



Public Administration and Constitutional Affairs Committee

Oral evidence: [Lobbying and influence: post-legislative scrutiny of the Lobbying Act 2014, HC 638](#)

Tuesday 17 October 2023

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Members present: Mr William Wragg (Chair); Jo Gideon; Mr David Jones; John McDonnell; Damien Moore.

Questions 202-268

Witnesses

[I](#): Alex Burghart MP, Parliamentary Secretary, Cabinet Office, Eirian Walsh Atkins, Deputy Director for FOI and Transparency Data, Cabinet Office, and Rachel Rayner, Deputy Director for Parliamentary and Constitutional Policy, Cabinet Office.

Examination of witnesses

Witnesses: Alex Burghart, Eirian Walsh Atkins and Rachel Rayner.

Q202 **Chair:** Good afternoon and welcome to the Public Administration and Constitutional Affairs Committee. Today the Committee is holding its final evidence session in its inquiry into post-legislative scrutiny of the Lobbying Act 2014 and related matters. In July this year, the Government published their long-awaited response to the reports by this Committee, the Committee on Standards in Public Life and Nigel Boardman following the Greensill saga. That report, entitled “Strengthening Ethics and Integrity in Central Government”, also touched on issues with the Lobbying Act that were identified in those three reports and in the course of this inquiry.

We are joined this afternoon by the Minister and two of his senior officials, whom I ask to introduce themselves for the record.

Alex Burghart: I am Alex Burghart, the Parliamentary Secretary for the Cabinet Office.

Rachel Rayner: I am Rachel Rayner, the deputy director for the constitution at the Cabinet Office.



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Eirian Walsh Atkins: I am Eirian Walsh Atkins, the deputy director for freedom of information and transparency data in the Cabinet Office.

Q203 **Chair:** Welcome, all. Minister, will you briefly outline the process by which post-legislative scrutiny is usually undertaken by the Cabinet Office?

Alex Burghart: Certainly, Mr Wragg. Thank you for the Committee's invitation to be here today. The process for post-legislative scrutiny is set out in the Government's document "Guide to Making Legislation", which was most recently updated last year. The process is ordinarily that, a number of years after Royal Assent, the Department responsible submits a memorandum about the legislation to the relevant Select Committee—yourselves in this case. From there, a piece of work begins on assessing how well the Act has met the criteria that it set itself. That is the general process.

In the case of the Lobbying Act, it was a slightly different process, though very similar. In about 2018, the Government received a letter from GRECO, or the Group of States against Corruption, suggesting that we might want to perform post-legislative scrutiny. Ministers at the time agreed. My predecessor, Chloe Smith, wrote to GRECO to announce that the Government would conduct post-legislative scrutiny of part 1 of the Lobbying Act.

Following that, there was engagement with stakeholders in the Department in early 2021 and then, following the launch of the Boardman review into supply-chain finance in April 2021, the Government clarified that the PLS in relation to the Lobbying Act 2014 would take account of the relevant findings of Boardman and of Standards Matter 2. They then followed the response to those reviews and inquiries, and we find ourselves here today.

Q204 **Chair:** When and with whom was that consultation done?

Alex Burghart: It would have been done in early 2021, and it would have been a range of stakeholders. Although I was not Minister at the time, I assume it would have been people from the consultant lobbying sector as well as transparency groups.

Q205 **Chair:** So trade bodies and other interested parties.

Alex Burghart: That is what I believe.

Q206 **Chair:** You have alluded to this already, but I want you to be very clear. It is often said that this was somehow a reaction to Greensill and the lobbying activity with that, but it did begin before that emerged.

Alex Burghart: It began before, but obviously when Boardman began, it was clear that Boardman would make findings that would influence post-legislative scrutiny, so we had to take account of that.

Q207 **Jo Gideon:** The Government have accepted the recommendation of the Committee on Standards in Public Life that the quarterly departmental



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transparency releases be consolidated into a single integrated platform for the whole of Government. What is the timescale for the introduction of that integrated release, and who is responsible?

Alex Burghart: This has begun. We are currently undertaking practical policy and digital work to prepare. We have engaged the services of the Government Digital Service, which will help us build the thing. It is not an entirely straightforward process, because we are building something in the centre that has to interact with all existing departmental systems, but the work is under way. I hope that in a year or so we will have a platform, but until I get the Government Digital Service's view of how complex it is, I cannot confirm that undertaking.

