



Lobbying

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In June 2007 the Public Administration Select Committee launched an inquiry into “the transparency of the lobbying industry, the effectiveness of recent attempts at self regulation, and whether the rules for those in Parliament and Government should be changed”. The Committee published their report in January 2009. They called for a statutory register of lobbying activity to “bring greater transparency to the dealings between Whitehall decision makers and outside interests”.

This note sets out issues relating to lobbying in the UK. It includes background to Committee’s inquiry and the main findings of their report. It also includes details of the 1991 Select Committee on Members’ Interests report and the relevant work of the Committee on Standards in Public Life.

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1 What is lobbying?

Lobbying can be broadly defined as seeking to influence decisions made by public office holders; such decisions can include the scope or content of legislation, the letting of a contract, or the broad direction of public policy. Lobbying can therefore involve a wide variety of activities and motivations. Many organisations lobby themselves, other employ multi-client lobbying firms to seek to influence on their behalf. Such firms may also offer other services under the banner of ‘public relations’ or ‘public affairs’ such as media monitoring or media strategies. Bodies which lobby or employ lobbyists can include companies, charities, public bodies, trade associations and professional membership organisations as well as individuals who may ‘lobby’ their MP.

In his 2007 paper for the Hansard Society, *Friend of Foe? Lobbying in British Democracy*, Philip Parvin looked more widely at the public affairs industry:

This paper uses both the terms ‘lobbying’ and ‘public affairs’. This is not because they are assumed to be the same, but because effectively influencing policy-makers requires a wide range of diverse techniques and practices. Lobbyists are keen to emphasise that ‘lobbying’ is only one part of what they do. Effective political communication involves not merely direct contact with MPs, ministers, and civil servants, but a range of other related activities including building partnerships with other organisations, raising issues with the press, engaging with user-groups, mobilising grassroots support, managing reputations, monitoring and predicting political, legal, economic, and social developments, market research, providing political intelligence and strategic advice, and so on. Put another way, lobbying and public affairs activity involves not merely the development of vertical relationships between all those different groups involved in policy development (including government). The term ‘public affairs’ has emerged to capture all these different activities under one profession or label.¹

The Association of Professional Political Consultants (the APPC) set out a definition of lobbying in their submission to the Public Administration Select Committee’s 2007-09 inquiry, and explained the range of activities which are undertaken by multi-client public affairs firms:

7. ‘Lobbying’, in our view, relates to activity which seeks to influence public policy, legislation or practice, or decisions of the executive. For political consultancies lobbying is about helping organisations – their clients – who want to achieve policy, legislative or regulatory change; to understand the people, policies and processes involved; who the key decision makers are, when to approach them, and how best to make their case.

8. There are, however, considerable differences in perceptions about the role of what the Committee describes as multi-client public affairs firms (or “political consultancies”). The reality is that ‘lobbying’ is frequently not the major part of the activities of such firms – and some consultancies do not lobby at all on behalf of clients. Other activities, including monitoring and providing intelligence about the political process, and advising about messaging and positioning in the media as well as for public affairs audiences, also fall under the public affairs heading. These may not be regarded as ‘lobbying’ at all.

...

¹ Philip Parvin, *Friend of Foe? Lobbying in British Democracy*, Hansard Society, February 2007, p6

12. Lobbying is simply about informing the policy debate. Each case will, of course, be presented in the most compelling possible way, but this is inevitable, and if the case is made honestly and transparently the individual or organisation being lobbied should be able to make up their own mind about its merits. Lobbying is a wholly legitimate exercise which helps decision makers and influencers reach informed decisions.²

Difficulties associated with providing a definition of what it is 'to lobby' are seen by some as creating difficulties in any proposed regulation of lobbying. In particular, questions are raised about who would be subject to regulation, all those who try to exert an influence, or just those who are paid to lobby or advise on how to influence.

2 Relevant rules and self-regulation of lobbyists

There is currently no external regulation of lobbyist activity in the UK. There are umbrella bodies which carry out a degree of self regulation. There are also non-statutory rules for public office holders about their contact with lobbyists. The *Freedom of Information Act 2000* can also be considered to have increased transparency of the interaction between lobbying firms, organised interest groups and the government.

2.1 Self-regulation

The Association of Professional Consultants (APPC) was established in 1994. It grew out of five of the largest professional lobbying firms who proposed setting up an association to regulate professional consultants by a code, based on the Committee on Members' Interests recommendations in the 1991 report.³ The APPC has stated that its role is to ensure transparency and openness by maintaining a register of political consultants, enforce high standards by requiring members to adhere to a code of conduct, and to promote understanding of the public affairs sector.⁴ The APPC now has 54 members. Between them, the APPC states, these companies represent more than four-fifths of the political consultancy sector (measured by turnover).⁵ The APPC operates a code of conduct, which amongst other things, requires the regular publication of a list of clients of public affairs companies.⁶

There is also a Public Relations Consultancy Association (PRCA) which also operates a Code of Conduct.⁷ The Chartered Institute of Public Relations also has a Code of Conduct for individuals working in public relations.⁸

Other organisations have their own codes of conduct, and professional organisations often have their own rules of operation, as the Public Administration Select Committee pointed out:

Public affairs companies which are members of neither the APPC or the PRCA often have codes of conduct of their own, such as Luther Pendragon's "Luther Code". Companies conducting public affairs in-house may well also require their staff to abide by ethical codes: there is a Tesco Code of Ethics, for example. A number of

² Public Administration Select Committee, *Lobbying: Access and Influence in Whitehall*, 5 January 2009, HC 36-II 2008-09, Ev 139

³ For more details see their website at <http://www.appc.org.uk/index.cfm/pcms/site/home/> (last viewed 12 January 2009)

⁴ *Ibid.*

⁵ *Ibid.*

⁶ See http://www.appc.org.uk/index.cfm/pcms/site.membership_code_etc.Code_of_Conduct (last viewed 12 January 2009)

⁷ This is available on their website at <http://www.prca.org.uk/default.asp?sid=2&pid=29> (last viewed 12 January 2009)

⁸ This is available on their website at <http://www.cipr.co.uk/publicaffairs/strategy/code/index.htm> (last viewed 12 January 2009)

international non-governmental organisations have signed a joint accountability charter, which includes commitments to responsible advocacy and to transparency.

