain significantly from contracts with Parliament or the Executive or in bidding for PPP/PFI projects and the like.

It would be rather ironic if the Parliament, born from a commitment to open up decision making, were to endorse a system of regulation which was less open than that in London. Our recommendation would be that ministers and civil servants be required to keep a record of meetings or other significant contacts with lobbyists, their clients and other special interests in line with the recommendations of the Neill Committee. This record should be put into the public domain at regular intervals – perhaps once every parliamentary session.

The role of the public in public consultations

We recognise the Standards Committee's genuine interest in public consultation on the regulation of lobbying. We also note the concern to ascertain whether the public finds it easy to access the Parliament. But we also note that this consultation has not been very extensively promoted to the public. The consultation document is available on the Parliament website, but a copy of the document was sent out to only 35 organisations. It is unlikely, therefore, that the public will have much genuine opportunity to participate in this debate. While we accept that a fair range of non-governmental and non-corporate organisations have been consulted (although the percentage representing corporate interests is rather high at 20%), it is not clear how the public interest might have any obvious role in

this consultation. All those that have been asked to respond to the consultation are groups who will have a particular interest in the rules governing lobbying. To the extent that there is a crisis of confidence in governance in Scotland, this consultation will do little to counteract that problem. There are a number of ways in which public views can be taken account of. From opinion polls and focus group research to new initiatives in public consultation such as that adopted by the Petitions Committee, there are ways and means of tapping into and responding to public concern.

It is important that the Standards Committee is not unduly swayed by the weight of evidence, but rather its quality. A Neill Committee insider revealed to us that this was a problem with their recent review of lobbying at Westminster (Neill 2000). As most of the evidence was provided by political insiders and actors with vested interests in the outcome of the review, it became difficult to sustain detached public interest arguments. We would recommend that the Committee take public concerns seriously by attempting to find out what they are and then acting upon them.

We Recommend:

Statutory regulation of all those engaged in lobbying in Scotland;

Disclosure of resources expended in lobbying campaigns, which itemises expenditure by outside interests (clients and their agents) on each piece of legislation they have lobbied on;

The publication and dissemination of information in the register of lobbyists, including details of all significant contacts with Ministers, MSPs and officials;

The adoption of an electronic system of registration, which would facilitate data gathering, storage, retrieval and access to information held in the register of lobbyists.

Responses to questions in Annex A of the consultation document

SECTION 1 D Lobbying Activity

1.1 The Stirling Media Research Institute (SMRI) has been studying the lobbying industry in Scotland, the UK and Europe since 1996. Strictly as part of this research the SMRI has been a corporate member of the Association for Scottish Public Affairs (ASPA) since its inception in 1998. One of our members, William Dinan, has been a committee member of ASPA for the last year. Our submission to the Committee reflects our knowledge of and research on the lobbying industry. It does not express the views of ASPA or any other section of the lobbying industry.

SECTION 2 D Accessing the Parliament

2.7 Our research suggests that the rules and procedures that govern the Parliament are indeed well understood by professional lobbyists. However, our research has also brought us into contact with other civic groups and members of the public who are interested in accessing the Parliament. For these non-professionals the Parliament and the Executive are often not seen as open,

accessible or transparent. This, we believe, seriously undermines the CSG's optimism that the open nature of the Scottish Parliament would hopefully encourage individuals and groups to approach MSPs directly, therefore, to some extent, making the need for specialist lobbying organisations redundant. While we agree that the individual constituent has as much right as the professional lobbyist to make representations to the Parliament (and Executive), we must recognise that such individuals simply do not have the necessary resources (time, money, and experience) to lobby in the same way as professional lobbyists. Statutory regulation will not create a two-tier lobbying system, as this already exists and is firmly in place in Holyrood. One way to tackle this imbalance, in our view, is to open up the activities of lobbyists to public scrutiny. In New York one consequence of engaging in statutory regulation of lobbyists was the production of a guide to lobbying for citizens and citizens groups, thus attempting to use statutory regulation as a real catalyst for opening up and broadening access to law-makers. We recommend an approach which sees statutory regulation as the beginning of a process which will help to reinvigorate democracy to the extent that it widens participation and demystifies commercial lobbying activity. Furthermore, the fact that the lobbying industry itself is not in favour of statutory regulation indicates they do not believe that any special advantage might be gained by this. The industry is keen on voluntary codes precisely because they will not have to disclose information about their clients, fees and tactics, which is in the public interest.