Q208 **Jo Gideon:** Have you consulted external stakeholders about the format? If not, why not?

Alex Burghart: I do not believe that we have a specific consultation on the platform itself. However, we—various groups in the Cabinet Office—hold meetings with stakeholders on just the issues that the platform will deal with, which is issues of open data, open government and transparency. The work of those sorts of ongoing consultations will absolutely feed into the building of the platform.

Is that all right? Have I missed anything out?

Eirian Walsh Atkins: No, that is absolutely right.

Q209 **Chair:** In terms of when, what have you asked or instructed staff of the Government Digital Service?

Alex Burghart: As I said, I hope that we will have something in about a year, but before I can give a firm undertaking I need to hear from the Government Digital Service about just how complex a task it is.

Q210 **Chair:** I wonder if you would mind writing to the Committee once you have had that conversation.

Alex Burghart: I will be delighted to.

Q211 **Jo Gideon:** We heard calls for the transparency releases to be published every month, rather than every quarter as is currently the case. You said that doing that before the integrated platform is introduced would not be cost-effective but, given that the Departments already have the information, why is that?

Alex Burghart: We understand the calls for greater timeliness. I do not want you to think that what I am about to say is evasive, because it is not—

Chair: We will judge that.

Alex Burghart: At the moment, we have a system whereby each Department will prepare its releases and returns; they come to the Cabinet Office for checking, in order to ensure that they are of the appropriate standard; and then they are compiled and released quarterly.



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If we were to do that every month, it would be a bigger job for everyone involved. To be clear, neither the Cabinet Office nor any individual Department feels that it has enough resource to be able to do that more intensive and laborious work every month, but once we have an integrated platform, that will obviously free up some capacity. At that stage, we will look into speeding the whole process up.

Q212 **Jo Gideon:** You say you will “look into” it. Is that a guarantee or a vague aspiration?

Alex Burghart: It is a guarantee that we will look into it. Seriously, once we have built the system—once it is up and running and we know it is fit for purpose—timeliness is one of the things that we will be considering.

Q213 **Chair:** Would you aspire to do that?

Alex Burghart: I aspire to do a great many things, Mr Wragg. It is our intention that we are building a better system that will help us give more timely information.

Q214 **Damien Moore:** There has been widespread dissatisfaction with the lack of detail in the data—for example, meetings being given vague or generic descriptions that reveal little about their purpose. You have committed to new guidelines that will require more detailed descriptions, but whose role is it to draft those guidelines and will there be any external consultation as part of that?

Alex Burghart: It is the Cabinet Office’s responsibility to produce those guidelines, and I am pleased to tell the Committee that that work is under way. We have drafted guidelines. They still have to go through a few rungs of internal clearance before they will be published, but that work is under way and is on course to be produced soon. In terms of consultation, we consult with a range of stakeholders and transparency specialists on a regular basis, and that is the work that has fed into the drafting of those guidelines.

Q215 **Damien Moore:** Whose role is it to ensure that guidelines are adhered to across Government so that sufficient information is included?

Alex Burghart: Simply put, that is a job for the permanent secretaries in each individual Department and for the Cabinet Office, which provides the quality assurance.

Q216 **Damien Moore:** Ministers can avoid disclosing that a meeting took place on the grounds that it was a party political meeting rather than ministerial business. How is that policed?

Alex Burghart: Obviously, people have political meetings. Lots of people in all parties will have had political meetings with a range of stakeholders at their party conferences recently. In those contexts, there are always meetings where there are not civil servants present, but the ministerial code is clear on this. The ministerial code says that if significant Government business is discussed outside of an official meeting, that should be reported back to the Department. In the holistic view of how all



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this fits together, there is provision for the reporting of such meetings when Government business is being discussed.

Q217 **Damien Moore:** Who initiates that that is documented, then? Is it the Minister or the civil servant?

Alex Burghart: The Minister would tell their officials and their officials would make a record of it.

Q218 **John McDonnell:** Can I follow on from one of your earlier answers? I want to come back to Boardman as well. Boardman recommended that transparency would be strengthened if a named official in each Department was designated. He suggested a senior responsible owner who would be responsible for the transparency returns and held to account for their quality and timeliness. You have rejected that recommendation. Why?

