TRANSPARENCY OF LOBBYING, NON-PARTY CAMPAIGNING AND TRADE UNION ADMINISTRATION BILL

Evidence to Mark Boleat to Commons Political and Constitutional Reform Committee Inquiry on lobbying aspects of the Bill

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Introduction

1. The House of Commons Political and Constitutional Reform Committee is conducting an inquiry on the lobbying aspects of this Bill and is seeking comments by 23 August. This paper comprises personal comments from someone who has been heavily involved in the political process over the years as chief executive of five trade associations, a regulator, a politician and author of a number of papers on representation.

Executive summary

2.

- The Bill is not capable of achieving its objective of introducing greater transparency into the lobbying process.
- The Bill is based on a false understanding of the nature of lobbying.
- The definition of "consultant lobbyist" is so tightly drawn that few, if any, public relations firms would be caught by it.
- Subject to the definition of "lobbyist" being widened, the information to be included on the register is satisfactory.
- The Registrar's role seems purely mechanical. It is not clear who is responsible for checking the accuracy of the information provided or of policing the offences created by the Bill.
- The Impact Assessment, like that for the consultation paper, is not fit for purpose.
- The proposal does not meet government policy in respect of the micro business exemption, One-in, One-out or clearance by the Regulatory Policy Committee.
- If it is intended to continue with the policy of registering lobbying organisations then a register should cover -
  - Companies that for reward provide a public affairs service, who should be required to identify their clients.
  - Trade associations that have a representative role, who should be required to identify their members.
  - Interest groups that have as one of their functions seeking to influence public policy, which should be required to give details of their membership.

The nature of lobbying

3. As the Bill seeks to regulate lobbying it is necessary to understand the nature of lobbying. It is defined in the Bill as "oral or written communications made personally to a Minister of the Crown or permanent secretary" relating to policy-making or other functions of the government, such as awarding contracts and

regulation. This definition and the content of the Bill generally fail to understand how policy-making or regulatory functions work. On any significant issue good government requires extensive contact between the decision takers and the people affected. Frequently those affected can deal directly with the decision takers, particularly if they are large organisations such as big businesses or trades unions. But in practice most people, and indeed organisations, prefer to seek to influence policy through a third party which can devote the necessary resources to dealing with the issue and which has expertise to do so. These organisations include pressure groups, locally ("save our hospital") or nationally (eg RSPCA or Greenpeace); trade associations; chambers of commerce; and the media. Frequently, people and businesses pay for such a service through a membership subscription, although generally the lobbying service is packaged with other services such as information or support services (eg the RAC and AA).

4. The lobbying function is much more than making representations. It includes –

- Analysis of the issue.
- Analysis of the policy making process.
- Gathering evidence.
- Drafting policy submissions.
- Building alliances.
- On occasion seeking media support.
- Individual or group meetings.

5. Much of this is very specialist and needs people with the necessary experience and expertise. Even representative organisations such as trade associations will frequently use a specialist company for advice and support, for example advising on the political climate, who the key influencers are, possible allies etc. Rarely does that support extend to hiring a specialist lobbyist to make personal representations to anyone, let alone a Minister or Permanent Secretary. A lobbyist may draft a communication to a Minister but it would always be sent by the principal. And a lobbyist may help to set up a meeting but would rarely if ever be the principal spokesman. More generally, the vast majority of communications are not to Ministers or to Permanent Secretaries, but rather to the relevant officials.

The definition of consultant lobbyist

6. "Consultant lobbying" is defined in Clause 2 of the Bill as –

- "oral or written communications made personally to a Minister of the Crown or permanent secretary", in effect on any function of the government
- "in the course of business and in return for payment".

7. There are numerous exemptions in Part 1 of Schedule 1 –

- MPs.
- A "business which is mainly a non-lobbying business" and where payment for lobbying "is an insubstantial proportion of that business".
- Government bodies.
- "The person acts generally as a representative of persons of a particular class or description".
- Other countries and international organisations.

8. The definition is such that in practice probably no organisation would fall within it. Trade associations and pressure groups are all excluded by the "representative of a persons of a particular class or description" exclusion. The vast majority, if not all, of public relations firms are excluded because the making of personal representations to Ministers or permanent secretaries is an insubstantial part of their business. It is assumed that the "Ministers and permanent secretaries" definition has been used because the appointments of these people are already published.

