

Standards, Procedures and Public Appointments Committee

Lobbying inquiry – background briefing for Chamber debate

Introduction

The Committee's inquiry has focused on the role of external individuals/organisations in informing policy formulation and scrutiny processes. The remit is:

To examine whether there is a problem, either actual or perceived, with lobbying and, if so, how this can most effectively be addressed; to what extent a register of lobbyists would help with this process, who such a register should cover and how it would be operated in practice; and whether other steps might be needed to improve probity and transparency in this area.

Links are available on the inquiry website to:

- all written submissions and *Official Reports* of evidence sessions
- Neil Findlay MSP's proposal for a bill
- SPICe briefings including on international approaches on lobbying.

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/68068.aspx>

Context for the debate

The evidence has focussed mainly on the options of a statutory or a voluntary register but has also looked at other options that could be viewed as alternatives to a register or as additional measures to be implemented alongside a register. These include: a code of conduct for lobbyists; strengthening the Code of Conduct for MSPs; the publication of details of contact with lobbyists by politicians or officials; publishing more information on 'new' forms of lobbying such as events; and improving the accessibility and searchability of information that is already publicly available. In assessing these options the Committee has considered key questions such as:

- what does and does not constitute lobbying?
- to what extent should the onus to make lobbying activity more transparent rest with the lobbyist or those being lobbied?

Before producing recommendations and conclusions, the Committee considers that a valuable next step is to hold a Chamber debate in order to tap into the experience and perspective of other MSPs. The debate will be publicised to all those who have shown interest or taken an active part in the inquiry, to enable them to contact MSPs in advance to share their perspective on the issue.

To inform the debate, the Committee has produced a summary of the issues raised in evidence (pages 3 to 13). The Committee has also produced, as context, appendices summarising: existing checks and balances in Scotland on those lobbying and those being lobbied (appendix A – page 13); and information currently

publicly available on lobbying activity around political processes (appendix B – page 17).

The Committee's perspective

The Committee is clear that there is a case for change, and that its recommendations to Parliament must seek to ensure:

- sufficient transparency for citizens seeking information on how lobbyists seek to influence policy formulation and scrutiny processes; and
- sufficient controls to prevent or expose any lobbyists seeking inappropriate access to, or to exert undue influence over, politicians or officials.

The Committee also wants to ensure that its recommendations are proportionate. For example it would not endorse any change that could act as a deterrent to those seeking to engage with policy formulation and scrutiny processes in a legitimate way. When undertaken appropriately, lobbying aids democracy. The 'multiplicity of sources and information' that adds value to policy formulation in Scotland must not be inhibited by disproportionate regulation.

Standards, Procedures and Public Appointments Committee

SUMMARY OF EVIDENCE

Definitions of lobbying

UK Public Affairs Council Lobbying means, in a professional capacity, attempting to influence, or advise those who wish to influence, the UK Government, Parliament, the devolved legislatures or administrations, regional or local government or other public bodies on any matter within their competenceⁱⁱ.

Organisation for Economic Co-operation and Development ...the oral or written communication with a public official to influence legislation, policy or administrative decisions, often focuses on the legislative branch at the national and sub-national levels. However, it also takes place in the executive branch, for example, to influence the adoption of regulations or the design of projects and contracts. Consequently, the term public officials include civil and public servants, employees and holders of public office in the executive and legislative branches, whether elected or appointed.ⁱⁱⁱ

- The Association of Professional Political Consultants in Scotland described the definition used by Neil Findlay (the UK Public Affairs Council definition above) as a “good starting point”^{iv}.
- The Association for Scottish Public Affairs (ASPA) added that definitions of lobbyist should ensure a level playing field, in other words there should not be distinctions between consultant (commercial) and in-house lobbyists^v.
- The STUC described lobbying as “the attempt to influence policy by relationships with the Government and MSPs through a range of communication devices”^{vi}.
- Agreeing with this description, Children in Scotland questioned the point at which lobbying starts and information sharing ends^{vii}.

The Need for Change

Is reform required?

The Committee was keen to ascertain the extent to which there is a problem with inappropriate lobbying activity.

It was argued that:

- due to a lack of a register and a relative dearth of investigative journalism, it is not clear whether there is a problem with inappropriate lobbying in Scotland (Spinwatch);
- regardless of whether there has previously been inappropriate behaviour, the idea of lobbying transparency and, in particular, the introduction of a register, is good practice and good governance, and is consistent with the founding principles of the Scottish Parliament (Spinwatch);

- a register would act as a deterrent for any future inappropriate activity (the Electoral Commission, OSCR and the Law Society).

Law Society ...to maintain public trust and confidence in the system it has to display that it is free from any suggestion that there might be a lack of transparency. We therefore agree theoretically that, although there might not be a problem, that does not mean to say that additional transparency would not help to prevent a problem from emerging in the future.^{viii}

Evidence also highlighted that a register would not just be beneficial in improving accountability, but it would also improve transparency, so that the citizen is more informed about the types and the extent of lobbying occurring and therefore more trusting of the system and likely to engage (Electoral Reform Society)^{ix}. It was argued that a more holistic picture of lobbying activity, that a register would provide, would also aid politicians in taking decisions on which lobbyists to interact with.