Alex Burghart: I suppose because we think that there is such an official already. It is the permanent secretary.

John McDonnell: Following on from your earlier answer.

Alex Burghart: Absolutely. If there was a problem with a Department's releases, the permanent secretary and Ministers would have to account for them.

Q219 **John McDonnell:** Understood, but it is not working, is it? I will give you a list, if you want, of just a few examples. Meetings and phone calls were held by Gavin Williamson, the former Education Secretary, but not declared in official transparency releases before the first pandemic lockdown. David Cameron had a private drink with Health Secretary Matt Hancock and Lex Greensill and, according to *The Times*, there were no minutes at all and it was not logged in transparency releases. *Business Insider* revealed how former Housing Secretary Robert Jenrick failed to disclose a meeting with housing industry representatives that was set up by a lobbying forum. James Bethell, Minister in the Department of Health, failed to declare 27 meetings, which were left off official transparency disclosures for more than a year. Health Secretary Matt Hancock—again—failed to publicly declare meetings with testing firms that later secured millions of pounds-worth of covid contracts.

I can completely understand your wanting to put the responsibility on a very senior official, but that is not working. That is why Boardman came up with the proposal for a particular senior civil servant who had ownership of all this—to try to address the fact that current system is not working and to restore confidence in the system.

Alex Burghart: As I say, I think that the best person to hold responsibility for this is the most senior civil servant in in any Department because it is, as you rightly pointed out, a very important job. But obviously there is also a responsibility on individual Ministers to make sure that they report things appropriately. Where that is not done, there are consequences, as has been seen in a number of the cases that you have outlined.



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Q220 **John McDonnell:** Will you monitor in any way the role of the permanent secretary and its effectiveness and report back, and perhaps review it at some later date?

Alex Burghart: As I mentioned previously, the Cabinet Office performs that quality assurance process. Individual Departments and permanent secretaries are responsible for preparing their releases. Those then come to the centre and the Cabinet Office makes sure that they are up to the requisite standard. But yes, of course, we are always looking to make sure that our systems are fit for purpose.

Q221 **John McDonnell:** Will you report on the performance of the permanent secretaries in this respect?

Alex Burghart: Timeliness is already apparent from publication of the quarterly releases, so I think there is a public record that would hold people to account.

Q222 **John McDonnell:** So we will have a league table of permanent secretaries, will we?

Alex Burghart: I imagine that it would be possible for somebody to draw that up from existing publicly held information.

Q223 **John McDonnell:** On the existing record there will be a few relegations, won't there?

Can I move on to special advisers? I will be straight with you: I am confused about this. Special advisers are expected to disclose meetings with media proprietors and media executives, but no others. The Government's argument for not including Spads in their overall reforms, which we often welcomed, is that they have no statutory powers and cannot authorise expenditure. To be frank, on all the information that you have received—and that we have received, too—they may not have that formal power, but you know as well as I do that they have significant influence on policy. I cannot understand why the reality of the situation and of their influence was not taken into account when you rejected the recommendations that their meetings and the gifts and hospitality they receive should be included in departmental transparency releases. You can see the concern that people have, because Spads do have considerable influence.

Alex Burghart: The gifts and hospitality they receive are already made public. It is already published. We do think that that is very important.

There are a number of different points to be made here. The key issue is that, yes, Spads can influence policy, but so can very many other civil servants. The formulation of policy in Departments involves officials at many levels, from the most senior to policy experts in their division. If you were to say that because some Spads can feed into that process they should report every meeting they have, you would logically have to extend that to all officials of junior grades. That would be a very big and very bureaucratic task. The truth is that Spads cannot make spending

decisions, unlike senior civil servants. They do not decide; it is Ministers who decide.

On the point you make about media proprietors, that was a decision that David Cameron made during Leveson, I think. First, we are talking about extremely senior people within media. Secondly, a lot of Spads work on communications—they have absolute frontline responsibility for communications—but that is different from policy formation. Policy is decided by Ministers in association with permanent secretaries. While we do think it is important that gifts and hospitality are registered, throughout—from 2014 onwards—our decisions have been guided by a desire to have light-touch but effective regulation. That means making sure that we are not unnecessarily bringing people or organisations into regulation.