Solicitors' firms conducting public affairs work are regulated by the Solicitors Regulation Authority (SRA) and are bound by the Solicitors' Code of Conduct, which conflicts with the APPC and PRCA Codes by putting a (statutory) duty to client confidentiality above any (non-statutory) duty to disclose publicly who those clients are. Other trades and professions are also engaged in lobbying. As has been pointed out elsewhere:

Public relations specialists, journalists, lawyers, managers, accountants and even doctors and engineers can be found in the world of lobbying. Most of these fields are represented by professional bodies that have widely varying capacities to discipline their members and diverse views on what constitutes appropriate conduct.⁹

2.2 Guidance for civil servants for contact with lobbyists

The text of the guidance for civil servants on contact with lobbyists has been the same since first issued in 1998.¹⁰ The guidance followed the cash for access affair where the *Observer* newspaper exposed the ex-special adviser Derek Draper as promising access to senior Government ministers.¹¹ The Association of Professional Political Consultants commissioned an independent enquiry undertaken by the former Cabinet Secretary Lord Armstrong and Nicholas Purnell QC which exonerated the employer of Draper.¹²

The guidance for civil servants on contacts with lobbyists states:

5. The Nolan Committee said in their first Report, "it is the right of everyone to lobby Parliament and Ministers, and it is for public institutions to develop ways of controlling the reaction to approaches from professional lobbyists in such a way as to give due weight to their case while always taking care to consider the public interest".

6. The Government's approach, reflecting the approach of the Nolan Committee, is not to ban contacts between civil servants and lobbyists but to insist that wherever and whenever they take place they should be conducted in accordance with the Civil Service Code, and the principles of public life set out by the Nolan Committee. This means that civil servants can meet lobbyists, formally and informally, where this is justified by the needs of Government.¹³

The rules include a list of 'dos and don'ts' for civil servants. It offers practical advice, such as:

These guidelines must of course be interpreted with common sense. If for instance you have a friend who is a lobbyist you do not have to sever your friendship and stop meeting socially. If you are married to one, you do not have to get divorced! But do make sure that the ground rules are understood, that you make proper arrangements to deal with any conflict of interest and that you do not get tempted into doing something which would lay you open to criticism or be misunderstood.¹⁴

⁹ Public Administration Select Committee, *Lobbying: Access and influence in Whitehall*, 5 January 2009, HC 36-I, paras 48-49

¹⁰ The guidance was issued as part of a response by the Prime Minister HC Deb 27 July 1998 c4w

¹¹ "Cash for access: £2000 buys a Minister", 19 July 1988, *Observer*

¹² "Report clears lobbyist's bosses", 30 July 1998, *Financial Times*

¹³ Cabinet Office, *Guidance for Civil Servants: contact with lobbyists*, http://www.cabinetoffice.gov.uk/propriety_and_ethics/civil_service/lobbyists.aspx, (last viewed 12 January 2009)

¹⁴ *Ibid*, para 9

It ends with the following comments:

Lobbyists are a feature of our democratic system. There is no ban on civil servants having dealings with them where this serves a proper purpose and is conducted in a proper manner. But the need for propriety is crucial. Lobbyists themselves are bound to want to talk up their own influence and contacts. It is the job of all civil servants to make sure that they conduct their dealings with lobbyists in a manner which is proper and is not open to misinterpretation.¹⁵

2.3 Ministers

Ministers are expected to act in a way consistent with the seven principals of public life. These include selflessness and integrity, defined as:

Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

There are also rules contained in the Ministerial Code on the acceptance of gifts and hospitality.

2.4 Freedom of Information

The Public Administration Select Committee noted in their 2009 report that the Freedom of Information Act had introduced some transparency into meetings between Government representatives and outside groups. Where information about who Ministers had met and on what subject was requested, this was generally released under the Act, although sometimes information was withheld using the policy development exemption. Departments had been less ready to publish detailed meeting minutes, on cost grounds but also under policy development, information provided in confidence and commercial confidentiality exemptions.

The Committee set out a judgement made by the Information Tribunal in April 2008 which resulted from a request from Friends of the Earth to the Department of Trade and Industry. The request for information about meetings held between the Department and the Confederation of British Industries, including notes of meetings and of an away day. The Tribunal ordered the release of the documents, arguing that:

The public interest in achieving a better understanding of the way in which lobbyists can seek to influence policy also involves an interest in understanding the nature and extent of the relationship between lobbyists and government departments. Understanding the relationship serves at least two purposes. First, it enables the public to better understand the mechanics of lobbying in that it reveals the many different ways in which lobbying can take place, from bilateral monthly meetings through to away-day (or away-morning) meetings with ministers and senior officials. Second, it

¹⁵ *Ibid*, para 15

subjects the relationship to a certain degree of scrutiny which can assist in ensuring that a particular relationship does not become unduly influential or dependent.¹⁶

The Tribunal also recognised, however, that “there is a strong public interest in the value of the government being able to test ideas with informed third parties out of the public eye and knowing what the reaction of particular groups of stakeholders might be if particular policy lines/ negotiating positions were to be taken”.¹⁷

2.5 Members of Parliament

Members of Parliament are subject to self-regulation under the Code of Conduct for Members of Parliament and associated resolutions of the House. The House has resolved that:

It is inconsistent with the dignity of the House, with the duty of a Member to his constituents, and with the maintenance of the privilege of freedom of speech, for any Member of this House to enter into any contractual agreement with an outside body, controlling or limiting the Member's complete independence and freedom of action in Parliament or stipulating that he shall act in any way as the representative of such outside body in regard to any matters to be transacted in Parliament; the duty of a Member being to his constituents and to the country as a whole, rather than to any particular section thereof: and that in particular no Members of the House shall, in consideration of any remuneration, fee, payment, or reward or benefit in kind, direct or indirect, which the Member or any member of his or her family has received is receiving or expects to receive —

- (i) Advocate or initiate any cause or matter on behalf of any outside body or individual, or
- (ii) urge any other Member of either House of Parliament, including Ministers, to do so, by means of any speech, Question, Motion, introduction of a Bill or Amendment to a Motion or a Bill or any approach, whether oral or in writing, to Ministers or servants of the Crown.¹⁸

The *Guide to the Rules Relating to Members' Conduct* explains that:

72. This Resolution prohibits paid advocacy. It is wholly incompatible with the rule that any Member should take payment for speaking in the House. Nor may a Member, for payment, vote, ask a Parliamentary Question, table a Motion, introduce a Bill or table or move an Amendment to a Motion or Bill or urge colleagues or Ministers to do so.

