

Introducing a Statutory Register of Lobbyists: Consultation response from the Sheila McKechnie Foundation

About the Sheila McKechnie Foundation

The Sheila McKechnie Foundation (SMK) was established as a charity in 2005 to help develop a new generation of campaigners who are tackling the root causes of injustice. We exist to connect, inform and support campaigners.

The scope of our consultation response

SMK aims to support campaigners to be more effective. Gaining information about how political decisions are made underpins the work of many campaigners, whether they are campaigning on social, environmental or economic issues. Our response to this consultation is therefore guided by a principle of creating greater transparency about the political process, and in doing so providing campaigners with a tool to understand and analyse who is influencing Government.

Many campaigners are based within the charity sector, so our response also focuses on the potential impact of a lobbying register on charities that are involved in lobbying.

In this response we cover the following:

1. What is the Government proposing?
2. What are the positive aspects of the proposals?
3. What is wrong with the proposals?
4. What else should be under consideration?
5. Responses to set consultation questions

Summary

SMK supports the general concept of a lobbying register, but believes the current proposals are too limited to provide effective transparency and regulation of lobbying activity.

In terms of the regulatory aspects, if a lobbying register as proposed was to be truly effective, we believe it should require more information to be collected, including the amount of money being spent and the policy objectives behind the lobbying activity. Additionally, an effective register would include an obligatory code of conduct for all registrants, along with clear sanctions for non-compliance or breaches.

In terms of transparency, we would advocate greater consideration and discussion of a 'Transparency Register' as an inclusive mechanism that includes a more diverse set of individuals and organisations, including private sector in-house lobbyists, consultants, charities, think tanks and trade unions. However, it is right that the Government's proposals, as they stand, do not and should not include charities.

A well-considered, inclusive register that does not exclude on ground of cost or bureaucracy, could be an invaluable tool for anyone interested in how decisions that affect us all get made.

1. What is the Government proposing?

1.1 The Government states that it is committed to introducing a statutory register of lobbyists. Following the May 2010 election, the Government said, in 'The Coalition: Our Programme for Government': *We will regulate lobbying through introducing a statutory register of lobbyists and ensuring greater transparency.*¹

1.2 The Government's stated aim is to increase the information available about lobbyists without unduly restricting lobbyists' freedom and ability to represent the views of the businesses, groups, charities and other individuals and organisations they represent, or deter members of the public from getting involved in policy making.

2. What are the positive aspects of the proposals?

2.1 The stated intention to tackle the worst excesses of lobbying is a good one, which we support, particularly in light of recent high-profile cases of impropriety. However, we do not think the proposed register will actually tackle the worst excesses because it would be weak in terms of regulation, information required and there would be no statutory code of conduct.

2.2 The stated intention to strengthen transparency – We believe in openness and transparency, and support Freedom of Information and other measures. A register has the *potential* to create a more level playing field of transparency for all those involved in lobbying. However, the current proposals are too limited, in that they look only at third party agencies, not in-house lobbyists, or indeed those that call themselves 'consultants', 'advisors' etc, who would easily be able to circumvent registering.

2.3 It has forced many to have a good look at **definitions** of a tainted word and activity. Who exactly is a 'lobbyist'? What do they do that defines them as such? Does it matter what sector you are from or if you influence for public benefit or not? In our discussions with

¹ *The Coalition: Our programme for government, Section 16 Government Transparency, pg 21.*

charity and voluntary sector representatives, while opinion was divided on many aspects, there were many who welcomed a chance to clarify their interpretation and definition of what a 'lobbyist' is. This version reflects some of the views we heard:

"A lobbyist is any professional individual or organisation who seeks to influence policy or political decisions through meeting with, or making direct representations to, Government ministers and senior civil servants."

This definition does NOT:

- Distinguish between third party and in-house lobbyists.
- Define a lobbyist as someone who necessarily works full-time to influence policy.
- Necessarily exclude the non-profit sector.

2.4 We agree with the principle set out in the consultation paper that a register should not *"cover the normal interaction between constituents and their MPs. Nor should the essential flow of communication between business leaders and Government, civil figures, community organisations and Government and so on, be included."*

3. What is wrong with the proposals?

3.1 Minimal disclosure - Tamasin Cave of the Alliance for Lobbying Transparency (ALT) has said that as they stand, the proposals form a partial system of minimal disclosure. ALT argues that the proposals lack both breadth and depth, and would reveal activity of only a tiny proportion of the industry, and not require sufficient and meaningful information to be collected. We share ALT's concerns on this point.

