POSITION PAPER

UNDERSTANDING ACCESS AND POTENTIAL INFLUENCE IN WESTMINSTER

SUMMARY

This paper sets out Transparency International UK's views on how to increase the openness and accountability of lobbying in Westminster. It provides:

- a review of the current arrangements for disclosing access and potential influence in UK politics
- where they fall short in achieving this objective
- a comparison of the UK against countries with a similar democratic tradition
- our proposals for change

When conducted ethically and transparently, lobbying can help to inform and strengthen the democratic process. It is a way for policy makers to gather the opinions and evidence of those who are experts in their respective sectors and those who would be affected by policy changes. This contributes to better decisions in parliament and government. However, when lobbying happens behind closed doors it can provide cover for privileged access and undue influence that corrupts our politics.

As a minimum, this can affect public confidence in the integrity of those in public office. In 2019, a survey found that 63 per cent of respondents thought the 'British system of Government is rigged to the advantage of the rich and powerful'.[1] Recent revelations will have done little to ease these concerns. These include:

- The Westferry Printworks development, in which the Secretary of State intervened on behalf of a party donor after being lobbied at a private fundraising event – a decision later quashed for being unlawful and could have cost the people of Tower Hamlets over £40 million in community levies for essential infrastructure.
- The award of COVID-19 contracts to politically connected companies, worth over £1.6 billion, without competitive tendering but often with the assistance from ministers via private correspondence.
- The ethically questionable lobbying by former Prime Minister, David Cameron, for Greensill Capital, which sought access to billions of pound of taxpayers' money for a failed and unsustainable enterprise.
- The secretive Advisory Board established to solicit political contributions over £250,000 in return for exclusive access to the Prime Minister and Chancellor the Exchequer.

At worst, this can lead to policy outcomes that only benefit the interest groups with the most resources, and risk millions, sometimes billions, of pounds of public money. The centrality of opaque lobbying in numerous recent political scandals shows the seriousness of this issue and the inadequacies of the current arrangements for regulating lobbying.

We contend the transparency reforms of the last decade have done little to improve public knowledge of what happens in Whitehall and that new legislation is needed for the UK to catch-up with its counterparts. The Canadian approach to regulating lobbying provides a model to build from that would deliver more meaningful openness over attempts to influence key decision makers through a proportionate and more comprehensive statutory register.

POLICY AND LEGISLATIVE CONTEXT

International good practice standards recommend there should be transparency over the impact of lobbying.[2] In order to achieve this, the public should be able to establish answers to the some key questions:

Who is lobbying?

When are they lobbying?

What are they lobbying about and why?

How they are lobbying?

However, this is not possible currently in the UK. Our analysis shows that there have been at least 27 lobbying scandals between 2010 and 2020 revealing critical information that was not captured by our official transparency disclosures – 12 of these are within the last five years. At fault are critical flaws in the way this information is collected and published.

Those seeking information on access and potential influence in Westminster must rely on three principal sources:

- Departmental disclosures: under the ministerial code, ministers should report any discussions concerning official business – including during social occasions – to their departments, who must disclose this information quarterly.[3] Similar disclosures are published for engagements with permanent secretaries but not special advisors.
- Statutory register of consultant lobbyists: established by the 'Lobbying Act' in 2014,[4] this includes basic information about paid consultants seeking to influence ministers or permanent secretaries concerning government business, including a list of their clients.[5]
- Freedom of information requests: by law, public bodies must respond to requests for information under the Freedom of Information Act 2000 (FOIA) and the Environmental Impact Regulations (EIR). These are subject to exemptions, but can allow requestors to access more specific information on lobbying activity, such as the attendees of meetings,

the minutes of discussions and any related correspondence, for example emails or letters.

In theory, forming a holistic picture of lobbying involves putting these different jigsaw pieces to together, but unfortunately they do not fit and significant gaps remain.

WHO IS LOBBYING?

The current arrangements do not provide a full picture of who is trying to advocate to ministers and other senior officials in government.

A critical flaw in the statutory register is that it only covers consultant lobbyists – those acting on behalf of paying clients – and excludes those who are 'in-house' – those who are employed directly by organisations, such as businesses, trade unions and large charities. Previous studies have found that the UK register does not cover the majority of those seeking to influence government in the UK.[6] We agree. Using official records from 2020, our research suggests that at most only 4 per cent of those who appear in departmental disclosures are on the statutory register.

The Greensill scandal also provides a powerful case in point. Despite clearly spending a significant amount of their time seeking to influence government to provide the company with hundreds of millions of pounds of public money, neither David Cameron nor Greensill Capital were required to register their activities for public inspection because they were not paid consultants.

Additionally, the current arrangements require members of the public to cross reference multiple datasets to form a more holistic view of what is happening. Initially, users have to compare data from departmental disclosures – published under the ministerial code – with entries on the statutory register of lobbyists to see who a consultant may be representing. Having to cross-reference these two datasets is neither intuitive nor accessible, and it is incredibly time-consuming.