9. It should also be noted that lobbying of organisations such as the Bank of England, regulators generally and Commissions such as that currently headed by Sir Howard Davies on London's airports are not included in the scope of the Bill. Similarly, lobbying of MPs and Peers is not included.

10. If the Bill is to be meaningful there needs to be a significant change in its scope. Rather than seek to define a "consultant lobbyist" it should cover those engaged in "lobbying business" which should be defined as: "seeking to influence public policy or other functions of government and government-established agencies, in exchange for payment, on behalf of third parties.

Information to be included on the register

11. Ignoring the fact that with the current proposals the register would be empty the proposals for the information required of businesses seem reasonable save in one respect. The register seeks information about "clients", and although it is not specified this presumably means clients who are provided with the specific service of making personal representations to Ministers or Permanent Secretaries. Again, this would be very sparse. There is also a requirement for each entry to give details of persons in a three month period on whose behalf lobbying for payment was done. This assumes that there is a distinct "lobbying" service whereas in fact public affairs companies provide a complete package of services and would not seek to levy a charge for a particular communication or other actions.

The role of the Registrar

12. The Registrar's role is entirely mechanical. It is difficult to see how the role can be financed through charges when there will be no way of knowing how many businesses will register – assuming that that the Bill is amended to ensure that at least some businesses are covered. The Registrar appears to be under no duty to ensure that any information that is provided is accurate or to "police the perimeter". It is not clear who is going to enforce the offence of not registering.

The impact assessment

13. The rationale for the policy being adopted should be set out in the Impact Assessment. The Assessment for the consultation document on the proposal was judged not fit for purpose by the Regulatory Policy Committee (RPC). The RPC said that the driver for the policy was market failure but that the Impact Assessment did not explain how significant this was or how the proposal would address the problem. It is unlikely that the present Impact Assessment will fare any better.

14. The IA has a number of errors –

- It is stated that no micro businesses are in scope. Assuming that a proper definition of lobbying emerges then many of the businesses would be micro

businesses. (In fact at the bottom of the first page the IA suggests that no businesses are in scope – correct as it stands but perhaps not what was intended.) In respect of micro businesses the IA contradicts itself by saying that 50% of "consultant lobbyists" have an income below the VAT threshold of £79,000, all of which would be micro businesses.

- It is estimated that 1,000 businesses would be caught by the proposal. This figure is based on international comparison, but these seem worthless in the UK context. There are not 1,000 lobbying firms that make personal representations to Ministers or permanent secretaries, or arguably who are lobbying firms under any definition. There seems to be confusion here between individuals and companies.
- In section 4 it is stated that "organisations who are VAT registered" will however be exempt from the fee. The word "not" is missing from this sentence.

Government regulatory policy

15. The proposals seem to fall foul of government regulatory policy in three respects –

- There is no assessment by the Regulatory Policy Committee of the Impact Assessment – unsatisfactory bearing in mind that the Assessment for the original proposal was judged "not fit for purpose".

- There is no exemption for small businesses.

- The best estimate for transition costs is £0.7m and for annual costs £0.3m. The IA correctly notes that the proposal is in scope of "One-in, One-out" but no compensating deregulation has been identified.

Proposal

16. The current proposals are badly thought through and serve no useful purpose. They misunderstand the nature of the representational process and invent a function of "consultant lobbyist" who makes personal representations to Ministers or Permanent Secretaries for payment on behalf of third parties. If such people exist they are very small in number. Clearly, major modification will be needed to the definition of "consultant lobbyist". In my comments on the consultation paper I made the following suggestion –

> "The definition of "lobbyist" must be narrowed so as to exclude people acting on their own behalf and there should be no attempt to identify employees engaged in lobbying activity, as this would be a bureaucratic nightmare. Registration could be confined to -
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> - Companies that for reward provide a public affairs service, who should be required to identify their clients.
>
> - Trade associations that have a representative role, who should be required to identify their members.
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> - Interest groups that have as one of their functions seeking to influence public policy, which should be required to give details of their membership."

This still seems a sensible suggestion.

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Mark Boleat has been Director General of the Building Societies Association, the Council of Mortgage Lenders and the Association of British Insurers and Executive Chairman of the Council of Property Search Organisations and the Association of Labour Providers. He founded the Trade Association Forum and has written widely on representation and policy making. He has also been the Claims Management Regulator and a member of the Gibraltar Financial Services Commission. He is currently Chairman of the Channel Islands Competition and Regulatory Authorities and of the Policy and Resources Committee of the City of London Corporation.

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