73. The Resolution does not prevent a Member from holding a remunerated outside interest as a director, consultant, or adviser, or in any other capacity, whether or not such interests are related to membership of the House. Nor does it prevent a Member from being sponsored by a trade union or any other organisation, or holding any other registrable interest, or from receiving hospitality in the course of his or her parliamentary duties whether in the United Kingdom or abroad.

74. The Resolution extends and reinforces an earlier Resolution of the House in 1947 that a Member may not enter into any contractual arrangement which fetters the Member's complete independence in Parliament by any undertaking to press some particular point of view on behalf of an outside interest. Nor, by virtue of the same Resolution, may an outside body (or person) use any contractual arrangement with a

¹⁶ EA/2007/0072, paras 133-134

¹⁷ *Ibid*, para 119

¹⁸ House of Commons resolution of 6 November 2005

Member of Parliament as an instrument by which it controls, or seeks to control, his or her conduct in Parliament, or to punish that Member for any parliamentary action.

75. In addition to the requirements of the ban on lobbying for reward or consideration, Members should also bear in mind the long established convention that interests which are wholly personal and particular to the Member, and which may arise from a profession or occupation outside the House, ought not to be pursued by the Member in proceedings in Parliament.¹⁹

2.6 The Business Appointment Rules

These are the rules which regulate the appointment of Former Permanent Secretaries (and deputy secretaries) and former ministers to posts in the private sector.²⁰ The independent Advisory Committee on Business Appointments reports to the Prime Minister on applications from former senior civil servants and advises former ministers directly.

3 Public Administration Select Committee inquiry

3.1 Issues and questions paper

In June 2007 the Public Administration Select Committee (PASC) launched an inquiry into “the transparency of the lobbying industry, the effectiveness of recent attempts at self-regulation, and whether the rules for those in Parliament and Government should be changed”.²¹ The Committee published an ‘Issues and Questions’ paper which set out the background to their inquiry:

In the 1990s lobbying was at the centre of political scandals. The cash for questions affair, amongst others, tarnish the word with the stain of sleaze. The industry responded by introducing an element of self-regulation and encouraging professionalisation of its work, and the Committee on Standards in Public Life produced some recommendations about the role of MPs and lobbyists.

However, lobbying is still viewed with suspicion. It was reported by *The Times* in September 2006 that a lobby firm was offering clients a party conference package that included dinner and drinks with high ranking members of the government for £5,000. *The Times* also revealed that a number of All Party Groups were funded by multi-client lobby firms who did not reveal the names of their clients, leading to an investigation by the Parliamentary Commissioner for Standards. A recent discussion paper from the *Hansard Society, Friend of Foe? Lobbying in British Democracy* found that lobbying is more widespread than often assumed by its critics and supporters.²²

The PASC inquiry followed a campaign by John Grogan MP to increase transparency in the lobbying industry. In an article in the April 2007 edition of *Public Affairs News* Mr Grogan argued that:

...the time is surely ripe to initiate the first parliamentary (as opposed to governmental) inquiry of any substance since the select committee on Members’ interests report on parliamentary lobbying (1990/91).

¹⁹ *The Guide to the Rules Relating to the Conduct of Members*, <http://www.publications.parliament.uk/pa/cm/code03.htm>

²⁰ For more information, see the Library Standard Note SN/PC/3745 *Business Appointment Rules*

²¹ Public Administration Select Committee, *Issues and Questions Paper: Lobbyists, access and influence*, 21 June 2007, available at <http://www.parliament.uk/documents/upload/Lobbying%20IQ%20paper.pdf> (last viewed 12 January 2009)

²² *Ibid.*

The inquiry could examine both how the system of self-regulation has operated in the intervening years and how government, Parliament and lobbyists themselves might strengthen it.²³

The Committee began taking oral evidence in November 2007 and published their report, along with the oral and written evidence, on 5 January 2008.

PASC had also conducted a short inquiry during the 2006-07 Session on the operation of the Business Appointment Rules. The former Prime Minister Tony Blair had ordered a review of the rules by former permanent secretary Sir Patrick Brown. The aim of the review was to seek ways to make it easier for civil servants to move into to the private sector and back again. However, when the report was published Mr Blair asked for further consideration of Sir Patrick's recommendations from PASC. The Select Committee published their report on 14 June 2007.²⁴ The Government response was published in October 2007.²⁵ PASC took evidence from the Advisory Committee on Business Appointments again as part of its inquiry into lobbying.²⁶

3.2 Conclusions and recommendations

The Committee's report summarised their conclusions as follows:

We propose that the ethics of the activities of lobbyists should be overseen and regulated by a rigorous and effective single body with robust input from outside the industry.

We propose that there should be register of lobbying activity provided for in statute, independently managed and enforced, to include information which should largely be in their hands already. This information would include:

- a) the names of the individuals carrying out lobbying activity and of any organisation employing or hiring them, whether a consultancy, law firm, corporation or campaigning organisation.
- b) in the case of multi-client consultancies, the names of their clients.
- c) information about any public office previously held by an individual lobbyists – essentially, excerpts from their career history.
- d) a list of the interests of decision makers within the public service (Ministers, senior civil servants and senior public servants) and summaries of their career histories outside the public service, and
- e) information about contacts between lobbyists and decision makers – essentially, diary records and minutes of meetings. The aim would be to cover all meetings and conversations between decision makers and outside interests.

