

# STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

## INQUIRY INTO LOBBYING

### SUBMISSION RECEIVED FROM SPINWATCH

#### **The Need for Change: have there been significant changes over the last decade in the way that lobbying is carried out?**

Since our original research on the development of the lobbying industry in Scotland in advance of devolution and during the first session of the Parliament<sup>1</sup>, it appears to us that there has been a bedding down of relations between lobbyists and the Scottish Parliament. Lobbying is seen as a normal and legitimate part of the democratic process. It is nevertheless quite difficult to establish with any certainty how the practices and techniques used in the organised lobbying of the Scottish Parliament may have changed in the last decade, as lobbyists are often reluctant to openly discuss or publicise the precise tactics and mechanics of how influence is brought to bear on political policy and decision making. A register of lobbying could address this gap in public knowledge and scrutiny about how lobbying operates, depending on the kinds of information lobbyists are required to disclose in a lobbying register.

#### **Is there a problem or perceived problem with lobbying in Scotland? If so, how can this best be addressed? If not, do steps still need to be taken to address any problem arising in future?**

We believe that the framing of this question slightly misses the point in terms of why lobbying disclosure is not only desirable, but necessary. There is a very compelling positive case for lobbying transparency which is often lost in the special pleading by those in the lobbying business that usually follows suggestions for reform in this area:

*Lobbying transparency can benefit the public, the media, elected representatives, public servants and those engaged in lobbying. Lobbying transparency promotes scrutiny, enhances accountability, contributes to informed public debate and can encourage citizens and civil society groups to engage with decision makers.*

#### **Register of lobbyists: To what extent will the introduction of a register of lobbyists address any problem or perceived problem with lobbying?**

A lobbying register will only help address the secrecy associated with lobbying if it ensures information is put into the public domain in a timely manner, and if the information disclosed enables scrutiny and accountability. It is important that any Scottish lobbying disclosure system is sensitive to local political culture, but equally that it is firmly founded on key principle of openness and transparency, and a presumption toward timely and meaningful disclosure.

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<sup>1</sup> See Schlesinger, P., Miller, D. and Dinan, W. (2001) *Open Scotland? Journalists, Spin Doctors and Lobbyists*, Edinburgh, Polygon.

## **To whom should such a register apply?**

We believe that it is vitally important that registration is based on clear principles and that special exemptions for particular categories of lobbyists are avoided. Any group or organisation that devotes a significant amount of time or money to influencing decision makers in the public sector should be registered. The most commonly raised objections to inclusion in a lobbying register in Scotland tend to come from non-profit organisations, charities, and lawyers. The voluntary sector do not like to see themselves as lobbyists, and make a significant and legitimate distinction between advocating for the relatively powerless in society rather than representing powerful private interests. By contrast lawyers appear to consider that they have some form of professional privilege that excludes them from transparency obligations. *In our view all those engaged in lobbying advice or advocacy should be subject to the same disclosure requirements.* The creation of exceptions will in all likelihood lead to those who wish to avoid transparency exploiting these exceptions. For example, if a register of lobbyists is created in Scotland, but lawyers are exempted from this, it is not unreasonable to assume that those individuals and organisations who wish to avoid lobbying disclosure would retain lawyers offering public affairs services and in so doing, circumvent the spirit of the lobbying register.

Concerns have been raised about creating barriers in the way of individuals and organisations interested in participating in public affairs. It is also clear that the intention is to bring transparency to the field of lobbying by making the activities of professionalised lobbying more open and transparent. It therefore follows that small community groups who do little lobbying, and engage in lobbying or advocacy on an ad hoc basis, need not be subject to the requirements of a disclosure or registration system. The key question which needs to be decided is where to draw the line between small scale lobbying or ad hoc advocacy and the systematic and professionalised lobbying efforts of organised interests. Concerns expressed about the creation of a two-tier lobbying system seem to us to be misplaced. Instead, it is quite possible that a lobbying register can have a positive impact on participation, by removing some of the mystique associated with lobbying, showing individuals and groups how lobbying is organised and potentially encouraging them to participate in the policy process.

## **Should it be voluntary or compulsory?**

Any lobbying disclosure system, to maintain credibility and respect, must be mandatory. Voluntary or self-regulatory regimes are inherently problematic – *they simply cannot capture those lobbyists who wish to operate in secret or selectively disclose information about their activities.* Those wishing to avoid scrutiny can simply ignore self-regulatory systems and continue to practice as lobbyists. The voluntary system recently introduced by the European Commission and European Parliament suffers from serious and widespread non-compliance, and weak disclosures by many of the organisations who have voluntarily declared lobbying information.

## **How should it be maintained and who should maintain it?**

A lobbying register needs to be updated and maintained on a regular basis in order to function as a useful tool that enables democratic scrutiny and accountability. Quarterly reporting seems to be a fair and proportionate obligation on those who are required to register. Requiring lobbyists to update their disclosures every three months means that record keeping is routinised, register accuracy and arguably the administrative burden of compliance are actually reduced. Disclosure is not simply a one-off annual chore, but a standard and recurring function of professional life. As the Public Administration Select Committee concluded after their review of lobbying in the UK: 'If sensibly framed, regulation would simply require those involved in the process of lobbying to provide information which should already be in their hands.'<sup>2</sup> Disclosure should be done electronically, and filings should be fully searchable, sortable and capable of being downloaded from a public website. The key characteristics of whatever body is charged with overseeing a lobbying register are that it is independent of government and independent of the lobbying industry.

