

Transparency International UK's submission to the Treasury Committee Inquiry on Lessons from Greensill Capital

The relationship between Greensill Capital and the Government has called the system of regulating lobbying into question. It involves a complex network of individuals with privileged access to those in senior positions, the failure to adequately monitor and manage conflicts of interest, and significant gaps in lobbying regulation that have put public money at risk. This case has received significant attention in part because it involves lobbying by a former Prime Minister. However, it is important to recognise that issues raised by the Greensill case go far beyond the way one company or even one individual used privileged access to try and influence public policy. They reflect systemic problems that should be urgently addressed to protect the public purse and the UK's reputation for good governance.

This submission focuses on the interactions between Greensill Capital and HM Treasury but it is important to recognise the breadth of access to Government that Greensill was able to enjoy.

Key Recommendations

- ACoBA should be replaced with a statutory body that has the powers and resources to effectively enforce the rules on business appointments. This new body should have a role in ensuring standards and compliance with business appointment rules in Whitehall departments.
- There should be a review of both the types and seniority of roles that should be subject to scrutiny by ACoBA
- The UK should meet international best practice by introducing a comprehensive statutory register of lobbyists that covers both in-house and consultant lobbyists. The register should include information on the policy, bill or regulation being lobbied on; key communications with ministers, senior government officials and special advisors; information on any public office held during the past five years by any employees who are engaged in lobbying; the use of secondments or advisers placed within government who may influence development of policy; and their expenditure on lobbying, including gifts and hospitality to public officials. Exemptions to ensure the reporting requirements are proportionate and do not unduly inhibit engagement with government should be available.
- Ministerial meetings data needs to be accurate, timely and meaningful. The Cabinet Office should be given a greater role in maintaining and enforcing standards across departments.

Lessons for HM Treasury (and its associated public bodies) from its interactions with Greensill Capital during the Covid crisis

Revolving Door

1. Moving through the revolving door can be beneficial to both public and private sectors by improving understanding and communication between public officials and business and allowing sharing of expertise. However, the revolving door brings risks that these officials will be influenced in their policy or procurement decisions by the interests of past or prospective employers.
2. The conflicts of interest associated with revolving door movements can occur before, after, or during a role in government. For example:
 - Ministers/officials being overly sympathetic to those who were previous clients during a past role outside of government.
 - Ministers/officials favouring a certain company, to ingratiate themselves and gain future employment.
 - Former Ministers/officials seeking to influence their former colleagues to make decisions in a way that favours their new employer.
 - Former Ministers/officials using confidential information to benefit their new employers – for example, during the development of government policy or tendering process.
3. One of the issues highlighted by the Greensill case is the benefit, specifically the level of access that a company can gain by employing people who have worked at senior levels within Government. As a former Prime Minister, David Cameron was able to simply text the Chancellor of the Exchequer, go for a drink with the Secretary of State for Health, email and text the Deputy Governor of the Bank of England and email the Chief Executive of NHS England and the Head of NHSX to promote the work of the company¹. Sir Tom Scholar, Permanent Secretary at the Treasury and formerly international adviser in Downing Street, was one of many HMT officials lobbied by David Cameron on behalf of Greensill. In evidence to the Public Accounts Committee, he was very open about how these connections work. He said,

'If a former minister I've worked with asked to talk to me, I would always do that.'²
4. This is a level of access to policy makers – across a range of different departments, institutions and agencies, that most people will simply never have and demonstrates the risks of the revolving door. It also highlights the significance of informal contacts which are not captured by lobbying regulations. Even in cases like Greensill lobbying the Treasury, where the

¹ The full list of people currently known to have been lobbied by David Cameron for Greensill is Matt Hancock, Health Secretary, Rishi Sunak, Chancellor of the Exchequer, Jesse Norman, Financial Secretary to the Treasury, John Glen, Economic Secretary to the Treasury, Lord Feldman, senior adviser at the Department of Health and Social Care: 23rd March- 15th May, Lord Prior, Charles Roxborough, Second Permanent Secretary, HMT Treasury Tom Scholar, Permanent Secretary. HMT Treasury, Jon Cuncliffe, Bank of England Deputy Governor James Benford, Bank of England, Julian Kelly, NHS England's Chief Financial Officer, Simon Stevens, Chief Executive, NHS England, Matthew Gould, head of NHSX

² Evidence session on 22 April 2021. Answer in response to Q15 <https://committees.parliament.uk/oralevidence/2083/default/>

access doesn't ultimately lead to the desired outcome for the person or organisation involved, it provides them with an advantage over commercial competitors or organisations making different arguments.