Spinwatch...an MSP would not know what other activities the lobbyists were engaged with; they could declare only what they were conscious of. One benefit of a wider disclosure regime would be that we would have a much broader awareness of what was going on across the entire Parliament and where influence was being brought to bear.^x

Conversely, it was argued that there is not a sufficiently serious problem to solve in relation to transparency and accountability and therefore a register is not required:

- there have been no major lobbying scandals and therefore there is no need for legislation (SCVO and the Commissioner for Ethical Standards in Public Life – then Stuart Allan);
- there is a lack of evidence of a problem with lobbying in Scotland and that the introduction of new regulation is neither justified nor proportionate (CBI Scotland);
- legislating is a disproportionate response that could act as a deterrent to those legitimately seeking to engage with politicians (Susan Deacon).

Susan Deacon“...if the Parliament’s aim and aspiration is to encourage openness and access and a free flow of information, and to build understanding, the last thing that we want is people worrying about how they are labelled and whether they have complied with the rules before they speak to politicians.”^{xi}

Developments in other jurisdictions – statutory and voluntary registers

The majority of those advocating change wanted a statutory register of lobbyists or lobbying activity, arguing that a voluntary register would only be complied with by those happy to make the details of their lobbying activities publicly available. Therefore a voluntary register would be ineffective in improving transparency and accountability.

However, it was suggested by some that a voluntary register could be a valuable step forward in increasing transparency (Commissioner for Ethical Standards in Public Life – then Stuart Allen).^{xii}

Examples of work elsewhere were detailed to inform the Committee’s consideration of the merits of statutory and voluntary registers.

- **UK Parliament**

The evidence was that the UK Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014 is not a good template for legislation. The SCVO described that bill as “putting democracy back” and hampering campaigning of third sector organisations^{xiii}. The Electoral Reform Society witness stated ‘It is not a model to follow and I hope that it gets repealed’^{xiv}. The Alliance for Lobbying Transparency described it as lacking breadth, homing in on consultant lobbyists, and covering only certain types of individuals being lobbied^{xv}.

Some organisations, such as the Scottish Retail Consortium (SRC)^{xvi}, FSB Scotland^{xvii} and CBI Scotland^{xviii}, expressed concerns that having two separate registers (and potentially four for organisations lobbying in Wales and Northern Ireland as well) could lead to duplication and unnecessary regulatory burdens being placed on representative organisations. Scottish Land and Estates argued that it would be “helpful to have some form of alignment with the UK register to reduce any uncertainty across jurisdictions”^{xix}.

- **Canada and the USA**

Canada was held up as an exemplar of transparency. Its monitoring system was described by Alliance for Lobbying Transparency as “very good” and “sophisticated”^{xx}. ALT added that there were benefits to the US register (it has financial disclosure – which the Canadian register does not) and the Canadian register (which requires registration of meetings with officials on a monthly basis)^{xxi}.

Canada has a Commissioner of Lobbying, with the role of ensuring transparency and accountability in lobbying of public officers. The Commissioner’s mandate is set out on her [website](#)—

- maintaining the [Registry of Lobbyists](#), which contains and makes public the registration information disclosed by lobbyists;
- developing and implementing educational programs to foster public awareness of the requirements of the Act; and
- conducting reviews and investigations to ensure compliance with the Act and the [Lobbyists' Code of Conduct](#) (the Code).

The Commissioner reports annually to both houses of Parliament. Reports on Investigation conducted in relation to the Code are tabled in Parliament as they are completed.^{xxii}The SPICe briefing, “Lobbying Schemes in Other Countries”, provides further details on this, and schemes in Australia, USA, New Zealand, and the EU.^{xxiii}

- **National Assembly for Wales**

The National Assembly for Wales Standards of Conduct Committee decided that a proportionate response stopped short of regulating lobbying through a statutory register.^{xxiv}

29. The Committee has explored the idea of a proportionate regime of voluntary registration for professional lobbyists, with a focus on records of meetings between lobbyists and Members being kept. It supports the principle of professional lobbyists making the details of their members/employees, their clients and the areas of interest that they pursue publicly available.

30. The Committee also thinks it would be useful for more information to be made public by professional lobbyists about the amount of money spent in pursuit of each broad area of lobbying. It should be stressed that the Committee respects the rights of lobbyists not to be required to provide commercially confidential information about their fees, but an indication of the cost of any major events specifically aimed at Assembly Members could be declared in the interests of transparency and the public's right to know.

31. By way of example, if a number of Assembly Members attended an event and then subsequently voted in plenary on an issue where the event organiser or their client had a strong commercial interest in the result, then that would be a matter of public interest, even though individual Members might not be required to register their participation in that event in accordance with Standing Order rules and thresholds for registering interests.

32. The Committee is however strongly of the view that no unnecessarily onerous burden, in terms of time or resources, should be placed on smaller voluntary, charitable or third sector organisations or campaigners. The Committee and Commissioner favour an approach that will not raise the burden on the public purse. They also favour a system that does not impose an unnecessary burden on Assembly Members. The Commissioner himself noted "the almost impossible task of recording every informal meeting or of having to determine who is a lobbyist." At the same time the need to give the public the accountability required in this area is recognised.