We also call for ACoBA to be strengthened and its membership refreshed, bringing in people who are more representative of society at large and better able to commit time to this work, and we call for consistent rules to be strictly applied so that former

²³ John Grogan, 'Lobbyists: It's time for action', *Public Affairs News*, April 2007

²⁴ Public Administration Select Committee, *The Business Appointment Rules*, 14 June 2007, HC 651 2006-07,

²⁵ Government response to the Public Administration Select Committee Report on the Business Appointment Rules, 24 October 2007, HC 1087 2006-07,

²⁶ Public Administration Select Committee Press Notice, *PASC to hear from Advisory Committee on Business Appointments*, 19 February 2008

Ministers and other public servants are prevented for an extended period from using contacts built up in public office to further their own and others' private interests.²⁷

3.3 The main issues

Continued self-regulation?

In their memorandum to the Public Administration Select Committee, the APPC set out their view that:

There is no clear evidence to support the view that outside regulation of the industry would work in the UK. It is more likely to be an unwieldy, ineffectual and, very probably, expensive bureaucracy. Alternatively, there is very clear evidence to support the view that self-regulation, as shown by the APPC, works, and works effectively.²⁸

Bell Pottinger Public Affairs was also in favour of self-regulation:

We think that it would be an unnecessary burden for Parliament to be a regulator of our industry, and that it would be an unnecessary burden on the public purse for there to be an external authority. We believe that membership of an approved code – be it the APPC, CIPR or PRCA – is sufficient.

There are very few examples of malpractice in the public domain in the UK. Anything other than self regulation would be akin to using a giant hammer to crack a very small nut.²⁹

However, Global Government Relations, DLA Piper UK LLP was in favour of a statutory register:

Our favoured solution would be for a statutory register of lobbyists and their clients to be maintained by the House of Commons in much the same way as the register of All-Party Groups currently is. This would ensure that *all* companies operating in this arena would be required to comply on the basis of a level playing field. It would also have the distinct advantage of ensuring that organisations such as NGOs, charities and corporations, among others, list their in-house professionals as part of the initiative.³⁰

John Grogan MP has campaigned on the issue of lobbying transparency. He has commended the efforts of the Association of Professional Political Consultants (APPC) and the Public Relations Consultants Association (PRCA) on their efforts to develop ethical standards. However, he pointed out that there is a minority of media and large PA consultancies that “refuse to subscribe to these ethical principles” and “often justify their positions by alleging that members of the APPC and PRCA have feet of clay and do not live up to their own codes”. Mr Grogan continued:

I would argue that the real reasons for non-compliance with the APPC or PRCA's regulations often boil down to securing commercial advantages or personal differences within the industry.

Those firms that choose not to subscribe to the approach laid out by the APPC and PRCA are badly letting the side down.

²⁷ Public Administration Select Committee, *Lobbying: Access and influence in Whitehall*, 5 January 2009, HC 36-I 2008-09, pp3-4

²⁸ *Ibid.*, Ev 45

²⁹ *Ibid.*, Ev 73

³⁰ *Ibid.*, Ev 89

As Sir Philip Mawer, the parliamentary commissioner for standards has argued “self-regulation only works if it is of general application throughout the industry”.³¹

The Parliamentary Commissioner for Standards, Sir Philip Mawer, gave an interview to *Public Affairs News* September 2006 in which he put weight on transparency rather than regulation as the way forward for the lobbying industry.³² The interview stated:

Mawer is keen to stress his support for the public affairs industry’s attempts at self regulation via the Association of the Professional Political Consultants and the Public Relations Consultants Association. “The more member organisations are signed up to these, the better,” he says firmly. “Self-regulation only works if it is of general application throughout the industry. Our experience so far has been that self-regulation is appropriate and proportionate”.

The Committee proposed the end of a system entirely reliant on self-regulation. They concluded that:

The central problem is that **the three umbrella groups have an in-built conflict of interest, in that they attempt to act both as trade associations for the lobbyists themselves and as the regulators of their members’ behaviour.**

...In the final analysis, what lobbying organisations refer to as “self-regulation” appears to involve very little regulation of any substance.³³

The Committee suggested that although the industry should be subject to external regulation, there was a role for a self-regulator organisation “to promote ethical behaviour by those involved in lobbying”. They suggested that

...there are a number of simple and obvious steps that they could take to improve the current situation:

- i. Establish a single umbrella organisation with both corporate and individual membership, in order to be able to cover all those who are involved in lobbying as a substantial part of their work...
- ii. Ensure that people from outside the lobbying world with a track record in regulation and business ethics are involved in running the organisation...
- iii. Establish a clear separation between promoting and representing those involved in lobbying activity, and regulating that activity.
- iv. Subject the standards of the members of the organisation, including external validation... The public affairs industry should institute and externally assessed and validated standard – a kind of kite mark – which its members should be required to meet...³⁴

A register of lobbying activity

The Committee recommended that there should be a register of lobbying activity. The first principles of such a register would be as follows:

³¹ *Ibid.*

³² “Striking the balance”, *Public Affairs News*

³³ Public Administration Select Committee, *Lobbying: Access and influence in Whitehall*, 5 January 2009, HC 36-I, paras 65-66

³⁴ *Ibid*, para 145

- a) it should be mandatory, in order to ensure as complete as possible an overview of activity.
- b) it should cover all those outside the public sector involved in accessing and influencing public-sector decision-makers, with exceptions in only a very limited set of circumstances.
- c) it should be managed and enforced by a body independent of both Government and lobbyists.
- d) it should include only information of genuine potential value to the general public, to others who might wish to lobby government, and to decision makers themselves.
- e) it should include as far as possible information which is relatively straightforward to provide – ideally, information which would be collected for other purposes in any case.³⁵

The Committee went on to set out the information which should be included in such a register:

Table 1: Information to be provided in a register

a) the names of the individuals carrying out lobbying activity and of any organisation employing or hiring them, whether a consultancy, law firm, corporation or campaigning organisation.

b) in the case of multi-client consultancies, the names of their clients.