A recent OECD study found that 18 out of 22 (80 per cent)[7] lobbying registers across the world include in-house lobbyists.[8] This includes countries with a similar democratic tradition to the Britain, such as Canada and Ireland. Scotland's lobbying register, which was not included in the OECD study, also covers these types of organisations.[9]

Across these three nations, in-house lobbyists make-up the majority of registrants. In Canada, between 2019 and 2020, 83 per cent of active registrants were in-house.[10] In Scotland during the same time period this figure was 91 per cent,[11] and for Ireland 95 per cent during 2019.[12] These three examples recognise that the focus of the rules should be on what people are doing, not who they are.

There are three principal objections to extending the current statutory reporting obligations to in-house lobbyists.

The first is that in-house lobbyists are covered by existing departmental disclosures. As we will see below, this only applies to those interest groups meeting with ministers face-to-face, and engagements that ministers and their departments choose to disclose. Given the current approach only covers a narrow range of activity and the rules are often not followed, it is far too easy

for in-house lobbyists to fly under the radar.

A second concern is that including them within the scope of the statutory regime, which involves periodic reporting requirements, would be overly burdensome, especially for charities and small businesses, and inhibit some organisations' willingness to engage with government. However, Canada,[13] Ireland[14] and Scotland[15] have all undertaken comprehensive reviews of their legislation and not found the administrative requirements too burdensome so as to justify their exclusion. The Irish review found that 'the Act has not led to a "chilling effect" on lobbying activities'[16] despite covering in-house and consultant lobbyists, as well as a broad range of communications with elected officials in both national and local government. Similarly, the Canadian review found 'the Act is generally working well in accordance with its objectives',[17] which aim to balance the 'need for transparency with minimizing the administrative burden on small- and medium-sized enterprises as well as charities and other not-for-profit organizations.'[18]

Targeted exemptions can ensure the rules are proportionate; for example, excluding those who engage government infrequently. This could be achieved through a variety of means, including a threshold based on the amount of time they spent seeking to influence government, including preparatory time, travelling and research. For illustration, an organisation could be exempted from registering and reporting requirements if they spent less than a quarter of one full time equivalent member of staff on regulated lobbying activities during a reporting period. Assuming a 37 hour week, this would be about 40 hours in a month.

The exact scope of the exemptions would be for Parliament to decide. When doing so, parliamentarians should take into account the tension between the imperatives of proportionality and transparency. Defining the exemptions too narrowly could impose undue burdens on those unable to comply or unnecessary to regulate for the broad purpose of the rules. Conversely, including broad exemptions would undermine the intention of delivering meaningful transparency. Having a clear intent for the rules and learning from other countries' experience should help MPs and Peers strike the right balance.

Beyond the drafting of the law, technology can significantly reduce administrative burdens. Many of the concerns expressed about the register in Scotland actually relate to issues with the system for reporting activity, rather than the principle of reporting itself. Those using the Zoe COVID-19 app during the pandemic will know how easy it is to report basic information when software is designed intelligently and intuitively. These statutory reporting requirements are no different – with the right user testing and interface design, meeting reporting obligations can be

made simple. Combining this with proportionate thresholds for registration, compliance can become a low burden, routine part of day-to-day business.

A third and related objection is that for some, any 'red tape' is unacceptable, and that it should solely remain departments' responsibility for disclosing those who engage ministers and public officials on government business. As we explore below, there are several critical issues with the way ministers report this information and their departments disclose them, which affects the quality, completeness and timeliness of these disclosures. Consequently, this option does not achieve substantive transparency over lobbying activity on its own, and remains out of step with the approach taken in most other advanced democracies.

Nevertheless, there are some practical improvements government can make in the short-term to improve the quality of departmental disclosures published under the ministerial code. As highlighted by the CSPL, it would be much easier for users to navigate existing transparency reports if they were compiled in a central location.[19] Currently, departments publish these on their own websites, with over 1,200 files scattered across 26 different places. We have collected and published all of this data for ministerial engagements on our Open Access UK platform,[20] but have not had the resources to do the same for those engaging permanent secretaries.

Currently, there are no equivalent disclosures for special advisers, which the IfG and CSPL recommend should change.[21] Similarly, the CSPL propose extending the scope of reporting relating to civil servants under permanent secretary level, where a lot of influence in shaping policy resides.[22] We agree with both of these reforms.

Similarly, there is wide range of ways in which departments describe the same organisation, leaving it challenging to understand the exact footprint of lobbyists across Whitehall. We noted similar issues with government procurement data in our *Track and trace* report.[23] Having a whole-of-government view of those seeking to influence ministers and senior officials should be as much benefit to those inside government as those outside of it. Creating unique identifies for these organisations – linking with any existing contact management software where possible – should help create a clearer view of who is meeting government.