- **EU Transparency Register**

This is a voluntary register with associated code of conduct and sanctions.

...provides citizens with a direct and single access to information about who is engaged in activities aiming at influencing the EU decision making process, which interests are being pursued and what level of resources are invested in these activities. It offers a single code of conduct, binding all organisations and self-employed individuals which accept to "play by the rules" in full respect of ethical principles. A complaint and sanctions mechanism ensures the enforcement of the rules and to address suspected breaches of the code.^{xxv}

There were some concerns expressed about the operation of that register.

Spinwatch “The European version, which has been trialled for the past couple of years, is a voluntary approach, and I think that it is awful. I am registered under the European transparency register. It takes me a couple of hours once a year to fill it out. We report in bands of around €50,000, and there is quite a difference between spending just a few thousand euros and spending €49,000 euros on lobbying.”^{xxvi}

- **Costs of examples of statutory and voluntary registers**

It was noted by the Alliance for Lobbying Transparency that a voluntary system would cost significantly less than a statutory register and an associated commissioner^{xxvii}. The Canadian register costs £600,000 per annum to maintain, the EU Transparency Register costs 130,000 Euros and the US register has been estimated to cost \$1 million.

A register of lobbyists for Scotland – how would it operate?

- ***The need for a proportionate approach***

A theme through the evidence in favour of a statutory register highlighted the importance for it to operate in a proportionate way meaning it should not capture low-level activity or be an overly cumbersome system that would take organisations with limited resources an unreasonable amount of time to comply with. For example it has been argued small charities should be exempt from registration and that any fee levels should be proportionate to the size of the organisation.

Concerns were raised that, in seeking to exempt certain organisations based on criteria such as purpose, size or income could make for a system that was complex to administer and that some lobbying activity of interest might slip under the radar as a result.

Before working through the detail of what a register might look like, it is worth noting Professor Raj Chari’s observation that the Committee need not devise a new system from scratch, there are an increasing number of examples of registers to base a Scottish register upon.

Professor Raj Chari “The international experience shows that, increasingly, countries and political systems are adopting lobbying regulations. Four did so in the 1990s, and the number has tripled today. If there is a will to pursue legislation and it is deemed necessary, it would be consistent with what many political systems in the world are doing. The final word is that it is easy to draw policy lessons from those political systems and to use their legislation and experiences when you draft your bill.”^{xxviii}

- ***What lobbying activity is challenging to capture on a register?***

A regular issue discussed in evidence was – what activity does and does not constitute lobbying? It was noted during these discussions that lobbying has evolved in recent years including an increasing amount of ‘indirect’ lobbying.

Association for Scottish Public Affairs: The focus of ‘lobbying’ activity has changed significantly and is now focused more on the organisation of profile raising events and exhibitions rather than primarily on ‘direct’ communication.^{xxxix}

In addition, advances in technology have allowed lobbying to become more sophisticated, not least as a result of the growth of social media. For example, there are methods that involve third parties such as ‘astroturfing’ ‘grass roots mobilisation’ and also commissioning research^{xxx}. In these forms of lobbying it is not immediately apparent who instigated a piece of work.

Furthermore in-house lobbying is increasingly dominant, with lobbying being integrated into an organisation’s standard communication functions.

Association for Scottish Public Affairs Lobbying is increasingly an activity that is integrated with a wide range of other communications disciplines, and forms part of organisations’ wider communications strategies.^{xxxi}

• ***Level of information to be provided on a register***

A number of advocates for reform argued that the following information should be provided on a register—

- who is lobbying;
- whom they represent;
- what issues they are lobbying for; and
- how much money they are spending.^{xxxii}

Some evidence focused on the need for the emphasis to be on the lobbying activity being undertaken.

Alliance for Lobbying Transparency The crucial thing is that the lobbying activity is captured. The register that is proposed in the Westminster bill is a list of names and clients. It does not show any information about their interaction with Government bodies. A register needs to include what people are lobbying on and whom in Government they are lobbying; otherwise, you just have a list of names. If you are going to have transparency in lobbying, you need to capture the lobbying activity, not just who is lobbying.^{xxxiii}

• ***Who should administer a register?***

No witness had a particularly strong view on the issue of who should administer a register. Those who stated a view argued that, if there were to be a register, it should be maintained independently of Government and the industry^{xxxiv}. Neil Findlay added that it should be independent of politicians and political influence^{xxxv}.

Given the absence of any evidence arguing for the creation of a new body to administrate a register, the most viable options would appear to be the Commissioner for Ethical Standards in Public Life in Scotland or the Parliament itself

(presumably this would be officials working independently of politicians – for example in the way that the standards clerks currently maintain the Register of Interests).

- **Sanctions**

Several witnesses argued that any sanctions for a breach of the requirements of the register ought to be proportionate.