3.2 No Statutory Code of Practice - A register should be accompanied by a clear statutory code of ethical conduct (which is not currently included in the proposals) that covers those who lobby and those who are lobbied.

3.3 Real 'teeth' - The Government's proposal for a lobbying register has arisen from a number of high profile cases of impropriety. While we recognise the potential value of a register as a starting point for tackling such problems, it is only that – a starting point. If the Government is serious about tackling improper methods of influencing the political process and ensuring public faith in politics, then they must introduce proper measures with teeth that ensure ethical conduct and openness. And it is vital that the Government is clearly seen to lead from the front.

4. What else should be under consideration?

4.1 Transparency Register - Our discussions with others during this consultation have flagged up the European Transparency Register as a useful model as it aims to "register and monitor organisations and self-employed individuals engaged in EU policy-making and policy

implementation"². This broader scope is worthy of discussion and consideration as it would create more transparent information, held in one place, of a wider range of professional individuals and organisations who are trying to influence Government.

4.2 Influence Mapping - If a register was set up in an inclusive and effective way, with published information accessible to the public, we believe it could result in an invaluable tool to enable 'influence mapping', open to anyone interested in how decisions that affect us all get made. A transparency register updated on a quarterly basis would enable campaigners, researchers, political analysts and indeed members of the public to see something along the lines of a real time record of activity of who is making representations to Government on live issues.

4.3 Open Government - A register provides an opportunity for the Government to strengthen its own accountability mechanisms by ensuring that it publishes not just details about who ministers and senior civil servants are meeting, but what they are discussing. The current proposals are disappointing, in that they would add little to information that is already in the public domain about ministerial meetings.

5. Responses to set consultation questions

If a register was introduced along the lines of the current proposals, we believe it would be ineffective as a regulatory mechanism because its scope would be too limited and it would lack teeth. It would also be ineffective as a transparency mechanism as its definitions are too narrow, it is not universal, and would not collect enough meaningful information.

Our replies to the consultation questions in relation to the current proposals are:

5.1 Definitions

5.1.1 What definition of lobbying should be used? How should lobbyists be defined?

The definition proposed in the consultation paper is too narrow. Its exemption of in-house lobbyists would mean a lobbying register would present only a very limited, and therefore non-transparent, record of who is lobbying. Furthermore, its use could lead to the unintended consequence that more organisations second lobbyists to work for them in-house where they will be 'under the radar', rather than commission an external agency, which would have to register.

² http://europa.eu/transparency-register/index_en.htm

5.2 Scope

5.2.1 Should lobbyists or firms acting on a pro bono basis be required to register?

A register's scope should ensure that it is difficult for individuals and organisations to circumvent either the letter or spirit of its rules. For example, Sarah Southern has boasted about her lobbying expertise, while saying that the lobbying register would not affect her because she is a "consultant", not a "formal lobbyist".³

The potential consequence of NOT including pro bono lobbying is that lobbying is undertaken on a purely pro bono basis for clients, in exchange for remuneration for other 'services'. This would enable some lobbyists to easily circumvent the need for registering.

5.2.2 Should organisations such as trade unions, think tanks and charities be required to register?

As it currently stands, the consultation proposals' focus on third parties would mean that charities would not need to register.

We support the position of NCVO set out below, which is broadly in line with our suggestion of a transparency register that enables influence mapping:

"NCVO believes that if the purpose of a statutory register of lobbyists is to inform the public of who is influencing policy, in-house lobbyists (including charities) should be included in a universal register for all organisations that undertake professional lobbying activity."

5.2.3 How can public participation in the development of Government policy best be safeguarded?

The register should not apply to members of the public, working in a non-professional capacity. As such, there is no reason to believe that the register could have a detrimental effect on public participation.

Indeed, a register, if done properly, could actually provide a new safeguard for public participation, as it might provide some level of assurance that the Government is open and transparent about what lobbying is going on, and who is carrying it out.

We support Democracy Matters' proposal on 'Equality of Influence', set out in their response to this consultation, which suggests that the Government should give serious consideration to ways of enabling the public to have a more effective voice in shaping the options considered.

³ <http://www.guardian.co.uk/politics/2012/mar/25/cash-for-access-sarah-southern>

5.3 Information to be included in the register

5.3.1 Should the register include financial information about the cost of lobbying and about any public funding received?

