

Transparency International UK's submission to the post-legislative review of Part 1 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014

Executive Summary

Part 1 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 created a Statutory Register of Consultant Lobbyists. When combined with ministerial meetings data, this was intended to give the public a complete picture of who is trying to influence policy making.

In practice this has not been the case. The narrow scope of the lobbying register combined with problems of accuracy, timeliness, meaningfulness and scope of ministerial meetings data means that lobbying remains largely in the shadows. Academic research concluded that “wide variation between the two sets of data, along with other evidence, contribute to our conclusion that the Government could have made, and still should make, the lobby register more robust.”¹

Key Recommendations:

In order to catch-up with the standards of lobbying transparency exemplified by its allies, neighbours and devolved administrations, the UK Government should make publicly available:

- a statutory register of lobbyists covering both in-house and consultant lobbyists
- registers of meetings between lobbyists and key decision-makers, which contain sufficient detail to enable the public to understand the scale and nature of lobbying activities and are published in a timely manner

There are smaller changes that can be made to improve the scope of the register, the amount of information that has to be declared and the quality of ministerial meetings data, that could be made through statutory instrument or guidance.

These changes would be a step forward within the parameters of the current system. However, a register that covers both in house and consultant lobbying is required to give a clear picture of lobbying activity in Westminster.

¹ McKay, A.M., Wozniak, A. Opaque: an empirical evaluation of lobbying transparency in the UK. *Int Groups Adv* 9, 102–118 (2020). <https://doi.org/10.1057/s41309-019-00074-9>

Introduction

We welcome this opportunity to provide post legislative review of Part 1 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014.

The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 implemented a statutory register of consultant lobbyists for the first time in the UK. This was a significant development. The Government's intention was that this would shine a light on lobbying and contribute to a rebuilding of public trust in the political system.

This submission explores how the narrow focus on consultant lobbyists, the limited scope of the register, combined with deficiencies in the publishing of ministerial meetings data, prevents there being meaningful transparency in lobbying in the UK.

Effectiveness and Scope

Lobbying is an essential part of our democracy. In order for governments and legislatures to work effectively they need to engage with those that may be affected by their decisions. As well as constituents, this could include big multinational companies, professional associations, trade unions or civil society groups. This type of engagement can enrich the policy making process. It can provide evidence to inform decision-making, highlight problems with existing policy and enhance legislators' scrutiny of draft laws.

However, this process can be abused by those looking to further private interests. Those with deep pockets can spend significant amounts on lobbying and attempt to make sure their sectional interests come first, regardless of the social, economic or environmental consequences.

The perception that money can buy access and influence negatively impacts on how the public views the political system and their place within it. The 2019 Audit of Political Engagement found that 47% felt that they have no influence at all in national decision making and 63% felt that Britain's system of government is rigged to advantage the rich and powerful.² The 2020 Eurobarometer survey also found that 64% of respondents agreed that "too close links between business and politics in the UK leads to corruption."³

² Hansard Society Audit of Political Engagement 16 (2019)

<https://www.hansardsociety.org.uk/publications/reports/audit-of-political-engagement-16>

³ Special Eurobarometer Report 502 Corruption (2020)

<https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/SPECIAL/surveyKy/2247#p=1&instruments=SPECIAL&surveyKy=2247>

The UK has now had a lobbying register for six years, but the public is still largely left in the dark about who is trying to influence public-policy decisions that affect their everyday lives. The UK's Statutory Register of Consultant Lobbyists and records of ministerial meetings, which when combined are supposed to provide a complete picture of lobbying activity, provide us with very little useful information with which to hold the powerful or influential to account.

There have been at least 26 lobbying scandals since 2010 revealing critical information that was not captured by either the statutory lobbying register or departmental disclosures. 12 of these lobbying scandals have been in the last five years.

Westminster's lobbying register is significantly weaker than those of its allies, its neighbours and even its devolved comparators. It is less comprehensive and reveals less information than registers in the USA, Canada, Ireland and Scotland. This opacity can give rise to mistrust in our political system and give cover to those seeking to exploit or undermine the integrity of our democracy. A table comparing the different lobbying registers is included in Appendix 1.

The focus on consultant lobbyists

In 2013 when the proposed register was being debated in Parliament, lobbying trade bodies and campaigners came together to warn that the register would capture less than 1% of lobbying activity.⁴ The concern was that the very narrow definition, focusing on consultant lobbyists, rather than the lobbying activity, meant that little would be revealed about those seeking to influence the Government. This has proven to be the case.

The rationale for focusing on consultant lobbyists rather than lobbying activity more generally, was that information on who is meeting with Government Ministers was already publicly available. There are two significant problems with this approach. Firstly, this fails to recognise the breadth of lobbying activity both in terms of advocacy targets and the ways in which they are engaged. Effective lobbying often includes engaging with a wide range of people, including MPs and civil servants, early in the policy development process before it comes to a Government Minister. Ministerial meeting data also fails to capture the breadth of lobbying at a ministerial level because only in person meetings are recorded. Lobbying activity can include phone calls, emails and letters. Many comparable democracies provide some form of transparency over activities other than in-person meetings, yet the UK does not. This means the public cannot get a clear picture of the influencing work that goes on.