Neil Findlay MSP “There should be a system of sanctions that increase in accordance with whatever had happened. There might be a slap on the wrist to begin with, right up to suspension or exclusion from the register, depending on the severity of the problem. A range of sanctions would be logical.”^{xxxvi}

Witnesses also made clear that the system should not punish organisations acting in good faith but whom, perhaps due to lack of resources, struggle to comply with the requirements of the register.

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

The Open University in Scotland expressed concerns over the possibility of sanctions being imposed on individuals for a failure to register activity. It believed that the threat of sanctions could prohibit organisations, in particular those with limited resources, from accessing MSPs, Ministers or public officials.^{xxxviii}

The Electoral Reform Society argued for a reporting regime and empowering the Commissioner for Ethical Standards in Public Life to be able to request registration and issue enforcement notices and fines for non-compliance.

Commissioner for Ethical Standards in Public Life I ask the committee to think long and hard about sanctions, and, in doing so, I come back to the principle that lobbying is a legitimate democratic pursuit. If you were to impose sanctions, someone who had failed to register in time would be sanctioned—that would be what it would amount to. People would start to draw comparisons with councillors or MSPs who had been sanctioned and would say, “What? You’re sanctioning somebody for putting in a return late?” Where would the public trust and confidence come from for that type of approach?^{xxxix}

The Association for Scottish Public Affairs and the Association of Professional Political Consultants in Scotland drew attention to sanctions they can already apply against their members for breach of their voluntary codes. These include disciplinary measures leading up to ejection from the body.^{xi}

• **Thresholds**

The issue of thresholds, below which there would be no requirement to register, attracted mixed views, including among advocates for a register^{xli}. Neil Findlay's consultation paper suggested a time threshold of 20% of a person's workload devoted to lobbying over a 6-month period, and a financial threshold of income of £2,000 or more over a 6-month period for consultant lobbyists, and £9,000 or more over the same period for in-house lobbyists. Spinwatch argued for resource-based thresholds but was sceptical about time-based thresholds^{xlii}.

Oxfam stressed that thresholds would protect its smaller, grassroots partners from being covered by a register, adding that "careful thought" should be given to how thresholds operate across individual staff time (as 20% of a Chief Executive's time is likely to cost more than 20% of a policy officer's time).^{xliii}

Several organisations expressed scepticism about the introduction of thresholds. Zero Tolerance indicated that it was wary of thresholds or exemptions, believing that an organisation's size ought not to exempt it from being required to register^{xliv}. OSCR expressed scepticism about both spend and time-based thresholds. The Chartered Institute for Public Relations (CIPR) was concerned that thresholds would create an "invitation to avoidance"^{xlv}.

Social Enterprise Scotland As soon as you start to create a register with various thresholds—whether those apply to the amount of money that is spent on lobbying, the turnover of organisations or the expenditure on staff—you need to justify those thresholds.^{xlvi}

• **Exemptions**

The related issue of what activities should be exempted arose in evidence. In his consultation paper, Neil Findlay MSP proposed that the following should be exempt from registration—

- lobbying by public officials acting in their official capacity (this does not apply to a public body employing a lobbying firm to carry out lobbying activity on its behalf);
- participation in parliamentary business; for example giving evidence to a Scottish Parliament committee;
- administrative requests made by lobbyists; for example on the status of a policy where no attempt is made to influence;
- communication by media workers in the course of their work; and
- communication – a speech, article, book, blog, twitter or social networking group that is made widely and publicly available.

The Chartered Institute of Public Relations (CIPR) argued that it should not be necessary for a register to include commercially sensitive information such as client fees or spending relating to contracts.^{xlvii}

The SCVO argued that the third sector should be exempt from having to register, highlighting the difference between consultant and third sector lobbyists. The feasibility of such an exemption will depend on how any bill to establish a register defines lobbying, and whether a distinction is made between consultant and in-house lobbyists.

Neil Findlay MSP set out why he believed the third sector should not be exempt—

Neil Findlay MSP Organisations such as the Scottish Council for Voluntary Organisations have argued that the voluntary sector exists only to perform public good, but that is a matter of opinion. One charity may deem its activities to be good and in the public interest whereas another organisation, which may also be a charity, might take completely the opposite view. When we get into the area of exemptions, that issue becomes difficult.^{xlvi}

- **Fees**

The Committee received a large amount of evidence arguing against the imposition of fees (Scottish Grocers Federation, SCVO, the Association for Scottish Public Affairs, STUC and Social Enterprise Scotland)

Alliance for Lobbying Transparency “There is a principle at stake. Lobbying is a good thing. It is a democratic right, and there should be no barrier to anybody speaking openly to Government. However, there is a practical issue. As a charity, we want to be on the register, and we want everybody who is a professional paid lobbyist to be on it. There should be no barrier to an organisation with one full-time lobbyist—we think that that should be the trigger for registration—registering. There should be no financial burden; it should be carried by the public purse. The larger agencies could swallow it, but if we are to get everybody on the register who we think should be on it, there should be no financial barrier.”

Should those being lobbied be required to publish information?

A number of those submitting evidence, including the CBI, SCVO, FSB, the British Heart Foundation and Mark Whittet, have argued that there should be an onus on those being lobbied, as well as those lobbying, to make public their activities.