These two categories of information are vital to identify who the lobbyists are, and who they might be representing.

c) information about any public office previously held by an individual lobbyist—essentially, excerpts from their career history.

This would enable the public to judge the extent to which former public servants or politicians were using their contacts or experience to pursue a private interest.

All of the above categories of information could only be provided by the lobbyists themselves.

d) a list of the relevant interests of decision makers within the public service (Ministers, senior civil servants and senior public servants) and summaries of their career histories outside the public service.

This would enable the public to judge the extent to which a decision maker's interests or connections from the past might be influencing the decisions they take.

This category of information could only be provided by the decision makers.

e) information about contacts between lobbyists and decision makers—essentially, diary records and minutes of meetings. The aim would be to cover all meetings and conversations between decision makers and outside interests.

This would enable the public to see what contacts are taking place, and to reach a reasonably informed judgement as to whether decision makers are receiving a balanced perspective from those they are meeting.

³⁵ *Ibid*, para 168

*This category of information could in theory be provided by either the lobbyists or the decision-makers.*³⁶

The publication of client lists

The publication of client lists by multi-client lobbying firms had been a key focus for John Grogan. He had argued that:

An absolutely essential and non-negotiable part of any decent system of self-regulation for consultancies engaged in public affairs work is public declaration of all client and employee names.

Such a high level of transparency serves to bring the industry out of the shadows and – given the old adage that information is power – it puts the power back where it belongs in a democratic society: in the hands of clients, potential clients and those legislators and government officials who are being lobbied.

They, and not public affairs firms, are the best judges of any potential conflict of interests.³⁷

However, some firms have objected to listing their clients in such a way. The political consultancy Bell Pottinger Public Affairs (BPPA) noted in its memorandum to the Public Administration Select Committee, that it is not a member of the APPC or the PRCA, but requires all staff to be members of the CIPR. BPPA stated that:

The APPC, which is only a few years old, represents just part of the commercial public affairs industry – not all of it – and does not operate a compliance procedure. As it happens, BPPA complies with all aspects of the APPC's codes except the requirement to publicly list our clients, which we cannot do as we have confidentiality clauses with some clients and others are covered by national and personal security obligations. The APPC has no method to ensure accuracy of client lists but we see no point in signing up to a code and deliberately breaching it. Furthermore, providing a list of clients on a quarterly or six monthly basis in a register is no guarantee in itself of transparent behaviour.

Bircham Dyson Bell LLP also commented on the matter of client lists in their memorandum to PASC:

Current debate has been focussed upon the disclosure of client lists and, in particular, the Code of Conduct of the Association of Professional Political Consultants which requires members to disclose "the names of all their clients... in the APPC Register". Bircham Dyson Bell LLP is not a member of the APPC and, as a law firm, questions the value of published client lists as a regulatory tool in the UK. In our view, far greater emphasis should be placed upon the requirement for lobbyists to disclose who they are acting for in a particular situation.³⁸

Global Government Relations, DLP Piper UK LLP have also said that:

We are not members of the APPC primarily because we have always viewed our obligations under the Solicitors' Regulatory Authority (formerly the Law Society) to be more stringent than those of the APPC.

³⁶ *Ibid*, Table 1, p53

³⁷ John Grogan, 'Lobbyists: It's time for action', *Public Affairs News*, April 2007

³⁸ Public Administration Select Committee, *Lobbying: Access and Influence in Whitehall*, 5 January 2009, HC 36-II 2008-09, Ev 178

There has also been a question as to whether our obligations under the SRA in relation to client confidentiality cut across the demand of the APPC that all clients should be disclosed on a public register. This is a matter on which we have sought the advice of the SRA. However, we should stress that as a matter of practice when engaging with parliamentarians, officials, opinion formers and the media, we are always transparent about who our client is. Public disclosure is, however, a different matter.

We would stress that, whilst many members of the GGR team are not solicitors, we are collectively bound by the SRA code, as are all employees of DLA Piper in the UK. Indeed, it forms a part of all employees' contract of employment. These obligations cover many areas over and above those of the APPC, including strict adherence to the rules governing money laundering and conflicts of interest. They are also rigidly enforced to ensure compliance and the penalties for non-compliance are severe.

This is not the case with the APPC code. Compliance with the code is not verified and the disciplinary process lacks credibility.

Given the lack of proactive auditing of compliance and a complaints procedure that lacks credibility, questions inevitably arise as to the extent to which APPC members comply with the code. Anecdotal evidence of non-compliance is abundant and we have no reason to doubt this.³⁹

The Committee recommended the publication of client lists as part of the mandatory registers, stating that:

...The public interest in the fact that a person or organisation is a client of a lobbying firm far outweighs any invasion of privacy that publication would represent. We are not proposing that there should be any requirement to publish the detail of the relationship between the lobbyist and the client; merely to publish the fact of the relationship. This would mean that if the fact of an approach from a lobbyist to a decision-maker were known, it would also be possible to investigate on whose behalf the approach might have been made. **We recommend that all multi-client organisations involved in public affairs should be required to publish in a timely and transparent way the names of all clients whose interests they represent to government and other public bodies as well as all clients to which they wish to give advice on how their interests would best be represented to the government and other public bodies.**⁴⁰

Gifts and hospitality

The Committee recommended that:

A first step towards greater transparency, and one that could be achieved without legislation, would be to publish routinely the information about ministerial and other high-level official meetings with outside interest groups which is currently produced only in response to specific FoI requests.⁴¹

The Committee argued that there were reasons why the Government rather than lobbyists should be required to provide information of this kind:

³⁹ *Ibid.*, Ev 203

⁴⁰ Public Administration Select Committee, *Lobbying: Access and Influence in Whitehall*, 5 January 2009, HC 36-I 2008-09, para 178