Q224 John McDonnell: Are the gifts and hospitality in the departmental releases?

Alex Burghart: They are published on gov.uk. I cannot remember under which—

John McDonnell: Are they in the departmental releases?

Eirian Walsh Atkins: They are in the departmental releases.

Q225 John McDonnell: David Cameron rightly—we welcomed it—ensured that spads registered contacts with the media, specifically because they were so influential in creating a media agenda, and because they had influence and power. That power is reflected in the advice that they give to Ministers. Ministers turn to their spads for specific advice, and they are influential in decision making. I find it difficult to comprehend that you—

Alex Burghart: Ministers turn to a lot of people for advice.

Q226 John McDonnell: But these are their personal appointments, aren't they, who will specifically advise them on decision making?

Alex Burghart: Yes, but there are lots of people in the Department on whom a Minister will depend.

Q227 John McDonnell: You don't accept the key role that they play.

Alex Burghart: I accept that they play a key role, but there are a lot of other people in a Department who play a key role in policy formation as well.

Q228 John McDonnell: Do you think that, at this stage, to try to restore confidence in Government, it would be worth while considering others' recommendations on this?

Alex Burghart: I think that we have drawn a proportionate balance. If special advisers receive gifts or hospitality, when those things were given and who gave them are clearly put on the record, but we are not increasing regulation unnecessarily.



John McDonnell: I think people will decide on that.

Q229 **Chair:** Sorry to interrupt you, Mr McDonnell. I wonder whether this could include not just spads—so that they did not think they were being unfairly targeted—but directors general and directors. Those will be the other people you are referring to who advise Ministers on decision making. Let's just put the three categories of folk together. That surely answers the question about the other people who are advising Ministers, and does not single out spads.

Alex Burghart: The difference is that very senior civil servants will make decisions about how budgets are allocated. Special advisers can never do that. They can feed into a process, but it is for other people to decide; it is for senior officials and Ministers to decide. Their position is not the same.

Chair: Okay. Sorry to interrupt, Mr McDonnell.

Q230 **John McDonnell:** As you know, impromptu messages to Ministers and officials were at the heart of the Greensill saga, yet you propose taking no steps at all to increase the transparency surrounding them. Why not?

Alex Burghart: We issued additional guidance on the use of platforms such as WhatsApp and non-corporate communication channels—NCCCs—in, I think, March this year. That made it clear that these new forms of communication had to be treated seriously. If you found yourself discussing significant Government business on them, you should make sure that that was properly logged in your Department, and that there was an official record of it. We have made some changes in that regard, but we do not want to find ourselves in a situation where every single communication that a Minister may receive has to be registered. That would become overkill. The important thing is that when significant conversations are had, the Department has a record of who Ministers were talking to, when.

Q231 **John McDonnell:** Let me get this straight: an exchange of messages between a consultant lobbyist and a Minister would require a declaration in the register, but a similar exchange between an in-house lobbyist and a Minister would not be disclosed anywhere.

Alex Burghart: That is not quite right. In both instances—with an in-house lobbyist and with a consultant lobbyist—the detail of a significant conversation would be recorded by officials. The register is not a register of lobbying; it is a register of consultant lobbyists.

Q232 **John McDonnell:** True, but the reality is exactly as I stated, isn't it? If a consultant lobbyist exchanges messages with a Minister, it is registered. If it is an in-house lobbyist, it is not. In the guidance that the Government have issued, they have agreed that virtual meetings or phone calls should be disclosed, but only if they take place in lieu of an in-person meeting. However, WhatsApp exchanges do not alone "evidence a substantial lobbying engagement", and therefore will not be registered.



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Alex Burghart: The issue at stake is what is discussed. If a Minister finds themselves discussing significant Government business with an in-house lobbyist or a consultant lobbyist, they have a duty under the ministerial code to report that to their officials, who will then log it. It does not matter whether the lobbyist in question is on the register of consultant lobbyists or not; there ought to be an official record of that. The key point is that when significant Government business is being discussed, there will be an official record of it.

Q233 **John McDonnell:** I am confused. Let's get it clear: an exchange of messages triggers the need to register for consultant lobbyists. Does it do that for others?