5. In the UK most public officials recognise the potential for conflicts and try hard to avoid them. However, a number of prominent cases have come to light in recent years in which former Ministers and civil servants have taken lucrative consultancies or directorships with companies that have relationships with their old departments. The system for regulating business appointments within departments was shown by the National Audit Office investigation to be inconsistent at best³. ACoBA, which regulates the revolving door for former Ministers and senior civil servants, lacks the independence, powers and resources necessary to be effective.
6. Ministers and senior civil servants are required to apply to the ACoBA when they are considering taking on a new role for 2 years after they leave office. In principle ACoBA can place restrictions on them such as requiring that they do not lobby their former department for a period of time. However it has neither the powers nor the resources to monitor whether these conditions are met. It also has no sanctions if an individual either failed to apply to ACoBA before taking on a role or if their guidance is not followed. The system relies on the principle that being 'named and shamed' for breaching the rules is enough to ensure compliance. It is not. The Public Administration and Constitutional Affairs Committee has called ACoBA a "toothless regulator" and repeatedly called for ACoBA to be abolished and replaced with a new statutory regulator. We endorse that recommendation.
7. The challenges of regulating the revolving door, preventing conflicts of interest and regulatory capture are not new, but neither are they going to go away. The civil service is no longer considered a 'job for life' and political careers are notoriously unstable. Whilst the creation of ACoBA demonstrates an understanding that this is an area that needs to be regulated, the current system is inadequate. It neither inspires public confidence nor protects the reputations of those in public life.
8. The level of coverage provided by the business appointments rules does not adequately manage potential conflicts of interest and ensure standards in public life are maintained. Only the most senior civil servants are regulated by ACoBA and this does not reflect the scale of the revolving door between the civil service and the private sector. In 2020, 34,000 people left the civil service and only 108 were subject to oversight from ACoBA. While other civil servants are subject to rules placed on them by departments this system of risk management has been shown to be inconsistent at best.
9. Another regulatory gap revealed by the Greensill Capital case is that civil servants who take on roles with the private sector whilst in Government are not covered by ACoBA. Bill Crothers, who is central to the network of those

³ NAO Investigation into Government's Management of the Business Appointment Rules <https://www.nao.org.uk/wp-content/uploads/2017/07/Investigation-into-governments-management-of-the-Business-Appointment-Rules.pdf>

with links to Greensill Capital inside Government, was given permission to take on a role with Greensill whilst also working as Chief Commercial Officer for the Government. This role gave Mr Crothers shares in the company worth £5.7 million in 2019.⁴ It is not clear what, if any, consideration of conflicts of interest was done before approving this appointment but a risk-based approach would identify the Chief Commercial Officer who set up a £15 billion-per-year business contracts division, as one of the roles where there are significant corruption risks and conflicts needed to be very carefully managed. The fact that this role started while Mr Crothers was in Government also meant that he was not required to apply to ACoBA regarding this role. This is a significant loophole that needs to be addressed.

10. It is also important to note that, until this scandal broke, there was no clear understanding of how many serving civil servants had second jobs and the risks that these may pose. Simon Case, the Cabinet Secretary, instructed colleagues to report any roles outside the civil service to their departments in the wake of the Greensill scandal.⁵

Recommendation: There should be a review of both the types and seniority of roles that should be subject to scrutiny by ACoBA

Management of Conflicts of Interest

11. The Greensill Capital case demonstrates that there are significant gaps in the way that conflicts of interest are managed within Government. Lex Greensill was an unpaid Adviser in Downing Street from 2012-2015 and a Crown Representative from 2013-2016. There was no contract and it has been confirmed that he was neither a civil servant nor a special adviser, so would not have been required to abide by any code of conduct. Despite this he had a security pass which gave him access to both the Cabinet Office and Downing Street and a business card describing him as an adviser and including contact details within Downing Street.
12. Greensill Capital was incorporated in April 2015, while Lex Greensill was working in Downing Street and in October 2015 Prime Minister David Cameron announces that the government supports Greensill's initiative to encourage large companies to use supply chain finance (SCF) to enable their suppliers to access low-cost credit. There is no way to know whether the Government's support for SCF was linked to the privileged access that Mr Greensill enjoyed within Government, but it created a situation where a company could access information from inside Government that could give it an advantage in selling its services to Government.
13. The fact that there is no paperwork relating to Mr Greensill's employment within Downing Street means that we cannot know what if any assessment of the potential conflicts of interest was made, if any restrictions were placed on Mr Greensill's work in Government or what was shared with other departments that Mr Greensill may interact with such as HMT. Simon Case,

⁴ <https://www.theguardian.com/politics/2021/apr/13/greensill-scandal-ex-civil-servant-faces-questions-over-whitehall-meetings>

⁵ <https://www.bbc.co.uk/news/uk-politics-56751997>

the Cabinet Secretary and Head of the Civil Service, stated that he did not think this was appropriate and that he could not explain the lack of documentation during evidence to Public Administration and Constitutional Affairs Committee⁶.