⁴¹ *Ibid.*, para 184

- a) Minutes of meetings are generally taken by Government, but may not always be taken by lobbyists. Where minutes are taken by lobbyists, there is unlikely to be any consistency in the form in which they are taken.
- b) It would prevent the registration requirements from becoming a burden on those who may have little experience of lobbying Government.
- c) It would make decision-makers think carefully about who they communicated with and would give them every incentive to ensure that they heard views from a variety of perspectives.
- d) It would place an onus on the decision-maker to judge whether a communication might reasonably be considered to constitute an attempt to influence their decisions. This would require the registration in cursory form even of informal contacts— although we would not necessarily expect full minutes to be available of every lunch or chance meeting.⁴²

Encouraging participation

In his internet Blog on the *Lords of the Blog* website, Lord Norton of Louth raised the following point about encouraging wider participation rather than focussing on the activities of professional lobbyists:

The focus on lobbyists and requiring registration is concerned essentially with one only dimension of the activity, that is the relationship between lobbyists and parliamentarians. That is not where the real problem lies. Parliamentarians know perfectly well when they are being lobbied and can quite easily distinguish between a glossy but intellectually threadbare lobbying campaign and a compelling point made by a small group or individual writing a letter. It is also perfectly true that a lot of people make representations and that charities and consumer groups are far better at it than many large companies. However, the focus should be on those who do not make representations. They miss out because their views go by default and they may well feel alienated as a result of the perception that there are others who do have access to parliamentarians.

We should be looking at ways to make sure that people are aware that their views can be expressed and that they don't need great resources to do so. Lobbyists primarily advise clients on how to lobby Parliament. To be honest, if you want to make a case to MPs or peers, you don't need to fork out a lot of money to get people to tell you how to do it. Time spent browsing the Parliament website should prove sufficient for the purpose.⁴³

4 1991 Select Committee on Members' Interests Report

The last Parliamentary inquiry into lobbying was carried out by the Select Committee on Members' Interests in the 1990/91 Session. The Committee considered the question "has the time now come to set up a "Register of Lobbyists".⁴⁴ The Committee first considered the "prospects for self-discipline". They stated that:

Any system of voluntary registration of "professional lobbying" which Parliament might be willing to accept could only work on the basis of a fully representative professional organisation with an effective code of practice and effective discipline. We have concluded that it is unlikely that any real progress will be made through the IPR

⁴² *Ibid*, para 185

⁴³ Lord Norton of Louth, www.lordsoftheblog.net, 11 January 2009

⁴⁴ Select Committee on Members' Interests, Parliamentary Lobbying, 24 July 1991, HC 586 1990-91, para 1

(Institute of Public Relations) and the PRCA (Public Relations Consultancy Association) alone despite the good intentions of both bodies and the sensitivity of some members of those organisations to the need to respond positively to the political consequences of a changing industry. We see little hope of obtaining consistently higher professional standards in the industry until an organisation is created which is fully representative of professional lobbying, which commands universal respect and which exercise effective professional discipline. It is possible that such a body might be established comprising of the relevant lobbying firms both inside and outside the PRCA and, perhaps associated with it. There is no sign, as yet, that this is likely to happen.⁴⁵

The Committee reported that on each of the three previous occasions that the registration of lobbyists was considered by select committees, it had been rejected.⁴⁶ On the last occasion, in 1983, the Committee on Members' Interests had argued against establishing a register "mainly because of the difficulties it saw in definition and enforcement, and more particularly in establishing a register that did not give or imply privileged status".⁴⁷

The Committee argued that a Register of lobbyists could fulfil three useful purposes:

(A) Transparency and Public Accountability

A public Register listing those who lobby and those who employ "professional lobbyists" would provide greater transparency and public accountability. The House must ensure that lobbyists do not interfere with the proper conduct of its business. It also has to be on its guard against influences that are improper, or which would bring the House into disrepute, or which would tend to corrupt. The House has nothing to gain and a good deal to lose by allowing the present obscurity to continue.

(B) Information to Members

A requirement on "professional lobbyists" to register information concerning the companies they represent, the staff they employ, and the clients they work for would assist members by providing an authoritative source of information on lobbyists, lobbying companies and their clients. A list of those other persons who are regularly in contact with Members on behalf of the interests who employ them would also be of value.

(C) Working of the House

It is important to ensure that lobbying does not interfere with the proper working of the House and its committees and that those engaged in lobbying do not abuse facilities provided for Members. Although these are matters for regulation rather than registration, a Register could be used in support of any measures taken to regulate the activity of lobbyists within the House.⁴⁸

The Committee concluded that in principle, it was desirable for a Register of lobbyists to be established. They went on to consider whether such a Register should be voluntary, and regulated by the industry; voluntary, and administered by the House; statutory; or mandatory based on decisions taken by the House in the form of a Resolution. They recommended a mandatory register of professional lobbyists to be enforced by the Resolution of the House:

⁴⁵ *Ibid.*, para 34

⁴⁶ Select Committee on Members' Interests (Declaration), HC 57 (1969-70); Select Committee on Members' Interests (Declaration) HC 102 (1974-75); Select Committee on Members' Interests, HC 408 (1984-85).

⁴⁷ *Ibid.*, para 41

⁴⁸ *Ibid.*, para 59

We recommend to the House that it should take a decision in principle to establish a Register of "Professional Lobbyists". Should the House take this decision it would then be for this committee or its successor to frame, in consultation with interested parties, the form and content of a Register and code of conduct to place before the House for its approval.⁴⁹

The Committee had concluded that there was no realistic prospect of effective self-regulation in the industry because there was no fully representative organisation which commanded universal respect and could have exercised effective discipline. The details of the operation of the scheme they envisaged are in paragraphs 75-80 of the report:

75. Some of the criticisms that can be made in respect of a voluntary register also apply to our favoured option, which is a mandatory Register established by Resolution of the House. **We recommend that the House should pass a Resolution requiring all those whom we have defined in paragraph 2 above as "professional lobbyists" to register details of their business and listing their clients.** We would envisage that any lobbyist failing to register, or providing inaccurate or incomplete information, would be in contempt of the House. However, we doubt very much if the House would ever need to resort to its historic powers. We believe that if the House required lobbyists to register the vast majority would do so. If they did not, then the House should not hesitate to establish a statutory system of registration. In practice we believe that a high degree of co-operation would be achieved once the House had made its intentions plain. Agreement by the House to our recommendation would have implications for the House of Lords, and such a decision would, no doubt, be considered by the appropriate Committee of that House.