Alex Burghart: If a Minister has a conversation with an external, during which significant Government business is discussed, whoever that external is, the Minister should report that to the Department if officials are not present, so that the officials have a record of who they spoke to and what was discussed. That exists.

Q234 **John McDonnell:** Define "substantial" business.

Alex Burghart: Ultimately, that is a matter for those who adjudicate the ministerial code. What is our best definition?

Eirian Walsh Atkins: In terms of informal approaches on WhatsApp from, say, an in-house lobbyist, it would be the result of those informal approaches. A Minister cannot control who WhatsApps him, to a certain extent, but if he agreed to a meeting, for example, that would be recorded in the transparency data releases.

Q235 **John McDonnell:** Understood, but who decides if an impromptu message is related to substantial business and therefore should be recorded?

Eirian Walsh Atkins: That would be the Minister.

Q236 **Mr Jones:** I am interested in how this works in practice. Were David Cameron's messages with Matt Hancock recorded?

Alex Burghart: In that instance, I do not know. Obviously, there has been the Boardman review since. Do you know if they were, Eirian?

Eirian Walsh Atkins: If we are talking about Greensill, the outcome of those messages was, to a certain extent, recorded. It resulted in meetings with the second permanent secretary, which were then declared.

Q237 **Chair:** But the messages in themselves were not.

Eirian Walsh Atkins: I am afraid that you would have to ask my colleagues in the Treasury that.

Q238 **Chair:** Have they not shared that with any of you? Minister? It is a highly topical issue that was likely to be asked about.

Alex Burghart: I do not have that information at my fingertips, Mr Wragg.



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Q239 **John McDonnell:** Let me get this absolutely clear in my mind. There is an impromptu message to a Minister. The Minister will decide if he or she declares that, because they will decide if it is substantial business. That substantial business could be miles down the path, at a subsequent meeting. Have I got that right?

Alex Burghart: Pretty much.

John McDonnell: I find that astounding, but there you are.

Q240 **Chair:** Minister, from your experience and your reflections on the process, this is very much based on the judgment of the Minister, isn't it? One assumes that some Ministers would very much take a precautionary approach and declare every jot and tittle, and others would perhaps be a bit lax. Is that a fair assessment?

Alex Burghart: I cannot think of any Ministers who would be a bit lax, Mr Wragg.

Chair: Occasionally it happens.

Alex Burghart: Occasionally, I suppose, it has happened in the past. We have a ministerial code that tells Ministers how they ought to behave. If they do not behave in that way, the consequences can be severe. People could choose to ignore the code, but the House and its bodies would then take a view on that.

Q241 **Chair:** That is a whole different kettle of fish. I am not seeking to disagree with you, Minister; the point I am trying to make is that how Ministers behave is at the heart of this. There are codes and processes, but I am just asking you to agree that the onus is on the Minister.

Alex Burghart: Certainly. The onus is on the Minister when officials are not present. When officials are present, it is incumbent on officials to make records, as they do, and to ensure, through the permanent secretary, that the information is released in the right way.

Q242 **Mr Jones:** The point that Mr McDonnell made a few moments ago is correct, isn't it? It may not be apparent to the Minister, when he receives the communication, that it is a matter of weight and substance. That may become apparent several months later.

Alex Burghart: I suppose that could be the case. It would then be incumbent on the Minister to report that he or she had received that information.

Q243 **Mr Jones:** Several months later.

Alex Burghart: Yes, but there are quarterly returns.

Q244 **John McDonnell:** On that basis, it is always best for Ministers to err on the side of caution and report impromptu messages. Has the Minister read the report in the *Financial Times* of 5 October on the telephone messages between Philip Hammond and John Glen? The call was reported back to the Treasury, but it did not have to be disclosed in the



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transparency releases because of its informal nature; nor did the subsequent meeting, because no Ministers attended. It was a meeting that I consider to have been influential with regard to cryptocurrencies. Have you read the report?

Alex Burghart: I have not read that article in the *Financial Times* from earlier this month. As I have set out, if there is a meeting between a Minister and an external at which significant Government business is discussed, the Minister should report that to their officials.

John McDonnell: This led to a meeting of officials and people from the relevant lobby, but not the Minister, so it did not turn up in the releases from the Department.