Secondly, the way that ministerial meeting data is published means it is very difficult to scrutinise and it is virtually impossible to do so in a timely manner. Academic analysis of more than 72,000 reported ministerial meetings and nearly 1,000 lobbying clients and consultants revealed "major discrepancies" between these two sources of information

⁴ See Francis Ingham's evidence to the Political and Constitutional Affairs Select Committee inquiry on the Government's Lobbying Bill <https://publications.parliament.uk/pa/cm201314/cmselect/cmpolcon/601/601.pdf>

about lobbying in the UK. They concluded that the “wide variation between the two sets of data, along with other evidence, contribute to our conclusion that the Government could have made, and still should make, the lobby register more robust.”⁵

These findings are backed up by our recent research, which is due for publication later this year. We analysed both the UK’s Statutory Register of Consultant Lobbyists and the ministerial meetings data for the period of January 2017 to March 2020. Out of the 48 consultant lobbyists on the statutory register that represent clients working on housing policy, we could only find three in quarterly departmental disclosures. Presumably, this is because the statutory definition of lobbying activities⁶ for consultant lobbyists is much wider than the range of activity covered in departmental disclosures, which tends to only include face-to-face meetings. However, this leaves the public completely in the dark about what the 45 other consultant lobbyists were doing to necessitate their registration.

Our findings also reinforced previous research that only a fraction of those recorded as meeting ministers appear in the statutory register. Our analysis of meetings about housing policy in this period found only 3 out of 903 or 0.3% were also on the register of consultant lobbyists.

The lobbying transparency regimes in comparable countries are not so narrow in scope. In the USA, Canada and Ireland, all lobbying activity – whether by in-house or consultant lobbyists – information is captured in one location instead of across multiple data sources.

Ministerial meetings data

The way that ministerial meetings data is published hinders effective scrutiny of who is seeking to influence Government. Although there have been some improvements in recent years, there are still issues with how meaningful, timely and accurate the data is. The rationale for requiring those on the lobbying register to only declare their clients and not details of the policy on which they are lobbying was that this information could be found in the ministerial meetings data. However, as shown by our analysis of lobbying on housing policy this is not the case. The most common purposes stated for meetings with ministers are “introductory meeting”, “general meeting” or simply that this was “not recorded by the department”. These declarations keep lobbying activity firmly in the shadows.

There is also an issue with the timeliness of the data. Departments have three months after the end of the quarter when they can publish the data and are inconsistent about when they do this. There can be significant delays in publication. TI UK’s Accountable Influence report found that the ministerial meetings data available in September 2015

⁵ McKay, A.M., Wozniak, A. Opaque: an empirical evaluation of lobbying transparency in the UK. *Int Groups Adv* 9, 102–118 (2020). <https://doi.org/10.1057/s41309-019-00074-9>

⁶ Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014, Section 2 <https://www.legislation.gov.uk/ukpga/2014/4/section/2/enacted>

was over a year old.⁷ This remains a problem – both HMT and FCO took nearly a year to publish the details of meetings that took place in quarter 4 of 2019. This makes it impossible for the public to understand at the time a policy is being debated who may be seeking to influence the Government.

Departments are also inconsistent in their approach as to what information needs to be published about ministerial meetings and there have been a number of instances where Ministers have failed to declare meetings. This means that it is not possible to rely on the accuracy of the published information.

In 2011, Theresa Villiers, then a DfT Minister, failed to declare a lunch with a university friend who was also the principal lobbyist for developers Helioslough. The developers had been campaigning since 2006 to build a £400m international rail freight exchange on 300 acres of green belt land near St Albans in Hertfordshire. The Minister described the event as a private engagement, which did not need to be disclosed, despite acknowledging that the development was discussed over lunch and that emails followed the meeting from said friend asking the Minister to lobby colleagues in government.

More recently in 2020, Robert Jenrick, Secretary of State for Housing, was found to have expedited Conservative Party donor Richard Desmond's planning application for a development in East London in a way that meant Desmond would not have to pay community infrastructure levy money to Tower Hamlets Council. The meeting between Jenrick and Desmond was not included in the ministerial meetings data. In both of these cases they only became public after newspaper investigations.

We believe that a more comprehensive approach to reporting on ministerial meetings data would often save Ministers from having to judge whether a meeting needed to be declared given their various roles, and from the consequent public accountability for those decisions. Meetings that Ministers have at events organised by a political party which would have been declared had they been hosted by their government department, should also be reported among their ministerial meetings. Improvements to the way ministerial meetings data is recorded could be achieved with clear guidance from the Cabinet Office about the purpose of the data, how it relates to other data sets and how it should be reported.