76. We recognise that there is a risk that the Register we propose will be interpreted as an "approved list" and could add to the status of "professional lobbyists. It is for this reason that the Register must be attached to a rigorously applied code of conduct and disciplinary procedure. In the Annex to this Report we attach a draft Register and a draft code of conduct. Their precise terms should be framed following consultations with the industry and with other interested parties. An associated disciplinary procedure will also be necessary but its exact form will depend upon the extent to which the industry is prepared to co-operate in implementing our proposals. If the House decided to establish a "Register of Lobbyists" we are in little doubt that "professional lobbyists" would not only register, but would also co-operate in setting up and maintaining the associated code of conduct and disciplinary procedure.

77. It will be noted that, unlike the Canadian Register where the responsibility for registration is placed upon the individual lobbyist, we propose that the obligation to register should be placed on the lobbying firm. This approach is more relevant to the structure of professional lobbying in the United Kingdom. The principals of the majority of "professional lobbying" firms are readily identifiable and it is in their interest, more than in the interest of the staff they employ, to ensure that registration is accurate and up to date. It also places the responsibility for applying the code of conduct to all aspects of the firm's affairs squarely upon those who run lobbying companies and partnerships, irrespective of whether or not they lobby Members in person. This will include the application of the code to any action taken by permanent, or temporary, staff.

78. We do not consider it necessary for each act of lobbying to be registered. This seems to us to be too bureaucratic for a system which relates exclusively to the House of Commons. It is much more important that clients should in all cases be registered. We recognise that this will meet some resistance. While the clients of public relations

⁴⁹ Select Committee on Members' Interests, *Parliamentary Lobbying*, 24 July 1991, HC 586 1990-91, para 81

companies seldom seem to object to publicity, clients of lobbyists may be more reluctant to be publicised. Westminster Strategy was one of several lobbying firms which drew our attention to sensitivity in this area: "organisations do not like to be seen to need advice on such matters": I "certain clients are perfectly happy to have it known that they employ advisers on special relationships, others are not. In those circumstances one has to respect their wishes ". The Chairman of Sallingbur Casey put this point particularly strongly, arguing that "there is an intrinsic difference between the public affairs consultancy who is often giving strategic commercial advice and the public relations firm who, on the whole, would wish to disclose its clients as a publicity exercise for itself". Mr Casey added that much of the advice which his firm gives" concerns the implications of potential changes, and much of that advice is sensitive and commercially confidential. We often deal with situations where a client has anxieties about a particular area of Government activity which, if widely known, could be prejudicial to that commercial concern". Mr Casey concluded by drawing a parallel between the services his firm provides and the services provided by lawyers, accountants, merchant banks and management consultants, where there were professional rules of confidentiality. In contrast, some other 14 "professional lobbyists" recognised that clients should be disclosed. It is natural for companies to have regard to the interests of their clients. However, we believe that the House will agree with us that there is an overriding public interest that the names of clients should be registered. At this stage we do not consider that it is necessary to go further and insist that the nature of the lobbying carried out for each client should be declared in the Register, though it is explicit in our proposed code of conduct that a lobbyist approaching a Member should declare both the client the lobbyist is representing and that client's interest.

79. One consultancy company encouraged us to require not only the registration of the names of all consultancy staff, whether full-time or part-time, but also details of their background and qualifications. It was suggested that this would lead to more responsive lobbying, more informed choice for clients and would encourage poorer quality firms to employ better staff or withdraw from the market. We agree that there should be a duty to register the names of consultancy staff, but in an area where no recognised professional qualifications exist we are doubtful whether the additional information would be of value. We also suspect that many companies would use the disclosure of the background of staff as the opportunity for advertisement. We also believe that the terms of the Code of Conduct would ensure that proper standards were maintained and we envisage a machinery for complaints which would provide some protection to clients.

80. The form of Register which we propose contains one other provision. The PRCA requires every member company to register in its "Yearbook" the name of any holder of public office associated with that company or its subsidiaries. We consider that this is an excellent provision. Accordingly we propose that the name of any Member employed by a lobbying company should appear in the Register of Lobbyists, although we recognise that in virtually all cases the interest will also be registered in the Members' Register.⁵⁰

The recommendations were eventually debated in the House on a motion for the adjournment so they were not voted upon.⁵¹ The then Leader of the House, Tony Newton,

⁵⁰ *Ibid.*, paras 75-80

⁵¹ HC Deb 28 June 1993 cc781-796

was sceptical about the value of such a register.⁵² Instead, he proposed that “a voluntary code would be better”.⁵³ He said that:

In fairness to the House, I am a little sceptical about the strength of the case for what is proposed in the report. I make that observation as a personal one, rather than as a great statement of Government policy. Obviously, we will consider what is said tonight. Perhaps I can best give my reasons for approaching the recommendation in a slightly sceptical way by adverting not only to the two points that my hon. Friend the Member for Wealden (Sir G. Johnson Smith) properly emphasised or rehearsed as reasons for the reservations expressed by some Members of his Committee--that is, the question of the considerable additional bureaucracy that almost certainly would be required to maintain such a register, and the possibility that the establishment of such a register would effectively be seen as giving a seal of approval to specific activities by specific firms in a way that might not be precisely what the House would wish. It may be that one could prevent people from putting "Approved lobbyist to the House of Commons" on their notepaper, but I am not sure that the House would generally regard that outcome with great enthusiasm.

I must confess to having to question whether the real beneficiaries of this proposal would not be such lobbyists by that sort of route, rather than the House in gaining some great improvement in its protection from lobbying, or, indeed, an enhancement of the standards of lobbying. As I said, I shall ask questions, rather than give views that are set in concrete. Those questions will need considerable examination before the House would wish to go down this route. I am reinforced in my view by considerable doubt about whether the distinction, which I understood my hon. Friend the Member for Wealden to be seeking to draw, between professional lobbyists and others who are engaged in almost the same line of business could be sustained for long. It is worth my placing on the record the second half of paragraph 2 of the report, in which the question of definition is approached.