Q245 **Chair:** Arguably, that is a slight loophole. As was ably explained earlier, if a meeting happened with Ministers, it would have to be recorded; but if no Minister was present at a meeting at which matters of substance were discussed after a Minister had been lobbied, and the Minister then made arrangements, there is no record of it. Surely that is a slight loophole in the system.

Alex Burghart: The way that the system is intended to work is this: when Ministers have meetings without officials, if they feel that there is information that should be recorded, they tell their officials, and it is recorded. Then we also have a system of quarterly releases.

Q246 **Chair:** I have a couple of questions on that theme. The 2014 Act has a list of "Positions equivalent to permanent secretary". That list does not appear to have been updated since its introduction. The registrar suggests a review to ensure that all positions that should be included are—such as, for example, the chief executive of His Majesty's Revenue and Customs and the chief medical officer; they are listed, I believe, in the Act. Would you undertake such a review?

Alex Burghart: Yes. We are looking at this. As I mentioned, we are issuing fresh guidance. Once we have completed that, and have assessed how it is working, we will absolutely look to make those changes. We would be grateful for the Committee's advice as to any roles that it feels ought to be included.

Q247 **Chair:** Thank you. The Government have committed to bringing forward secondary legislation to increase the amount of information that consultant lobbyists include in the register on consultant lobbyists. In particular, that will include information on the subject on which the lobbying took place. When will that be done? When will the secondary legislation be forthcoming?

Alex Burghart: The process that we are following is this: we will draft fresh guidance. We will then make an assessment of the working of that guidance. Off the back of that, we will move to secondary legislation. The process is under way and will be done in due course.

Q248 **Chair:** It is one for the fifth Session of this Parliament, one would assume.



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Alex Burghart: To be frank with you, Chair, we will not get primary legislation in this Parliament, but I would hope that we can move in that direction with secondary legislation.

Q249 **Chair:** The Government have also rejected calls for more information to be included, such as information on individual instances of contact with the Government, despite recommendations from both Mr Boardman and the Committee on Standards in Public Life, as well as the registrar of consultant lobbyists. Why do the Government consider this recommendation from those very august persons and bodies to be unnecessary?

Alex Burghart: If every individual instance of contact with the Government were brought into scope, there would be a substantial increase in the recording and reporting burden on the Government. It would also potentially bring a lot of other organisations into the remit of the legislation.

I used to work in a think-tank, and we used to email Ministers all the time; it was our bread and butter. The idea that everything we sent would have needed to be kept under official record, and that organisations like that might automatically have to join the register and pay fees to be on the register, takes us back to the point I made earlier: this is about trying to strike a proportionate balance. From 2014 onwards, we were very keen to try to make light-touch, effective regulation. I completely understand that there are other experts out there who would like more heavy-handed regulation, but we have chosen a different route.

Q250 **Chair:** You said "light-touch" and "effective". Is it effective, though? That is at the heart of the issue.

Alex Burghart: The work that your august Committee is doing, Chair, will help make the regulation more effective. Some of the advice that we have received from other inquiries and reviews is certainly helping us to strengthen it now.

Q251 **Mr Jones:** On that last point, when you were working in the think-tank, were you emailing Ministers directly, or were you emailing their special advisers?

Alex Burghart: We probably did email Ministers directly sometimes through their parliamentary email addresses. We would not have had their private email addresses in the Department. We would certainly have emailed spads, and we would certainly have emailed senior officials or policy officials if we had their contact details. Think-tanks are very keen to share their ideas.

Q252 **Mr Jones:** As you know, the Act exempts those who are not registered for VAT purposes from the requirement to register. That exemption has been described as not fit for purpose and arbitrary. In fact, the registrar himself described it as "very crude". Mr Boardman recommended that that exemption should cease. Do the Government intend to ignore that advice from so many august people?



Alex Burghart: We have not ignored that advice. We have considered it, but we have come to a different conclusion. The truth is that we did not want to create a system that brought very small organisations—very small businesses—under the cover of this regulation. The priority for the Government, certainly over the past year, has been looking out for small and medium-sized enterprises. The Procurement Bill, which I and Baroness Neville-Rolfe have just been taking through Parliament, makes special provision for SMEs, and it is in accordance with the principle of trying not to overburden small businesses that we have decided to keep this threshold.