RECOMMENDATIONS

Future legislative reform should include in-house lobbyists within the scope of the statutory register. It should consider exemptions to remove the risk of imposing undue burdens on those who are not undertaking substantial influencing activities.

Those managing a revised, more comprehensive register of lobbyists should undertake thorough user experience testing to ensure the reporting system minimises

administrative burdens as much as possible.

The Cabinet Office should collate all departmental disclosures and publish them in one centrally managed database, as recommended by the CSPL.

Government should develop solutions to create unique identities for those organisations and individuals referenced in departmental disclosures to provide a clearer, whole of government view to interests groups' engagement with Whitehall.

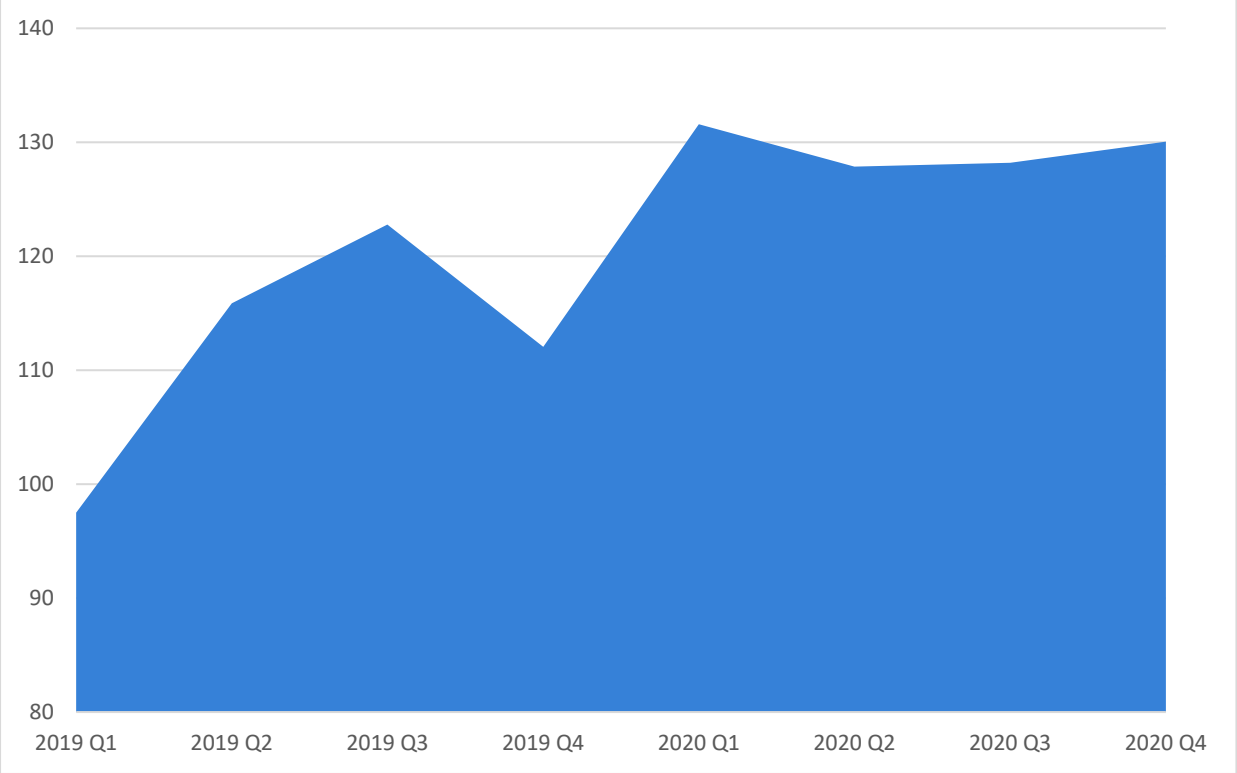
WHEN ARE THEY LOBBYING?

In order to allow for effective scrutiny, lobbying information should be published in a timely manner. Yet repeated delays to the release of departmental disclosures undermines the public's ability to know when meetings take place between ministers, their officials and lobbyists. Consequently, the passage of time may mean that the bill or grant under consideration has already passed or been awarded by the time this information is made available to the public, which renders disclosures tokenistic.

During the last year it took departments four months (129 days) on average after the end of a reporting period to publish the details of ministers' meetings with outside interest groups. This means that UK citizens could not find out about meetings hosted by ministers until potentially seven months after they happened. In contrast, it took an average of 28 days from the day of a communication to publish similar information in Canada during the same period, with almost one in ten of these disclosures released within five days of the communication taking place. In the EU, publication of meetings with European Commissioners is required within two weeks of them taking place.[24]

Some ministers and departments fail in their obligations under the ministerial code completely. For example, there is no official public record of either Robert

Table 1: Average days from end of quarter to publication for ministerial meetings, Q1 2019 to Q4 2020 (Source: UK government)



Jenrick's discussion with Richard Desmond over the Westferry development at a party fundraiser, nor Matt Hancock's meeting with David Cameron over drinks concerning Greensill's Earnd app for the NHS.[25] Both of these clearly relate to official business and the latter was reportedly declared to officials, but this information was not published.