SECTION 3 D Regulation of Lobbyists and Code of Conduct Statutory Regulation

3.1 Yes. We would strongly support the establishment of a statutory registration scheme for professional lobbyists.

3.2 The main benefit of introducing statutory regulation of lobbyists in Scotland would be to ensure that Parliament takes distinctive action to police lobbying which is in advance of the systems operated in both Westminster and Brussels. This would be extremely significant evidence that the Parliament was attempting to live up to the CSGOs provisions on openness. A statutory register would provide a public record of the resources devoted by outside interests to shaping public policy in Scotland. At present, the principles of openness and transparency that the Scottish Parliament has been founded upon lack concrete form. A register of lobbyists and their clients would be a very effective way of auditing the activities of outside interests who seek to influence policy making. One of the recurrent problems in trying to understand the nature and scope of lobbying activity has been the absence of any reliable data on what lobbyists actually do, and what resources are devoted to influencing policy. This kind of information will not be disclosed by lobbyists unless Parliament requires it. A statutory register of lobbyists would allow such important information to enter the public domain.

3.3 The drawbacks of statutory regulation are, in our opinion, more imagined than real. There is evidence from the United States and Canada that registration systems can be administered easily and efficiently, especially in electronic form, which has the advantage of being relatively cheap and accessible. The only drawback we can see is that it would threaten the unaccountable, opaque and secretive conduct of some lobbyists. The

main arguments used against the existing systems of regulation by lobbyists tend to be that they do not work and are complicated and subject to loopholes. But in fact these systems have secured a measure of transparency. There certainly is a concern in some places (such as the US) that the systems of regulation in place are subject to loopholes and that corporations and lobbyists have found ways to get round them (Silverstein 1998). In our view this is only an argument for having more, not less, effective regulation.

3.4 For a statutory registration scheme to have the full confidence of the public, the Parliament, and the lobbying community, it should be administered by an independent commissioner or commission. Given the scale of lobbying in Scotland, such a body could probably operate on a part-time basis, with the administrative support of Parliamentary staff.

Voluntary Code

3.5 As a corporate member of ASPA, the SMRI is affiliated to ASPA's code of conduct. However, since we do not engage in any lobbying activities, its provisions have never actively applied to us.

3.6 The creation of the ASPA code of conduct was seen by some in the organisation as a way of establishing self-regulation as the norm for Scotland, and as a way of seeing off statutory regulation.

3.7 Based on our research, it would appear that ASPA's voluntary code (and indeed that of the APPC) is not being monitored in any systematic way, and that enforcement is also problematic in principle. In fact, it

would appear that these voluntary codes are only policed sporadically and informally. During our research, we were told of a case where professional lobbyists were offering preferential access to ministers. These self-same lobbyists were signatories to a code which explicitly prohibited such behaviour. That this event happened only a short while after the 'Lobbygate' affair serves to highlight the inadequacies of self-regulation on the part of lobbyists. It is hardly likely to inspire public confidence in the Parliament if the regulation and policing of lobbying is left to the industry itself, or industry appointed agents. An arrangement whereby lobbyists are able to sit in judgement on themselves ought to give rise to questions about conflict of interest. Furthermore, there remain real legal doubts over the ability of lobbyist trade associations to enforce sanctions by the application of their codes. In particular there may be legal difficulties for ASPA or APPC Scotland in 'naming and shaming' lobbyists in member companies. It has been suggested to us by lobbyists in London, that lobbying companies which have members named and shamed might well resort to or threaten to resort to law if their business is adversely affected by a trade association judgement. Such pressures are not conducive to self-regulation.

3.8 The advantage of voluntary codes has been that they have given lobbyists guidance on how they should behave when in contact with MSPs and their staff. However, as these codes are voluntary they do not necessarily apply to all those engaged in lobbying the Scottish Parliament or Executive. This is a serious regulatory blindspot. Again, with no obvious

mechanisms to effectively police these codes, their value as regulatory instruments is questionable.

3.9 We do not see any benefits to be gained through the introduction of a voluntary code of conduct for lobbyists.

3.10 Voluntary codes are often ineffectual. If lobbyists are not compelled to sign up to such codes, and are not bound by any independently applied sanction if they breach these codes, then their impact can only be cosmetic. It is our view that voluntary codes are poor substitutes for statutory regulation. The weak and ineffectual regulation in Brussels and Westminster are testament to that.

3.11 Although we think only a statutory code will satisfy the CSGOs aspirations for openness if a voluntary code were to be introduced it should apply to all those who lobby in Scotland, including commercial consultants, in-house lobbyists in commercial corporations and the voluntary sector. The code should make explicit provision for the disclosure of the resources devoted to lobbying. Furthermore it should apply to the Parliament and to the Executive. Any information which is disclosed should be made widely available to the public in printed form and on the web. It is simply not enough to bury it by making disclosure only to SPICe or some other part of the Parliamentary apparatus.

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