14. Government bringing in experts and people with specific skills from the private sector can help improve public policy. However it does also increase the likelihood of conflicts of interest emerging. It is essential that the public has trust that decisions are being made in the public interest, not because they could benefit, financially or otherwise, those who are making the decisions. This is why it is important that these risks are assessed and mitigated.
15. There is also a broader issue related to this about the role of unpaid advisers and Crown Representatives. Government increasingly uses informal roles such as consultants to Trade Envoys, Crown Representatives and tsars. These are currently not covered by ACoBA and it is not clear how, if at all, any conflicts of interest are managed.

Recommendation: ACoBA should be replaced with a statutory body that has the powers and resources to effectively enforce the rules on business appointments. This new body should have a role in ensuring standards and compliance with business appointment rules in Whitehall departments.

Unregulated lobbying activity

16. 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.
17. 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.
18. 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.⁷ The 2020

⁶ <https://www.theguardian.com/politics/2021/apr/22/david-cameron-kept-pushing-bank-to-risk-20bn-to-help-greensill>

⁷ Audit of Political Engagement 16 Hansard Society 2019 <https://www.hansardsociety.org.uk/publications/reports/audit-of-political-engagement-16>

Eurobarometer survey also found that 64% of respondents agreed that "too close links between business and politics in the UK leads to corruption."⁸

19. David Cameron lobbied HMT and the Bank of England on behalf of Greensill Capital which if successful would have involved up to £20bn of taxpayer's money⁹. The gaps in the way Westminster regulates lobbying means that this lobbying activity would not normally have become public.
20. In March 2020 David Cameron emailed the Bank of England deputy governor, Jon Cunliffe and James Benford, private secretary to the Governor about the work of Greensill and asked to have a conversation about it. A full proposal was sent to Jon Cunliffe later that month. Sir Tom Scholar, Permanent Secretary at HMT, is approached by David Cameron via texts and calls seeking meetings with Treasury officials to ask that Greensill could qualify for government-backed loans under the Covid corporate financing facility (CCFF).
21. In April David Cameron repeatedly contacted both the Chancellor of the Exchequer, Sir Tom Scholar and Jon Cunliffe to try and move the process on with Rishi Sunak texting Cameron on 23 April to confirm that,

"I have pushed the team to explore an alternative with the Bank that might work. No guarantees, but the Bank are currently looking at it and Charles should be in touch. Best, Rishi".
22. Greensill had meetings with senior officials in HMT at throughout April and May to discuss "Eligibility For Covid Support Packages". The proposal to include Greensill in the scheme was ultimately turned down on 26th June in a letter from John Glen, Economic Secretary to the Treasury. Mr Cameron continues to contact John Glen and Jesse Norman, Financial Secretary to the Treasury, about Greensill by email and text in late June.
23. Although the policy was not ultimately changed, this represents significant lobbying activity at senior levels of HMT and the Bank of England. In countries with strong lobbying transparency regimes such as the USA, Canada and Ireland much of this would have proactively been published. In the UK most of this activity would remain hidden. Without investigations by journalists and freedom of information requests, the only aspect of this lobbying that would have been made public, is the meetings that Greensill held with senior officials in HMT. As these just list the company name there would have been no public record that David Cameron was involved in trying to influence public policy and that his connections to current office holders was key to getting the policy change considered.
24. While there is a statutory Register of Consultants Lobbyists in the UK, it does not include the vast majority of lobbyists who, like David Cameron, are employees of a company, known as in house lobbyists. There are two broad

⁸ 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>

⁹ <https://www.theguardian.com/politics/2021/apr/22/david-cameron-kept-pushing-bank-to-risk-20bn-to-help-greensill>

and fundamental problems which mean that it is not possible for the lobbying register to be effective. These are structural problems, rather than failures of implementation or operation.

25. The first is the scope of the register. The UK is unique in only seeking to regulate the activity of consultant lobbyists who contact Government Ministers or Permanent Secretaries. 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 activity¹⁰. 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.
26. The second is the level of information that is required. The small number of consultant lobbyists that are required to join the register only need to declare the name of their clients. This means it is very difficult to understand the nature of the lobbying that is taking place.
27. 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 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.
28. 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 was over a year old.¹¹ 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.
29. 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 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.”¹²

¹⁰ 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>

¹¹ 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](https://www.transparency.org.uk/sites/default/files/pdf/publications/Accountable%20Influence%20Bringing%20Lobbying%20out%20of%20the%20Shadows.pdf)

¹² 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>

Recommendation: The UK should meet international best practice by introducing a comprehensive statutory register of lobbyists that covers both in-house and consultants lobbyists. The register should include information on the policy, bill or regulation being lobbied on, information on any public office held during the past five years by any employees who are engaged in lobbying, the use of secondments or advisers placed within government to influence policy and their expenditure on lobbying, including gifts and hospitality to public officials.

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