The principal reason for delays is that the disclosures are subject to the 'grid' – government's cross-departmental communications plan – which ultimately relies on ministerial discretion. Consequently, it is not uncommon for departments to release information both late and alongside several other major publications or events, seemingly in an attempt to 'bury' any interesting facts in wider news.

The reason for omissions is less clear. When challenged about why Matt Hancock's meeting with David Cameron over drinks was not declared by his department, a senior minister suggested meetings relating to official business are only reported when other topics are not discussed.[26] Similarly, trade minister Liz Truss had removed records of a meeting with the Institute for Economic Affairs, claiming it was a personal engagement, only to add it again to the public record later.[27] Despite the code clearly stating that any ministerial engagements discussing official business should be reported to departments and published, regardless of the setting, this is not followed consistently, with ministers applying their own exemptions at will.

This reflects a fundamental flaw in the current approach to delivering timely information to the public. Unlike statutory registers, which have clear reporting obligations and deadlines stated and enforceable in law, the UK's process is political and ultimately subject to the discretion of the Prime Minister, who is the ultimate arbiter of the ministerial code. If they choose to ignore their own rules, or breaches of them by their colleagues, there is no other means of redress.

It is clear that this approach – which is heavily reliant on reporting by ministers, publication by their departments and enforcement by the PM – is not providing timely public access to key information about government business. Other countries with a similar democratic tradition, such as the US, Canada and Ireland, as well as Scotland, have an independent publication process, backed by a legal requirement for disclosure. These include more meaningful sanctions to deter potential non-compliance with the rules.

Pending legislation to introduce similar arrangements here, there is scope for the Prime Minister to amend the ministerial code in order to improve the timeliness and completeness of information within the current framework. Indeed, the PM has committed to update the code 'in due course', which provides a golden

opportunity to address these issues head-on.[28]

There are three main areas for improvement.

First, we think the UK should also adopt the same approach as Canada and move disclosures of specific interactions with interest groups to a monthly reporting cycle – a view shared by the Committee on Standards in Public Life (CSPL).[29]

Second, there should be more clarity over when these disclosures are published and what discussions are covered by the rules. Currently, the timing of these publications is highly unpredictable. Moving to a monthly publication cycle will help resolve part of this issue, but clarifying exactly when within a month they would be made available would help provide maximum clarity. Similarly, stating unequivocally that any discussion relating to official business must be reported, regardless of the setting, would help reduce the risk of omission by accident and narrow the range of routes for deliberate obfuscation.

Third, so long as the PM is responsible for issuing sanctions for breaches of the code, it would also help outlining what they might do in instances where ministers failed in their reporting obligations. As the IfG and CSPL have noted already, the current range of sanctions is limited to a decision to fire a minister or not, which is far too binary, especially for breaches of procedural rules such as these. Arguably, the administrative nature of these breaches would suit civil penalties issued by an independent body, as is the case in Canada. However, in the absence of that, the PM should provide a clear list of other sanctions they can impose to deter non-compliance – unwittingly or otherwise – with these rules.

RECOMMENDATIONS

Future legislative reform should require lobbyists to report on communications with government monthly, as is the case in Canada.

When updating the ministerial code, the Prime Minister should:

- Move departmental transparency disclosures to a regularised monthly cycle.
- Commit to publication on specific days, so there is clarity over when information will be made available.
- Emphasise that all ministerial discussions involving official business, regardless of the setting, should be reported to departments and published in a timely manner.
- Outline the range of sanctions they may impose for those who fail to follow the code, and how they will determine when to apply them.

WHAT ARE THEY LOBBYING ABOUT AND WHY?

Currently, there is a lack meaningful information available concerning what is being lobbied on and why. There is nothing on the statutory register of consultant lobbyists to answer these questions. As we show in our *House of cards* report, when consultant lobbyists appear in departmental data they may have multiple clients, so it is impossible to understand who they are actually representing in a particular meeting – the key function of the statutory register – let alone why they are there.[30] While departmental disclosures include the 'purpose' of each meeting with ministers, this is often unhelpfully vague. For example, in 2020, we count at least 540 meetings where the purpose was recorded as 'the 'impact of Covid 19' or 'response to Covid-19'. This ambiguity does little to clarify what was discussed.

The current disclosures also fail to include the reason for these engagements, which will not always be clear to ministers or senior civil servants attending. Those best placed to explain why an interest group wants to lobby government is the interest group themselves.

In the US, Canada and Ireland, those seeking to influence decision makers are required to declare why. This can include specific details about the particular legislative, policy or procurement process they would like to change or secure. In the US and Canada, this information is provided in a summary page for registrants, so there is a one-stop shop for all details about a lobbyist's influencing objectives.