The report says:

"We also use the expression professional lobbyist', by whom we mean someone who is professionally employed to lobby on behalf of clients or who advises clients on how to lobby on their own behalf. There is, in addition, another category of paid lobbyist, much larger numerically: those whose job it is to make representations on behalf of their employers or particular interests such as charities, professional bodies, industrial or commercial associations, or other pressure groups. We readily appreciate that some of those to whom we refer as lobbyists' or professional lobbyists' will not recognise themselves as such, or consider that their actions amount to lobbying. We recognise, too, that apart from political consultants of various kinds, members of some other professions who are most unlikely to consider themselves as lobbyists', solicitors or accountants, for example, may act in a representative capacity or give advice the nature of which amounts to professional lobbying'." That paragraph gives a pretty clear indication of some of the definitional problems that would arise in a restrictive approach to the register and of the immense practical problems that would arise if a more broadly based definition was adopted. It could easily produce a position in which almost every paid worker of every large voluntary organisation or national charity in the country, together with the public relations managers of many larger firms and a whole range of other people, extending at the extreme to solicitors or accountants, who are specifically mentioned as undertaking activities that amount to professional lobbying, would be on the register. The difficulties of a register that was as widely drawn as that,

⁵² *Ibid.*, cc785-786

⁵³ *Ibid.*

if it proved difficult to sustain the narrower definition, as I suspect that it would, would be immense.

I make a last point about the questions that the House would need to think through before it went down that path. The Committee, as my hon. Friend the Member for Wealden very fairly acknowledged, said in effect that it would be much better to have a voluntary code of registration by the industry itself rather than a register that was imposed, as is raised as a possibility by the report. I rather share the view that such a voluntary code would be better.

As it could be argued that the main beneficiaries of the proposal would be those who wished to engage in this activity rather than those of us who are subject to it, I am inclined to think that the most appropriate course would be to make a further effort, if that were possible, to promote the establishment of a voluntary code by the industry. I recognise the reasons why the Committee shied away from that. However, the House as a whole may wish to consider whether the right next step would not be for the industry to make a further effort, with encouragement from the Select Committee, rather than for the House to go down the path that raises the difficult questions on which I have touched. I conclude where I began: I am listening, although I felt it right to express those causes of scepticism.⁵⁴

The Select Committee decided to look again at the issue of a Register in 1993/94, and began taking evidence in an effort to establish whether the lobbying industry was now able to regulate itself. Although minutes of evidence were published the Select Committee decided not to issue a Report.⁵⁵

5 The Committee on Standards in Public Life

In October 1994 John Major set up the Nolan Committee on Standards in Public Life “to examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of public life”⁵⁶. The First Report from the Committee on Standards in Public Life (the Nolan report) in 1995 recommended against a register of lobbyists and the Government accepted this recommendation. Instead, the emphasis should be on transparency by those being lobbied. The Committee stated that:

72. Mention has been made in evidence to us of a proposal for a Register of Lobbyists. We are not attracted by this idea. It is the right of everyone to lobby Parliament and Ministers, and it is for public institutions to develop ways of controlling the reaction to approaches from professional lobbyists in such a way as to give due weight to their case while always taking care to consider the public interest and the interests of constituents whom Members of Parliament represent. Our approach to the problem of lobbying is therefore based on better regulation of what happens in Parliament.

73. To establish a public register of lobbyists would create the danger of giving the impression, which would no doubt be fostered by lobbyists themselves, that the only way to approach successfully Members or Ministers was by making use of a registered lobbyist. This would set up an undesirable hurdle, real or imagined, in the way of access.

⁵⁴ *Ibid.*

⁵⁵ HC Paper Session 1993/4 Minutes of Proceedings 21 June 1994

⁵⁶ See Library Research Paper, RP 95/60, [Aspects of Nolan – MPs and Lobbying](#)

74. We commend the efforts of lobbyists to develop their own codes of practice, but we reject the concept of giving them formal status through a statutory register.⁵⁷

The Fifth Report from the Committee on Standards in Public Life in January 2000 again recommended against regulation:

7.28 In the opinion of the Committee, the weight of evidence is against regulation by means of a compulsory register and code of conduct. Lobbyist regulation schemes can help make government more open and accountable, providing useful information about influences on decision-making. But we believe that the amount of information that could be made available through a register would not be proportionate to the extra burden on all concerned of establishing and administering the system. There is also still force in this Committee's original objection, that such a system could give the erroneous impression that only 'registered lobbyists' offer an effective and proper route to MPs and Ministers.

R26. There should be no statutory or compulsory system for the regulation of lobbyists. The current strengthening of self-regulation by lobbyists is to be welcomed.⁵⁸

The Government accepted this recommendation in its response in June 2000.

Recommendation 26

There should be no statutory or compulsory system for the regulation of lobbyists. The current strengthening of self-regulation by lobbyists is to be welcomed.

In its First Report, the Committee concluded that a statutory or compulsory system for the regulation of lobbyists could create the danger of giving the impression that the only way to approach Members of Parliament or Ministers successfully would be by making use of registered lobbyists. The Government agrees with the Committee that this conclusion still holds true. It, too, commends the efforts of lobbyists in the area of self-regulation, and notes that this has led to greater confidence in the industry.⁵⁹

⁵⁷ Committee on Standards in Public Life, MPs, *Ministers and Civil Servants, Executive Quangos*, Cm 2850, 11 May 1995

⁵⁸ Committee on Standards in Public Life, *Reinforcing Standards: Review of the first report of the Committee on Standards in Public Life*, Sixth Report, January 2000, Cm 4771 <http://www.archive.official-documents.co.uk/document/cm45/4557/4557.htm> (last viewed 12 January 2009)

⁵⁹ *Government response to the Sixth Report of the Committee on Standards in Public Life*, July 2000, Cm 4817 <http://www.archive.official-documents.co.uk/document/cm48/4817/4817.htm> (last viewed 12 January 2009)