The SCVO drew attention to Malcolm Harbour MEP’s lobbying contact report. Mr Harbour periodically publishes a log detailing his contacts with lobbyists, showing the date, the name of the lobbyist, the company, the client (where appropriate) and the context.

It was suggested that MSPs could consider publishing details of MSP activity with lobbyists in line with the approach adopted by the Scottish Government, namely publishing on a monthly basis, three months in arrears, details of contact with external stakeholders. These ‘contact reports’ might exclude details of confidential work undertaken for constituents but could usefully include details of contact with lobbyists in relation to their work as parliamentarians.

Some giving evidence had a broad interpretation as to what should be recorded and published, for example including emails received. Alcohol Focus Scotland noted that:

“Diaries do not cover emails, text messages or telephone calls, nor do they necessarily convey whose interests are being represented at meetings with MSPs.”^{xlix}

As highlighted in evidence by the then Commissioner for Ethical Standards in Public Life, Stuart Allan, MSPs should consider keeping a record of contact with lobbyists as standard. Should the Commissioner require to investigate a formal complaint on lobbying, an MSP could be asked for details of contacts with lobbyists under section 5 of the Code of Conduct.^l

There was also evidence to suggest that, as lobbyists do not just focus their activities on politicians, then officials, special advisers, public office holders and departmental boards should also keep a record of and publish information on contact with lobbyists.

UK Parliament Committee on Standards in Public Life (report entitled *Strengthening Accountability around Lobbying* commenting on UK-wide basis)

Public bodies should routinely publish information about all significant meetings and hospitality involving external attempts to influence a public policy decision. This should include significant contact (including private meetings) where a specific matter is raised which has a bearing on official business.

The published information should include dates of meetings, details of attendees and meaningful descriptors of subject-matter. It should normally be published within one month on a relevant website in an easily accessible format.

In the case of central government, the disclosure arrangements should cover special advisers and senior civil servants as well as Ministers, Permanent Secretaries and Departmental Boards.

Public office holders who are outside the scope of the Freedom of Information Act (including Members of Parliament, Peers and Councillors) should be encouraged to disclose the same information and consideration should be given to including this in relevant Codes of Conduct.^{li}

As noted above, the suggestion that MSPs and/or officials should publish details of contacts with lobbyists, was intended to be a useful alternative to a lobbying register by some organisations (CBI) whereas others felt it would complement a register but should not be considered to be an adequate substitute for it (Electoral Reform Society).

Existing checks and balances in Scotland on those lobbying and those being lobbied

Checks and balances on lobbyists

Legislation

The 2010 UK Bribery Act provisions include the crimes of bribery and the failure of a commercial organisation to prevent bribery on its behalf. The penalties for committing a crime under the Act are a maximum of 10 years' imprisonment, along with an unlimited fine, and the potential for the confiscation of property under the [Proceeds of Crime Act 2002](#), as well as the disqualification of directors under the [Company Directors Disqualification Act 1986](#). The crime of bribery is described in Section 1 as occurring when a person offers, gives or promises to give a "financial or other advantage" to another individual in exchange for "improperly" performing a "relevant function or activity". "Financial or other advantage" is not defined in the Act, and so is open to wide interpretation, potentially encompassing items such as non-monetary gifts.

Voluntary codes of conduct for lobbyists

A number of submissions to the inquiry highlighted voluntary codes of conduct. For example, the Association for Scottish Public Affairs (ASPA) requires its members to agree, as a condition of membership, to abide by a code of conduct which governs their engagement with the Scottish Parliament and Government and its agencies and aims to reflect best practice and professional ethics. ASPA members may also have to adhere to standards and codes of conduct set within their own organisations or by professional bodies^{lii}.

Charities

The Office of the Scottish Charity Regulator publishes the Scottish Charity Register which details all charities regulated by them in Scotland and provides details of income and activities undertaken by these charities, including campaign and communications work.

Trade unions

As noted in the BMA's submission, trade unions must comply with the Trade Union and Labour Relations (Consolidation) Act 1992 as amended by the Employment Relations Act 1999. These require them to adhere to a number of regulations and standards and to publish information to that effect.

Limitations on lobbying activities in the Scottish Parliament complex

Events

Guidance on member-sponsored events in the Parliament place certain restrictions on external organisations including that: events should not include lobbying on parliamentary business under current consideration; no organisation may be

sponsored for more than two events in 12 months; and invitations, issued by the sponsoring member, must be issued to all MSPs.

SPCB policies

The SPCB has a number of published policies that, in part, seek to ensure that the Parliament could not be perceived to be allowing undue access to lobbyists or the promotion of one particular cause over another. For example there are restrictions on the use of meeting rooms, the issuing of security passes to external organisations and fundraising for causes other than those formally endorsed by the SPCB.