Q253 **Mr Jones:** The registration threshold is £85,000, isn't that right? You can do quite a lot of lobbying for £85,000, can't you?

Alex Burghart: Our assessment is that you would not be able to do terribly much as a VAT-exempt organisation. We feel that it is difficult to justify the burden on a business that does not meet the turnover threshold for VAT registration. This is a relatively low income threshold. Only a limited amount of lobbying work could be done, and it is unlikely to be a core part of the work of a business that is VAT exempt. That was the conclusion of our analysis.

Q254 **Mr Jones:** There have been suggestions that certain lobbyists have been splitting their invoices between separate years in order to continue to enjoy this exemption. Are you aware of that?

Alex Burghart: I can imagine that one or two organisations may have done that. However, this is a simple way of creating an exemption for small and medium-sized enterprises, which we think is valid.

Q255 **Mr Jones:** Can you assure the Committee that your apparent refusal to accept the recommendations is not because it would require a change to primary legislation?

Alex Burghart: Not in this instance. As I said, we will not have primary legislation on the subject in this Parliament. Our primary concern in this instance is to make sure that we are not extending the regulatory burden to small businesses.

Q256 **Mr Jones:** There is also an exemption for so-called incidental lobbying, as you know. What is the purpose of that exemption?

Alex Burghart: It was probably best set out by Chloe Smith, my predecessor, when she was doing the Act. I looked this up earlier; for the record, it was 9 September 2013. She said: "It has always been the Government's intention that those who communicate with Government in a manner incidental to their normal professional activity should not be required to register as consultant lobbyists. These are not the people or organisations that this register is intended to capture." To "exclude those who undertake only occasional lobbying from the requirement to register as consultant lobbyists" was up front on the Bill.

To give you an example of the sort of person that might be, a lawyer representing a client in a piece of litigation who, in the course of that



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representation, sent a letter to the Minister relating to the case, would be considered to be lobbying only incidentally, because the main purpose of their work is defending or supporting their client. To classify those people in the same way consultant lobbyists are classified would extend the burdens and costs of regulation to a whole additional class of people and organisations. On balance, we felt that that was disproportionate.

Q257 **Mr Jones:** The Registrar of Consultant Lobbyists has provided guidance, as you know. The response of the Government is that that guidance provides sufficient clarity about the incidental lobbying exemption, so no change to the Act is required. The registrar, however, has himself described that guidance as merely “papering over the cracks”, as he put it. He argues that the continued vagueness—again, as he put it—around the exemption is undermining the operation of the Act. What would you say to that?

Alex Burghart: We think that the registrar has used very good paper, and he has performed a very useful exercise. I know he would agree that unless you have primary legislation, you cannot add total clarity to incidental lobbying. However, having guidance from the registrar makes it clear that the exemption cannot be relied upon if the lobbying makes a significant contribution, either by volume or value of purpose, to its non-lobbying work. It also notes that most lawyers, accountants, management consultants and others that communicate with Ministers on behalf of clients are required to register. We think the registrar has done a very useful job, but yes, if a Government wished to make significant changes to incidental lobbying, it would need primary legislation.

Q258 **Chair:** Can I interrupt briefly on that? As something analogous perhaps, I just wondered, Minister, is there a similar incidental exemption included in the business appointment rules’ prohibition to lobby?

Alex Burghart: That is a very good question, Mr Wragg.

Chair: You are more than welcome to write to us, if you want to, on that, if you could clarify that.

Alex Burghart: I am happy to do so.

Chair: I apologise for interrupting, Mr Jones.

Q259 **Mr Jones:** On the point the registrar made and which I have just quoted about papering over the cracks and so on, did he make that point during the post-legislative scrutiny process conducted by the Cabinet Office?

Alex Burghart: I am not sure, but I can say that in the meeting that I had with the registrar after I became Parliamentary Secretary, he mentioned it in passing.

Q260 **Mr Jones:** So he mentioned it then. Would it be possible also for you to write to us to indicate whether he made that point during that process, before your time?

Alex Burghart: Certainly, I am happy to.



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Q261 **Mr Jones:** It seems fairly clear from the Government's response that there is reluctance to accept any recommendations that require changes to primary legislation. What is the point in undertaking post-legislative scrutiny if you have no intention of changing the legislation as a result?