For example, Google LLC's summary page in Canada shows they are trying to influence a number of different pieces of legislation, including the Income Tax Act, the Copyright Act and Bill C-10 'An Act to amend the Broadcasting Act' (see Annex I).[31] In the US, they are also seeking changes to the Digital Millennium Copyright Act and intellectual property enforcement.[32] In Ireland, this information is included alongside the details of specific engagements rather than on a central summary page.[33]

Given lobbyists are likely to know most about the intended effects of their efforts, it makes most sense for them to report this information. It is unclear how departments would be able to secure the same details in a meaningful way if they remained the principal source of transparency over attempts to influence decision-makers in government. This can only happen when the reporting obligations are shifted from public officials to those lobbying.

Pending legislation to enact these changes, departments could do more to ensure there is a clearer explanation of what is discussed in ministerial engagements with interests groups concerning official business. Currently, the Cabinet Office provides them with guidance on how to collate and publish transparency disclosures, which says explicitly that they should avoid using generic descriptors for the purpose of

these interactions. However, as evidenced above, this does not seem to be heeded in some departments.

Part of the issue is that what is needed is not the 'purpose' of the discussion, which when reported by government will not necessarily reflect what the interest group thinks it is, but a summary of the topics discussed. Feasibly, this may cover a number of issues, which should be recorded already in a minute of the meeting, at least when a civil servant is present. For illustration, this could be as simple as stating the content of discussions were: 'Online Safety Bill; UK copyright law; Bounce Back Loan Scheme (BBLS).' This would be more useful information than leaving it to the officials tasked with compiling these disclosures to try and second guess what the discussion was really about.

Ironically, the guidance for departments on compiling transparency disclosures is not published as an official document but made available to the public via a response to a Freedom of Information (FOI) request.[34] This should be published proactively by government as a matter of course so there is clarity about the expectations concerning the content of these records.

RECOMMENDATIONS

Future legislative reform should require clarity about the objectives of lobbyists and the topics they discuss with relevant officeholders. As is the case in Canada, this should include a summary report from registrants, updated at least every six months, outlining their key objectives, such as the specific legislation, policy, contract or other official business they are seeking to influence. It should require monthly reporting of the topics of specific communications with government.

The Cabinet Office should update its guidance on departmental disclosures so that the content of meetings are reported, not the perceived purpose of the interaction; for example, the specific bills, policies and/or grants under discussion. This guidance should be published as soon as reasonably practical in an appropriate place on a gov.uk website.

HOW ARE THEY LOBBYING?

Lastly, we don't have a full understanding of how interest groups attempt to influence decision makers. Both the Westerry and Greensill scandals make this patently clear. If discussions concerning government affairs take place via phone, instant messaging, email or even snail mail, none of this turns-up in current transparency records.

The ministerial code as drafted requires that any meetings with interest groups be reported to departments and then published quarterly. Previously, departments have tended to only publish in-person meetings, leaving all other forms of communication off the public record. While current guidance issued on the use of private emails advises that communications on 'substantive discussions' or 'decisions' made on official business need to be forwarded to civil servants, we find no evidence of them published proactively.

During the pandemic we have seen more phone calls being published, but this is not explicitly a requirement in the code and there is inconsistency in application between departments. In total, over 400 reported meetings in 2020 were actually phone calls. The department for Digital, Culture, Media & Sport (DCMS) accounted for the most, with 126 recorded. This contrasts with many departments who had none, such as the Cabinet Office.[35]

More to the point, were it not for the work of investigative journalists, we would know little about the flurry of calls and WhatsApp messages being exchanged between ministers and those seeking to influence them in recent years. Fundamentally, the scope of activities covered by the current transparency rules are both too narrow in scope and unclear in implementation to be of use.

One solution could be to require departments to publish the details of all discussions ministers have concerning official business with those outside of government, regardless as to how that took place. According to recent statements made to Parliament, this is information held currently by civil servants and therefore merely an issue of publication rather than additional reporting requirements for ministers or others. Both the CSPL and the IfG support this position, and we think it is a desirable interim solution pending legislation for a more comprehensive statutory lobbying register.[36]

While the simplicity of this solution is attractive, it has its own challenges. Crucial to this approach working in practice is an effective means of ensuring ministers' compliance with the rules. We have seen from past experience that some have taken a novel and arbitrary approach to determining what does and does not constitute official business,[37] and so long as this publication process remains within departments they are potentially subject to political pressure. Were this approach to work it would require greater independence in the process for

publishing these engagements, and meaningful sanctions for those ministers who through either neglect or intent fail to pass on discussions to their officials for public disclosure. As a minimum, to prevent unaccountable discussions taking place outside of official channels, we agree with the IfG's proposal that the ministerial code be updated to ban the use of personal phones for government business.[38]

There are various ways in which lobbying registers have sought to capture a wide range of communications. Unfortunately, while the UK's statutory lobbying rules covers all forms of engagement, regardless as to how it happens, no information on these interactions are made public – the rationale being that any meaningful content is published through departmental disclosures, which as we note above is not the case.