Checks and balances for those being lobbied

Scottish Government Ministers

The provisions of the Code of Conduct for Members of the Scottish Parliament apply to all Scottish Ministers. In addition, the Scottish Government Ministerial Code includes provisions on lobbying, such as:

- Ministers should publish details of their meetings with outside organisations three months in arrears on a rolling monthly basis;
- Ministers need to consider the manner in which they conduct private meetings with outside organisations, for example an official should be present and minute the meeting;
- Ministers need to exercise caution in relation to commercial interests: “They should also bear in mind public sector procurement procedures and resist any attempt to influence them in favour of particular products or services. If such attempts are experienced, Ministers should report these to the Director of Procurement.”
- Ministers should be advised by officials on the appropriateness of accepting an invitation and informal approaches should be ‘treated with caution’ and reported to the appropriate Directorate where necessary.

In the first instance, complaints made under the terms of the Ministerial Code are considered by the First Minister. Where a complaint is deemed sufficiently serious, the First Minister may refer matters to a panel of independent advisers who publish a report on the complaint. This report informs the First Minister’s judgement on any action required in response to the complaint.

Scottish Government Civil Servants

The Civil Servants Code sets out broad principles on impartiality, honesty, integrity and objectivity to guide the behaviour of officials. There are no specific rules on contact with lobbyists.

MSPs

- The Code of Conduct

The Code of Conduct for Members of the Scottish Parliament sets out rules and guiding principles, many of which are underpinned by legislation, that individuals

should follow when acting in their capacities as MSPs. The Code also details sanctions available for the Parliament to impose where a complaint is upheld against a politician.

With some exceptions, the Commissioner for Ethical Standards in Public Life for Scotland considers complaints made under the terms of the Code. Sanctions available under the Code include exclusion from formal proceedings or from the Parliamentary complex or withdrawal of allowances and/or salary.

- The Register of Interests

Under Section 2 of the Code, all MSPs, whether ministers or backbenchers, are required to register any significant financial interests that could influence, or could be perceived to influence, the manner in which they carry out their work as parliamentarians. Register entries include details of the organisation providing the goods or services which require to be registered.

Section 2 is underpinned by the Scotland Act 1998 which made failing to register a financial interest in the Scottish Parliament's Register of Interests, or to declare it when taking part in relevant parliamentary proceedings, a criminal offence. The decision on whether to prosecute any of these offences is a matter for the Procurator Fiscal.

Under Section 3 of the Code registered interests must be declared before an MSP takes part in proceedings of Parliament relating to an interest. That includes written questions and all committee and plenary proceedings.

- Paid Advocacy

Section 4 of the Code sets out rules that prohibit paid advocacy. The paid advocacy offence currently requires receipt of an inducement by an MSP (or by an MSP's partner, where this results in some benefit to the MSP). The Bribery Act 2010 goes further than this. It does not require an individual to *receive* inducements in order to commit an offence, but only to *agree* to receive such inducements.

This section is also underpinned by the Scotland Act 1998 which makes paid advocacy a criminal offence. The decision whether to prosecute any of these offences is for the Procurator Fiscal.

The Committee has agreed, as part of its upcoming committee bill, to amend the paid advocacy offence in the Scotland Act, and accordingly in the Code, for greater consistency with the Bribery Act 2010.

- Lobbying

Section 5 sets out rules to guide members in considering what constitutes appropriate contact with lobbyists. It also states that MSPs 'should consider' keeping a record of contact with lobbyists.

- Cross Party Groups

Section 6 of the Code provides rules on Cross Party Groups. The Committee has recently reviewed, and as a result strengthened, this section. Financial support to groups totalling over £500 in one year from the same source requires to be disclosed. In addition minutes and annual returns detailing attendees at meetings and issues discussed must be published.

Information currently publicly available on lobbying activity

Information on lobbyists

Voluntary registers of lobbyists

A number of organisations cited in evidence to the Committee existing voluntary registers for lobbyists including: the Association for Scottish Public Affairs; the Association of Professional Political Consultants; the Public Relations Consultant Association; the Chartered Institute of Public Relations and the UK Public Affairs Council. These registers link in with the codes of conduct set out by these organisations. For example the PRCA publishes every quarter a list of all members who practice current affairs and a list of all clients of consultancies that conduct public affairs. Memberships of organisations are diverse, for example ASPA's membership is drawn from businesses, charities, consultancies, trade unions and trade associations.

Charities

As mentioned above, the Office of the Scottish Charity Regulator publishes the Scottish Charity Register which details all charities regulated by them in Scotland including providing details of income and activities undertaken by these charities, including campaign and communications work.

Trade unions

As noted in the BMA's submission, trade unions must comply with Trade Union and Labour Relations (Consolidation) Act 1992 as amended by the Employment Relations Act 1999 which requires them to adhere to a number of regulations and standards and to publish information to that effect.

In addition trade unions, as with many other organisations, actively seek to publicise the extent to which they are lobbying effectively on behalf of their membership. For example the BMA's policy and lobbying page highlights how it ensures 'your voice is heard at Holyrood'.

Information on contact between politicians and lobbyists

Scottish Government – Ministerial engagements

The Scottish Government has adopted the practice of publishing on a monthly basis and 3 months in arrears details of engagements carried out by all Ministers. The publication of ministerial engagements is a requirement of the Scottish Ministerial Code.