Alex Burghart: There are obviously many responses that one might give to post-legislative scrutiny. In this instance, we are in the process of changing guidance. We are in the process of building a new online platform. We are in the process of looking at secondary legislation. So even though, say, we are not going to have primary legislation in this Parliament, there are a number of things that we can do and are doing in order to improve the effectiveness of work in this area.

Q262 **Mr Jones:** Fine-tuning the legislation.

Alex Burghart: Yes, and potentially adding to the secondary legislation as well.

Q263 **Mr Jones:** But not replacing the current vehicle with a new model.

Alex Burghart: That is right. Giving it a full service and some fresh oil.

Q264 **Chair:** Giving it a wash but not changing the body work.

Alex Burghart: Changing the tyres perhaps.

Chair: Okay. Our purpose is to kick those tyres, as you will appreciate, Minister. On that, we will go back to Jo Gideon.

Q265 **Jo Gideon:** The Government have committed to introducing secondary legislation that will require consultant lobbyists to reveal the ultimate beneficiary of their lobbying activity. When will that be done?

Alex Burghart: At the moment, we are undertaking the policy and legal work to bring about that change. We will then engage with a range of stakeholders to consider our approach. Again, if the Committee has any suggestions about how we might go about that, with things to watch out for or take into account, I would be very pleased to hear your thoughts. However, it is under way.

Q266 **Jo Gideon:** Those who are not covered by the Lobbying Act but who conduct lobbying and advocacy activity will not be under a similar obligation to reveal their ultimate beneficiaries. Shouldn't the Government be extending the obligation to all those who conduct lobbying, and if not, why not?

Alex Burghart: Obviously, if you are a consultant lobbyist, you will have clients. The original legislation took account of that and if you are a consultant lobbyist, you have to publish who your clients are. What we do not have at the moment is a recourse to ultimate beneficiary. So if your client has clients, that is not recorded and we think it ought to be for the purposes of transparency. If you are an in-house lobbyist, it is pretty clear who your client is. Your client is the company that is employing you. So we did not see the need to extend things to in-house lobbyists.

Q267 **Jo Gideon:** In rejecting Nigel Boardman's recommendation for a



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statutory code of conduct for lobbyists, the Government's response notes that the main professional associations have lobbying codes of conduct covering most of the industry. Yet the registrar told us that less than half of the firms on the register have signed up to either the CIPR or the PRCA codes of conduct and he, along with those two professional associations, support a statutory code of conduct for lobbyists. Why then do the Government think that this does not demonstrate the need for mandatory compliance with a statutory code of conduct for lobbyists?

Alex Burghart: The purpose of the register is to make it clear on whose behalf organisations or individuals are lobbying; the purpose of the register is not to codify industry standards or to compel adherence to a single code of conduct. In previous discussions that were held during engagement, we certainly found no consensus that a statutory code was needed.

Concerns have been expressed to us about the practicality of bringing in such a change. First, there is a chance that it would cut across existing codes of conduct within the industry, as well as codes of conduct that accountants or legal firms might have, and those are necessarily distinct from codes of conduct for consultant lobbyists. Also, if you have a code, you have to have a means of enforcement, and that would require additional resources and an additional body. In keeping with our desire to have light or lighter touch regulation, we have decided not to pursue it.

Q268 **Damien Moore:** Minister, there is little scope in the Act to accommodate the temporary unavailability of a registrar, if they were unavailable for medical reasons or given the need to recuse themselves for potential conflict of interest. What are the consequences of the unavailability of the registrar for the operation of the Act?

Alex Burghart: I do think that that is a serious point. You are quite right that the Act as drafted does not make allowances for the registrar being temporarily unavailable or conflicted. Down the line, when time for primary legislation is available, that is a change that would need to be made. In the interim, we have had some internal discussions about what we would do if such a situation ever arose, and we think that we could create a sort of temporary patch using regulation in order to alleviate that situation.

Damien Moore: So there is a need to change it, but in the interim we could do it by regulation.

Alex Burghart: I do not think that it would be entirely straightforward, but if we had to, we could do it. I think that is where we are.

Chair: Thank you, Minister, for coming this afternoon. The relative brevity of our meeting may reflect the succinct answers you provided, but I also note a number of things on which you will write to us, for which we will be most grateful. I thank you and the officials from the Department for your time.