In Canada, registrants must report oral or written communication with ministers and senior officials, including who they engaged in public office. In conjunction with their summary page, a member of the public can see both lobbyists' key activities and their intentions. In Ireland, registrants must also record the form and quantum of their engagement. This does not include precise details of each and every interaction, but it does provide sufficient information to give a decent understanding over the content and purpose of the engagement. The US does not require reporting on the form of communication, but it does include information about who lobbyists targeted.

Given the obvious loopholes provided by only covering a limited range of communication methods, we think that any legislative changes should make reporting requirements comprehensive. Canada's example provides meaningful transparency while not imposing disproportionate burdens on those lobbying. We think the UK should adopt a similar approach.

As we saw from the Greensill scandal, there is a public interest in knowing whether or not someone involved in lobbying used to work in government. This can help identify a range of risks, including securing privileged access and potential influence over major decisions. Although effective controls on the revolving door between the private and public sector can help mitigate this risk – for example, through a 'cooling-off' period, whereby former ministers or civil servants cannot lobby government within a certain timeframe of leaving office – the UK's current approach is not fit for purpose and additional controls beyond this timeframe are still be beneficial.

Ireland and Canada require lobbying registrants to report the details of anyone they employ involved in their lobbying activities who at any time was once a public official. The scope of these rules covers a designated list of public officials, mostly within central government and Parliament. Both countries also have statutory cooling-off periods, prohibiting former office

holders from lobbying public officials within a certain period of leaving the public sector, but still require this additional level of transparency, too.

Individually, knowing which lobbyist worked for what previous public institution allows scrutiny of particular activities and decisions. Having this information in one place and linked to lobbying activities for these individuals after leaving public office also enables wider macro analysis of trends in post-public employment that might suggest more systemic issues that merit further investigation. We see no good reason why this should not be included within the scope of future legislative reform.

Intertwined with debates about lobbying are questions over the relationship between money and politics. According to research by the Hansard Society, 63 per cent of respondents to their survey thought government is rigged to advantage the rich and powerful.[39] Transparency International's previous Global Corruption Barometer, a public opinion poll, also found that 76 per cent of UK respondents strongly believed that wealthy individuals exert undue influence on governments and action needs to be taken to stop this.[40] The view that money talks seems ever-present.

Despite this, there is little solid empirical evidence to test this assertion. The amount spent on lobbying in the UK still remains the subject of speculation, with no statutory requirements for consultants or in-house forms to report this information. In the US, consultant lobbyists have additional requirements to report the amount of income they receive every six months and in-house lobbyists must report how much they spend on influencing activities.[41] For amounts over $10,000, these reports just need to be rounded to the nearest $20,000. A similar approach is adopted in the EU's transparency register. We think there is merit considering similar requirements developing legislative proposals for reform in the UK.

RECOMMENDATIONS

Future legislative reform should require meaningful information on all forms of communication between lobbyists and government, including details of the:

- form of communication; for example, email, letter, phone call etc.
- subject matter discussed, which would link back to their registration summary report
- specific public officials they engaged
- date of the communication

Registrants should also have to report the details of anyone they employ involved in lobbying activity that at any point has been a public official, which could apply to those from a select list of institutions.

Government and Parliament should consider including financial reporting obligations in any future legislation.

When updating the ministerial code, the Prime Minister should make it explicit that all forms of communication with ministers concerning official business

must be reported in departmental disclosures. To make these communications more traceable, it should also ban the use of personal phones for official government business.

ADDITIONAL ISSUES

In addition to the points raised above, we identify three areas that need further review to deliver meaningful transparency and accountability to lobbying.

Access to information

Lobbying registers alone are not sufficient. They provide a key snapshot of influencing activity, but do not give the full picture. Some of the most meaningful detail comes from access to information requests through the FOIA and EIR. This can secure more specifics on interest groups' engagement with government; for example, minutes of the meeting, presentations or briefing papers shared, and outcomes of the discussions.

According to official data analysed by the Institute for Government, there has been a noticeable decline in the timeliness of FOIA responses in a number of departments over the past five years, including the Cabinet Office, which sits at the heart of Whitehall. Although some of this appears to have been caused by the pandemic, only 13 out of 20 departments (65 per cent) in 2019 met the ICO's benchmark of responding to 90 per cent of requests within 20 days of receipt. Many FOIA requests also not being responded to in full. While the IfG recognises that there are several possible legitimate reasons for departments not providing fuller answers, there are other more concerning explanations.