<http://www.scotland.gov.uk/About/People/14944/Events-Engagements/MinisterialEngagements/2012-13>

Scottish Government – stakeholder engagement and sources of advice

The Scottish Government publishes information as standard on stakeholder involvement in policy formulation, for example submissions to consultations, participation event attendance and working group membership. In relation to bills, information on work involving stakeholders, and hyperlinks to all of the detail of this work, is provided as standard in policy documents that accompany legislation.

The Scottish Government also maintains a list of special advisers who provide specialist political advice to Ministers. Under the ministerial code the annual cost of these advisers is published by the Scottish Government.

MSPs – register of financial interests

As stated above, all MSPs, whether ministers or backbenchers, are required to register any significant financial interests that could influence, or could be perceived to influence, the manner in which they carry out their work as parliamentarians.

The requirements to register: gifts; hospitality; benefits in kind; overseas visits; and remuneration from other work are all set out in Section 2 of the Code of Conduct for MSPs, which is based on the provisions in the Interests of Members of the Scottish Parliament Act 2006 (the Act). All registered interests are published on the Parliament's website on each MSP's page. This includes detailing the name of the organisation providing whatever the MSP is registering (for example which organisation has paid the expenses of an MSP undertaking an overseas visit).

MSPs - Electoral Commission

It should also be noted that all permissible donations for political activity received by politicians that meet certain criteria, including financial thresholds (and similarly donations received by political parties and party leaders) are registered with the Electoral Commission and are publicly available. Details of the organisation making the donation are detailed in this published information.

MSP - engagement with stakeholders

This section does not deal with MSPs' engagement with constituents as constituency casework tends to be confidential in nature as it deals with personal matters raised by constituents as individuals. There was no suggestion during evidence taking on the inquiry that this could be deemed to be lobbying and therefore the Committee considers this form of work to be exempt from any work to increase the transparency of lobbying activity.

Formal engagement during parliamentary proceedings

Parliamentary committees' main work is evidence taking in relation to: committee inquiries; primary and secondary legislation; budget scrutiny and petitions. This includes formal evidence taking in committee meetings, inviting written evidence including through social media, and undertaking fact-finding visits. Details of the role of all contributing stakeholders are detailed in the agenda, the minutes, the substantially verbatim record of proceedings (the *Official Report*) of formal meetings and in the notes from fact-finding visits. All written evidence is also published as are

research briefings from the Parliament's Information Centre. All organisations and individuals contributing to these briefings are referenced. The reports produced by committees cite organisations that have informed the findings and recommendations.

There is also information published on committee advisers, employed by the Parliament to provide specialist advice. In addition information is available on any external research commissioned by committees.

There are details of all petitions and the names of those in support of those petitions on the Public Petitions Committee website.

Finally, all Chamber proceedings, are covered in the *Official Report* and all written questions and answers and motions lodged are also published.

Informal discussion forums

- Cross Party Groups

Cross Party Groups (CPGs) are groups that allow MSPs to share and collaborate with the policy community in order to inform their work. Over 1,000 organisations and 1,000 individuals engage with MSPs through these groups. CPGs are open to the public and groups are required, under the Code of Conduct, to publish minutes, lists of attendees at meetings, membership lists (including all non-MSP members), and also details of financial and material support in annual returns. These are all available on the Parliament's website.

- Scottish Parliament Business Exchange

The Scottish Parliament and Business Exchange (SPBE) is an organisation aimed at 'fostering understanding' between business and the Scottish Parliament. Its activities and membership are available on its website^{liii}.

- Scotland's Futures Forum

Scotland's Futures Forum was created by the Scottish Parliament to: "help its Members, along with policy makers, businesses, academics, and the wider community of Scotland, look beyond immediate horizons, to some of the challenges and opportunities we will face in the future"^{liiv}. Again, details of its work are available on the website.

Information released following Freedom of Information requests

The Scottish Government and the Scottish Parliament both publish logs of FOI requests and information published as a result of these requests. The Scottish Government, including ministers are subject to FOI, as is the Scottish Parliament. However individual MSPs who are not ministers are not subject to FOI. Information released can include information on contact with external organisations and individuals.

ⁱ Susan Deacon Scottish Parliament Standards, Procedures and Public Appointments Committee, Official Report 27 February 2014, Col 967

ⁱⁱ UK Public Affairs Council, Lobbying Definition,
<http://www.publicaffairscouncil.org.uk/en/resources/lobbying-definition.cfm>

ⁱⁱⁱ <http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=256&InstrumentPID=250&Lang=en&Book=False> – this definition was referred to in oral evidence.