Scope

One factor that undermines the effectiveness of the lobbying register, in addition to the narrow definition of lobbying, is that the lobbying targets covered by the register are also very limited. Consultant lobbyists only need to register if they are contacting Government Ministers or Permanent Secretaries. Effective lobbying involves a far wider range of advocacy targets and is often aimed at influencing policy before it reaches Government Ministers.

⁷ Transparency International UK Accountable Influence 2016 p16

https://www.transparency.org.uk/sites/default/files/pdf/publications/Accountable_Influence_Bringing_Lobbying_out_of_the_Shadows.pdf

For example, the register does not cover interactions between lobbyists and Special Advisers or mid-level civil servants, even though these officials can have a significant influence over how policy is developed within government. It also does not cover lobbyists who try to influence parliamentarians, who are responsible for scrutinising and deciding on whether legislation should be taken forward or not. Neither is there a requirement for lobbyists on the register to provide any information on how much they are spending on their activities or what they are lobbying on, which could help the public understand whether it is possible that influence is effectively being bought. This information is already required in the USA and in Canada. These improvements to the register could be made by statutory instrument so would not require parliamentary time while the Government's focus is necessarily on managing the pandemic.

Part 1 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act has not shone a light on lobbying as was hoped when it was passed in 2014. This post-legislative review is an important opportunity to recognise the need for improvements in lobbying transparency in Westminster and to commit to the changes necessary.

Recommendations

The narrowness of the scope and the very limited information collected in the register, means that it has done little to increase the transparency of lobbying activity in the UK. In order to achieve to catch-up with the standards of lobbying transparency exemplified by its allies, neighbours and devolved administrations, the UK Government should make publicly available:

- a statutory register of lobbyists covering both in-house and consultant lobbyists
- registers of meetings between lobbyists and key decision-makers, which contain sufficient detail to enable the public to understand the scale and nature of lobbying activities and are published in a timely manner

The registers of lobbyists should require regulated individuals and organisations to provide the following details, as well as quarterly updates:

- the name of the lobbyists / their registered company name (if applicable)
- their company registration number (if applicable) to ensure there is clarity about which company is engaging in this activity
- their registered address
- details of the names of lobbyists who have lobbied on their behalf within the previous quarter
- the details of the government policy, legislation etc. they have lobbied on during the preceding quarter
- information on any public office held previously (during the past five years) by any employees who are engaged in lobbying, and their expenditure on lobbying, including gifts and hospitality to public officials

- to include any use of secondments or advisers placed within government to influence policy.
- In addition to these disclosure requirements, there should also be effectively enforced codes of conduct setting out what behaviour is appropriate for lobbyists.

The reporting requirements mentioned above are reasonable and reflect practice that already exists in other Western democracies, such as the US and Canada. Where information has to be provided about lobbying expenditure, organisations and professional lobbyists should be able to make a reasonable and honest assessment of this amount, possibly within certain reporting ranges. Those companies who spend money to try and influence how people vote at elections and referendums are already required to report expenditure in more minute detail, so it seems reasonable that broader estimates can be made by lobbyists.

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Annex 1 - Lobbying Registers: An International Comparison

	Nearest to best practice
	In-between
	Furthest from best practice

Country	Scope: Lobbyists		Scope: Public officials		Form of communication				Reporting		
	In-house	Consultant	Executive	Special advisors	Legislators	Face-to-face	Written	Oral (remote)	Purpose of lobbying	Spending	Reporting period
US (statutory register) Est. 1946	SEC 3(7) 2 USC 1602	SEC 3(9) 2 USC 1602	SEC 3(3) 2 USC 1602	SEC 3(3) 2 USC 1602	SEC 3(4) 2 USC 1602	SEC 3(8) 2 USC 1602	SEC 3(8) 2 USC 1602	SEC 3(8) 2 USC 1602	SEC 5 2 USC 1604 Example		Quarterly
Canada (statutory register) Est. 1989	Section 7	Section 5	Section 2(1)	Section 2(1)	Section 2(1)	SOR/2008-116 (Sections 6 and 9) Section 5(1)(a)	Section 5(1)(a) NB. is included in registration details	Section 5(1)(a) NB. is included in registration details	Section 5(2) Example		Monthly SOR/2008-116 (Sections 6 and 9)
Ireland (statutory register) Est. 2015	Section 5(2)	Section 5(1)	Section 6(1)(a)	Section 6(1)(e)	Section 6(1)(b)	Section 5(4)	Section 5(4)	Section 5(4)	Section 12 Example		Every four months (Sections 7 and 12)
Scotland (statutory register) Est. 2016	Section 1	Section 1	Section 1(1)(a)(1)	Section 1(1)(a)(1)	Section 1(1)(a)(1)	Section 1 incl. video conferencing			Section 6 Example		Biannually (Section 11)
UK (statutory register) Est. 2014		Section 2	Section 2(3)	Can be introduced via S.I.		Section 2(3)	Section 2(3)	Section 2(3)	Section 6 Example		Quarterly (Section 5)