In 2020, a report by openDemocracy[42] identified numerous factors indicative of a culture of secrecy emerging in government, including:

- an increase in unjustified withholding of information by departments
- stonewalling of requests to drag-out the time it takes for the requestor to secure a meaningful response
- an Orwellian 'Clearing House' system of monitoring and coordinating responses to sensitive FOIA requests, which has no basis in law

These practices are unjustifiable and appear to be a deliberate attempt to obfuscate departments' responsibilities to comply with the letter and intent of the FOIA.

RECOMMENDATIONS

We agree with openDemocracy's recommendations that:

- The ICO should respond to stonewalling complaints by using enforcement notices to order authorities to respond to all overdue requests immediately.
- Future legislative change should introduce an administrative silence rule whereby a failure to respond to a request within the requisite time period is deemed to be a refusal and can be appealed in full to the ICO (enabling the ICO to rule on whether the requested information should be disclosed and not only on the fact that the response is late).

We recommend the UK Government provides a timely response the Public Administration and Constitutional Affairs Committee's inquiry on the Clearing House for FOIA requests.

Securing compliance with the ministerial code

In the absence of legislation, providing timely information about access and potential influence within Whitehall depends heavily on compliance with the ministerial code by ministers and their departments. We have identified at least five major incidents in the past three years alone where ministers have seemingly failed to comply with their obligations under these rules without meaningful redress. Additionally, as mentioned above, their departments are increasingly publishing quarterly transparency disclosures over 100 days after the end of the relevant reporting period.

Securing compliance with the ministerial requires a greater independence of oversight than is currently the case. At the moment, all of the power – from initiating investigations to the publishing of findings and issuing of sanctions – rests with the Prime Minister. We agree with the IfG and CSPL that this is unsatisfactory and needs changing. Ideally, the body responsible for monitoring and ensuring compliance with the rules – currently the Independent Advisor on Ministerial Interests – be put on a statutory footing, with the autonomy to advise, investigate and issue administrative sanctions without the patronage of the PM. We see merit in considering whether these responsibilities form part of a wider brief, including ethical standards in government more generally. Pending such reform, it should at least have the power to initiate investigations and publish their findings without the PM's approval, as proposed by the IfG and CSPL.

Delivering more timely transparency not only requires shorter reporting periods, as proposed above, but also a process that is independent of political interference. Currently, departmental disclosures are subject to the government's communication grid. Not only does this political involvement in publications lead to arbitrary decisions about what is and is not made available to the public, it also has severe implications for their timeliness. There should be greater certainty about the timing of these publications through a more independent publication process. As a minimum, this should involve specifying the timing of publications more explicitly within the ministerial code.

RECOMMENDATIONS

The UK Government should improve the completeness and timeliness of departmental transparency disclosures by:

- Establishing a separate publication process that is relatively fixed and not subject to the government's communication 'grid'.
- Giving the Independent Advisor on Ministerial Interests the power and resources to investigate proactively

any failure to comply with the ministerial code.

Departmental disclosures or lobbying register, or both?

During consideration of any future legislation on lobbying transparency, consideration should be given as to whether it would be beneficial to retain the current departmental disclosures. Doing so would likely duplicate some of the records in any new, more comprehensive statutory register of lobbyists. However, there are still merits in keeping dual disclosure.

First, given there are likely to be exemptions in the new law, departmental disclosures should include additional information that is not on the statutory register. For example, small businesses that are exempt from the statutory reporting requirements will still seek to influence ministers and senior civil servants. During the pandemic, numerous small companies lobbied ministers over contracts for the supply of Personal Protective Equipment. This kind of activity, involving hundreds of millions of pounds of public money, is most certainly in the public interest and should be disclosed, even if not by the company themselves.

Second, dual disclosure provides a safeguard against accidental or intentional failures to report. Currently, the Registrar of Consultant Lobbyists can use departmental disclosures via our Open Access tool to help identify whether or not someone has failed to comply with their legal obligations. This could continue under an expanded statutory regime.

Third, there are wider organisational benefits to departments maintaining complete and accurate records of their external engagements, at a senior level and below. Typically, large businesses and institutions ensure organisation-wide views of their key stakeholders. This can help them identify where to prioritise their resources, avoid overlapping or conflicting messaging with key clients, and protect against institutional memory loss, which could be caused by high staff turnover. While the statutory lobbying register would provide some of this information for departments, it would only do so for interactions with public officials covered by the scope of the rules.

RECOMMENDATION

Government should consider retaining departmental disclosures alongside a new and expanded statutory lobbying transparency regime.