^{iv} APPC Scotland oral evidence (SPPA Committee, 16 January 2014, Official Report, col 881)

^v ASPA oral evidence (SPPA Committee, 16 January 2014, Official Report, col 881)

^{vi} STUC oral evidence (SPPA Committee, 30 January 2014, Official Report, col 906)

^{vii} Children in Scotland oral evidence (SPPA Committee, 30 January 2014, Official Report col 906)

^{viii} Michael Clancy, Law Society (Scottish Parliament Standards, Procedures and Public Appointments Committee, Official Report 27 February 2014, Col 944)

^{ix} Juliet Swann, Electoral Reform Society, Scottish Parliament Standards, Procedures and Public Appointments Committee, Official Report 27 February 2014, Col 944

^x Scottish Parliament Standards, Procedures and Public Appointments Committee, Official Report 16 January 2014, Col 871

^{xi} Scottish Parliament Standards, Procedures and Public Appointments Committee, Official Report 27 February 2014, Col 981

^{xii} Commissioner for Ethical Standards in Public Life, Stuart Allan, written submission

^{xiii} Scottish Parliament Standards, Procedures and Public Appointments Committee, Official Report 30 January 2014, Col 919

^{xiv} Scottish Parliament Standards, Procedures and Public Appointments Committee, Official Report 27 February 2014, Col 952

^{xv} Scottish Parliament Standards, Procedures and Public Appointments Committee, Official Report 16 January 2014, Col 872-873

^{xvi} Scottish Retail Consortium, written submission.

^{xvii} FSB Scotland, written submission.

^{xviii} CBI Scotland, written submission.

^{xix} Scottish Land and Estates, written submission

^{xx} Scottish Parliament Standards, Procedures and Public Appointments Committee, Official Report 16 January 2014, Col 864

^{xxi} Scottish Parliament Standards, Procedures and Public Appointments Committee, Official Report 16 January 2014, Cols 873-874

^{xxii} http://www.ocl-cal.gc.ca/eic/site/012.nsf/eng/h_00004.html

^{xxiii} SPICe briefing note, “Lobbying Schemes in Other Countries, prepared for the Committee’s 3rd meeting, 2014 (27 February 2014). Available here:

http://www.scottish.parliament.uk/S4_StandardsProceduresandPublicAppointmentsCommittee/Meeting%20Papers/papers_20140227.pdf

^{xxiv} <http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs/cr-ld9308-e.pdf?langoption=3&tll=CR-LD9308%20-%20Report%20by%20the%20Standards%20of%20Conduct%20Committee%20into%20Lobbying%20and%20Cr%20Party%20Groups>

^{xxv} <http://ec.europa.eu/transparencyregister/info/about-register/whyTransparencyRegister.do?locale=en>

^{xxvi} Scottish Parliament Standards, Procedures and Public Appointments Committee, Official Report 16 January 2014, Col 863

^{xxvii} Scottish Parliament Standards, Procedures and Public Appointments Committee, Official Report 16 January 2014, Col 864

^{xxviii} Scottish Parliament Standards, Procedures and Public Appointments Committee, Official Report 27 February 2014, Col 983

^{xxix} ASPA submission

^{xxx} <http://www.theguardian.com/commentisfree/2012/feb/08/what-is-astroturfing>

^{xxxi} ASPA submission

^{xxxii} Alliance for Lobbying Transparency oral evidence (SPPA Committee, 16 January 2014, Official Report, col 861)

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- ^{xxxiii} Alliance for Lobbying Transparency oral evidence (SPPA Committee, 16 January 2014, Official Report, col 862
- ^{xxxiv} See Unlock Democracy oral evidence (SPPA Committee, 16 January 2014, Official Report, col 865)
- ^{xxxv} SPPA Committee, 16 January 2014, Official Report, col 866
- ^{xxxvi} Neil Findlay, oral evidence, SPPA Committee, 16 January 2014, Official Report, Col 866
- ^{xxxvii} Zero Tolerance, oral evidence, SPPA Committee, 30 January 2014, Official Report, Col 915
- ^{xxxviii} Open University in Scotland, written submission
- ^{xxxix} Scottish Parliament Standards, Procedures and Public Appointments Committee, Official Report 13 March 2014, Col 1001
- ^{xl} ASPA and APPC Scotland oral evidence, SPPA Committee, 16 January 2014, Official Report, Col 886
- ^{xli} Spinwatch oral evidence, SPPA Committee, 16 January 2014, Official Report, Col 867
- ^{xlii} Spinwatch oral evidence, SPPA Committee, 16 January 2014, Official Report, Col 867
- ^{xliii} Oxfam, written submission
- ^{xliv} ^{xliv} Scottish Parliament Standards, Procedures and Public Appointments Committee, Official Report 30 January 2014, Col 916-917
- ^{xliv} CIPR written submission.
- ^{xlvi} ^{xlvi} Scottish Parliament Standards, Procedures and Public Appointments Committee, Official Report 30 January 2014, Col 932
- ^{xlvii} CIPR written evidence
- ^{xlviii} Scottish Parliament Standards, Procedures and Public Appointments Committee, Official Report 16 January 2014, Col 870
- ^{xlix} Alcohol Focus Scotland submission
- ^l Scottish Parliament Standards, Procedures and Public Appointments Committee, Official Report 13 March 2014, Col 997
- ^{li} http://www.public-standards.gov.uk/wp-content/uploads/2013/11/2901376_LobbyingStandards_WEB.pdf
- ^{lii} ASPA written submission
- ^{liii} <http://www.spbe.org.uk/>
- ^{liv} <http://www.scotlandfutureforum.org/>