## **What level of information should be on it?**

A disclosure system needs to make relevant information about the scale and scope of lobbying available to scrutiny. In effect this means that details like the names of lobbyists, the resources devoted to lobbying, the targets of lobbying, and the issues being lobbied on need to be disclosed. In particular, *who is undertaking lobbying activities, and what financial resources are devoted to lobbying are fundamental to a credible lobbying disclosure system.*

With careful crafting, and taking into account the particularities of the Scottish political scene, it should be possible to create a lobbying register that greatly enhances transparency, and makes a concrete positive contribution to equality. This can be achieved on two connected fronts: equality of information and equality of access. Research on the introduction of the lobbying disclosure regime in Canada found that one of the key early beneficiaries of the legislation was elected representatives. The lobbying register allowed new information about the breadth and focus of lobbying to be put in the public domain, and gave politicians an improved overview of where pressure was being brought to bear. This equality of information can clearly have impacts on equality of access as well, given that a reliable lobbying register allows politicians and public servants to more easily avoid giving privileged access to particular interest groups and try to ensure balance and equity in their interactions with outside interests.

## **Should thresholds be set for registration? If so what should they be?**

Yes. Please see the submission of the Alliance for Lobbying Transparency for detailed recommendations on this point.

## **What are the likely cost implications of registration for groups that lobby?**

Compliance with a lobbying register need not be an onerous or costly exercise. It is very difficult to answer this question without a clear understanding of the scope and

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<sup>2</sup> Public Administration Select Committee (2009), p. 63.

reporting requirement of a proposed registration system. Nevertheless, some observations based on experience elsewhere do seem appropriate. The European Transparency Register – a voluntary system – has very few costs associated with disclosure, but equally, the quality and detail of the information therein is very questionable. Part of the problem of compliance with that system is arguably the amount of discretion afforded to those registering. Different organisations in some sense pick and choose how much they wish to disclose about their activities. In contrast, the US Federal System is much more prescriptive and registrants need to comply with detailed regulations and guidance on how to present their lobbying disclosures. However, there is evidence that the costs of compliance even with the detailed US federal system are not significant and are easily absorbed by the organisations covered.

**What sanctions should there be for failure to register lobbying activity? How will the register sit alongside the UK register? How will compliance be monitored?**

Please see the submission of the Alliance for Lobbying Transparency for detailed recommendations on sanctions and compliance. In terms of monitoring it is very important that sufficient resources are devoted to checking the quality and accuracy of filings, and ensuring that erroneous submissions are quickly identified and corrected. This means that whatever body is responsible for a lobbying register has the capacity to monitor submissions, audit filings and investigate registrations, either proactively or reactively if complaints are made about the quality or veracity of disclosures. There are exemplars of good practice in terms of openness and transparency in Scotland, not least the functions of the Office of the Scottish Information Commissioner, which has educational, investigative and enforcement powers. Such a mix would be well suited to the task of ensuring compliance, respect and trust in a Scottish lobbying transparency register.

At the time of writing the proposed UK register is still taking shape at Westminster. However, we would suggest that the Scottish Parliament does not follow the Westminster model, which seems to be driven by an intent to stifle civil society campaigning and engagement, while largely ignoring the power and privilege of large corporations with very significant in-house lobbying capacity. A Scottish lobbying registration system should reflect the founding principles of the Scottish Parliament, promoting openness and participation, and based on equity and equal opportunities.

**What are the implications of a register for (a) the Parliament, (b) MSPs, (c) organisations that lobby and (d) Ministers and civil servants?**

This question cannot be answered in detail in advance of knowing the form and character of a lobbying register. Nevertheless, in principle, a number of key implications flow from the creation of a lobbyists register. For Parliament it will likely be necessary to resource whatever body is set up to oversee and maintain the register, and primary legislation will be needed to create the powers for the office that is responsible for the register. MSPs and their staff may be required to record and formally disclose contacts with lobbyists. They will also benefit from getting a clearer picture of where and how influence is bearing brought to bear in the Scottish political system through the information disclosed in a lobbying register. Organisations who lobby will be required to declare their lobbying activities and

details of the resources they devote to influencing the political process. There will be a general expectation that the secrecy that currently surrounds lobbying will be replaced by a culture of openness and transparency. This point equally applies to Ministers in the Scottish government and public servants working within the executive. Diary and record keeping of covered contacts with outside interests should be disclosed.

With careful drafting it is possible to create a disclosure system that is not too costly, bureaucratic, or onerous to comply with. Nevertheless, it is important that a register is not simply a 'tick-box' system that does not significantly enhance transparency and accountability. Such a register would not command respect of those covered, or the trust of those outside of the lobbying business, such as the media and interested member of the public.

**DR WILLIAM DINAN & PROFESSOR DAVID MILLER<sup>3</sup>**  
**SPINWATCH**  
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<sup>3</sup> William Dinan, Senior Lecturer, School of Social Sciences, UWS & Professor David Miller, Department of Social & Policy Sciences, University of Bath. We are both founders of Spinwatch, an independent non-profit making organisation promoting greater understanding of the role of PR, propaganda and lobbying. We are also founder members of the Alliance for Lobbying Transparency in the UK (ALT UK) and the Alliance for Lobbying Transparency and Ethics Regulation in Europe (ALTER EU).