The amount of money being spent on lobbying should be an essential part of a register, as it provides key context about the relative 'weight' of activities being undertaken by different individuals, organisations and sectors.

We suggest that the principles and priorities for an effective regulatory register should be to answer the following questions:

1. **What is the lobbying objective?** (i.e. What policy/decision specifically is the lobbyist seeking to influence)
2. **Who is lobbying, and if different, on whose behalf are they conducting the lobbying?** (So if it is a third party lobbyist, both they and the organisation(s) on whose behalf they are lobbying would need to be included).
3. **Who is being lobbied?** (So the name and office of the Ministers and senior civil servants who are being lobbied should be mentioned).
4. **What lobbying mechanisms and routes are being used?** (This needs to record, for example, whether it is a face-to-face meeting, attendance at an All Party Parliamentary Group meeting, or Select Committee).
5. **How much money is being spent on lobbying?** (This would be an estimate based on, for example, staffing allocation to the lobbying activity, the value of any third party contracts, and any financial contribution to All Party Parliamentary Groups).

We appreciate the potential value of recording information about public funding, such as where this is provided to private sector firms as Government contracts.

However, we remain unconvinced that charities, if they are brought in to the register's scope, should be required to provide such information. Our concerns arise from recent instances where spurious and unwarranted criticisms have been made of charities that receive public funding and are also seeking to influence policy. The Compact enshrines the voluntary sector's right to receive statutory funding yet retain an independent voice, and as mentioned elsewhere, charities' political activity is already carefully regulated by the Charity Commission.

5.4 Frequency of returns

5.4.1 Should returns be required on a quarterly basis?

With regard to the Government's current proposals, the information requirements are minimal and weak and therefore we would not see a value in making frequent returns.

However, our suggestion for a transparency register in paragraph 4.1, if updated on a quarterly basis would enable the public and others who are interested in 'influence

mapping' to see timely information about who ministers and senior civil servants are meeting with and what policies they are discussing.

In that scenario, an annual return could be too infrequent to serve a useful purpose, and a monthly register would be too bureaucratic.

5.5 Additional functions

5.5.1 Should the register's operator have any additional functions besides accurately reproducing and usefully presenting information provided by the registrants?

For a register to have any genuine value, the operator must have regulatory powers to investigate and audit organisations and individuals, who may not be complying. In the spirit of open Government the register should be publicly available and downloadable, so that individuals and organisations can carry out their own research and analysis.

Furthermore, without regulation, a register's purpose could be subverted and indeed be used in exactly the opposite way in which it was intended to be. We can foresee a scenario where lobbyists register to give their activity a veneer of credibility and transparency, without there being any oversight to ensure they act ethically and with genuine transparency. Only effective regulatory powers can achieve this.

5.6 Sanctions

5.6.1 Should penalties for non-compliance apply? If so, should they be broadly aligned with those for offences under company law?

For any statutory register to have 'teeth' penalties for non-compliance are important. They should be sufficient to send out a clear message that non-compliance is a serious matter. However, the starting point should be a statutory code of ethical conduct, followed by published sanctions for non-compliance or breaches. These could include fines and/or exclusion from the register (as long as this was accompanied by a ban from undertaking any further lobbying activity). In extreme cases, existing criminal laws should apply regardless of the existence of any register.

If it ultimately transpires that charities are included in the register (which we do not support in its currently proposed form), we believe the sanctions should be different for them in comparison to those in the private sector. Charities are already well regulated by the Charity Commission and report in a strict format to ensure they are providing public benefit. Furthermore, their lobbying activities are already effectively and proportionately guided by the Charity Commission's guidance on 'Speaking Out: Guidance on Campaigning and

Political Activity by Charities (CC9)⁴. It is also important to note that these proposals have arisen out of problems associated with private sector lobbyists, not charities. As such, we think it would be unfair if charities were to become included and then to face potentially significant sanctions for non-compliance.

5.7 The register's operator

5.7.1 Who should run the register – a new body or an existing one? What sort of body should it be?

For the register to have credibility, it must be operated by an independent body. It should not be operated by the lobbying industry - such self-regulation would be completely inappropriate and counter-productive for an issue such as ensuring transparency. Rather than the creation of a new body, it may be appropriate for the Electoral Commission to take on this role, as it arguably would be a logical extension to what they already do.

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⁴ <http://www.charity-commission.gov.uk/Publications/cc9.aspx>