Annex 1: Example registration summary

Redsill REGISTRATION SUMMARY	
Subject Matters	**Subject Matter Details**
Taxation and Finance Science and Technology Economic Development Government Procurement Financial Institutions Industry	**Policies or Programme** Roll-out and use of new fintech app 'Payin' for NHS employees, free-of-charge **Grant, Contribution or Other Financial Benefit** Eligibility of Redsill for the Covid Funding Grant Eligibility of Redsill for the Large Business Covid Grant **Legislative Proposal, Bill or Resolution** Financial Services Bill, Clause 1, Duty of care for financial service providers
Lobbyists employed by the organization Anthony Brown, Senior corporate adviser | Former Prime Minister (2010 – 2016)	

Annex 2: Example communication report

Redsill COMMUNICATION REPORT			
Date	**Position Title, Government Institution**	**Subject Matters**	**Mode of Communication**
01/08/2019	Matt Hancock, Secretary of State for Health and Social Care	Science and Technology	Letter
01/10/2019	Matt Hancock, Secretary of State for Health and Social Care, Department of Health and Social Care	Science and Technology	Face-to-face meeting
15/03/2020	Rishi Sunak, Chancellor of the Exchequer, HM Treasury	Financial Institutions	Text message

TRANSPARENCY INTERNATIONAL UK

12-Month Lobbying Summary - In-house Corporation

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Google Canada Corporation / Sabrina Geremia, Managing Director

Registration Summary | **Monthly Communication Reports**

Active - Last Updated: **2021-04-01**

Who is lobbying?

Google Canada Corporation (Address & business activities)

Sabrina Geremia, Managing Director

Received government funding or funding expected in current financial year
No

Business Relationships

Google Canada Corporation is a subsidiary of the following parent companies

- Alphabet Inc. (Address information)
- Google Holdings LLC (Address information)
- Google LLC (Address information)
- XXVI Holdings Inc. (Address information)

Beneficiaries of the Lobbying Activity

- Google Canada Corporation does not have any subsidiaries that could have a direct interest in the outcome of the undertaking

What is being lobbied?

Subject Matters

- Arts and Culture
- Broadcasting
- Economic Development
- Elections
- Government Procurement
- Immigration
- Industry
- Infrastructure
- Intellectual Property
- International Relations
- International Trade
- Justice and Law Enforcement
- National Security/Security
- Privacy and Access to Information
- Science and Technology
- Small Business
- Taxation and Finance
- Telecommunications
- Tourism

Subject Matter Details

Legislative Proposal, Bill or Resolution

- Communicating with the Government of Canada about Bill C-10 (An Act to amend the Broadcasting Act), more specifically about the regulation of online content.
- Copyright Act, in respect of amendments related to user rights and intermediary liability.
- Copyright Act, in respect of reforms to the Copyright Board of Canada
- Income Tax Act, in respect of a proposed 'digital renovation tax credit' for small and medium sized businesses.
- Income Tax Act, specifically expanding section 19 to cover digital advertising.

Policies or Program

- Broadcasting policy, specifically related to governing online content.
- COVID-19 pandemic, more specifically potential collaboration between the Government of Canada and Google on remote work practices, chatbots, community mobility reports, and network infrastructure.
- Consideration of the creation of a Government digital service, a central office to coordinate digital transformation of the Government of Canada
- Government of Canada consultation on Canadian Content in a Digital World
- Immigration and visa policies, specifically policies that will promote and maintain a highly-skilled workforce.
- Innovation policy, specifically policies or programs related to the adoption of technology by small and medium-sized enterprises.
- Intellectual Property Strategy, as it relates to intangible assets.
- Internet advertising policy, specifically the adoption of digital media and advertising by government.
- Internet policy, specifically as it relates to cyber-security and national security.
- Internet policy, specifically the implementation of policy affecting the governance of the internet.
- Policies that would encourage growth of The Toronto-Waterloo Region Corridor, an 100-km stretch that is the second largest technology cluster in North America and is a global centre of talent, growth, innovation and discovery
- Procurement policy, specifically policy related to the provision of technology services by the Government of Canada.
- Providing feedback to a Canada Revenue Agency employee on draft government communications training program
- Public service polices to create greater digital skills
- Public service policies to encourage more open government
- Taxation policy, specifically proposed changes to the taxation of technology companies.
- Technological developments related to artificial intelligence.
- Technology policy, specifically promoting the development of technological infrastructure through the Smart Cities Challenge.

Policies or Program, Regulation

- The North American Free Trade Agreement (NAFTA), specifically provisions related to intellectual property and digital trade.

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[10] https://lobbycanada.gc.ca/media/1905/annual-report-2019-20-en.pdf [accessed 20 April 2021]

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Public Relations', cross checked with registry category 'Was this lobbying done on behalf of a client? Standards in public Office Commission, *Regulation of Lobbying in 2019 , Annual Report (2019) pg.50* https://www.lobbying.ie/media/6270/regulation-of-lobbying-annual-report-2019-final-web.pdf

[13] House of Commons Canada, *Statutory Review Of The Lobbying Act: Its First Five Years (May 2012) pg.12* https://www.ourcommons.ca/Content/Committee/411/ETHI/Reports/RP5577899/ethirp03/ethirp03-e.pdf

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