Written evidence from the Registrar of Consultant Lobbyists (LOB02)

Public Administration and Constitutional Affairs Committee
Post-legislative scrutiny of the Lobbying Act 2014 and related matters inquiry

1 Introduction

As Registrar of Consultant Lobbyists, I am an independent statutory office holder appointed under the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014 ('the Act'). I was appointed as Registrar in September 2018 and re-appointed for a further term of three years in September 2022. My appointment was subject to a pre-appointment hearing by PACAC in 2018.

I am responsible for publishing and maintaining the Register of consultant lobbyists in order to ensure that there is transparency in the work of consultant lobbyists in their engagement with ministers and permanent secretaries on behalf of clients. My duties under the Act also include providing formal guidance on the operation of the Act and ensuring compliance with the Act.

The government initiated post legislative scrutiny of the Act in October 2020. I met the Minister to contribute my thoughts based on my experience as Registrar and later participated in two stakeholder roundtables. My submission to PACAC's enquiry is largely that which I made to the earlier process, but informed by a further 22 months of experience.

The following comment helpfully on a number of the issues that I raise in this submission:

- Report by Nigel Boardman (August 2021)
- Institute for Government: Government transparency (October 2021)
- Committee on Standards in Public Life: Standards Matter 2 review (November 2021).

2 Policy context

The current legislation was introduced following a number of lobbying scandals prior to 2014.

The policy objective was to provide transparency in the lobbying of ministers and senior officials. In particular, registered consultant lobbyists are required to declare the identity of their clients although, perhaps surprisingly, not the names of those they lobby.

In-house lobbyists are excluded from the regime. As I understand it, the rationale for this was that the identity of their employers would be apparent from the published departmental transparency data. The effectiveness of the system as a whole therefore depends on the rigour and nature of the data published about communications with ministers and permanent secretaries.

There is a widespread and damaging myth that the registration regime only applies to public affairs businesses and excludes others, such as lawyers and accountants, who offer lobbying services to clients. This is demonstrably false and a number of such businesses appear on the Register. Whether or not an organisation considers itself to be a public affairs company is irrelevant; the test is the nature of the activity they conduct on behalf of clients. There is also no general exemption for charities and non-profits.

My statutory responsibility is for implementation, rather than for policy, which is for ministers. My submission is made in that context.

3 Information in quarterly returns

Registered consultant lobbyists are required to submit a quarterly information return (QIR) in which they declare the names of clients they have lobbied for or been paid to lobby for in a quarter. The declaration gives no indication of who was lobbied, the subject of the communication or how many communications were made on behalf of that client.

Quarterly information returns therefore provide only limited transparency, despite the policy aims of the Act. In particular, the fact that the targets of lobbying activity are not identified on the Register feels like a significant gap.

One of the most important ways in which I fulfil my duty to enforce compliance is to cross-check registrants' quarterly declarations against published ministerial and permanent secretary transparency data, to identify undeclared registerable communications.

However, the fact that my Office only knows clients' names and not who was lobbied makes cross-checking very hard and hinders my compliance activity. As a result, my Office spends an inordinate amount of time checking limited data and then making enquires of ministers' private offices, who struggle to respond in a timely or complete way.

The Act provides that regulations may make provision about 'the form and content of information returns' (section 23(2)(b)).

It would significantly assist transparency and compliance if quarterly returns included:

- Which minister or permanent secretary was lobbied
- Dates of the communications
- Medium of communication (meeting, letter/email, phone, text)
- Topics of communication

4 Published transparency data

Others have made recommendations about the completeness, timeliness and accessibility of the transparency data published by ministers. The legal obligations of the Act rest on consultant lobbyists, not on the targets of lobbying and departmental transparency data is therefore outside my remit.

However, my work to ensure compliance would be greatly aided if ministers' and permanent secretaries' transparency data was published in a more complete, consistent, timely and accessible form.

5 Special advisers

The Act requires that consultant lobbyists disclose communications with ministers and permanent secretaries in their quarterly returns to the Registrar. In addition, section 2(5) of the Act provides that, by regulation, communications with special advisers may be added to those that are required to be disclosed.

Because special advisers are often key and senior contacts for consultant lobbyists and others, they are already required to publish transparency data alongside ministers and permanent secretaries. In my view, including them in the remit of the Registrar would therefore be consistent and would be supportive of the transparency aims of the Act.

6 VAT registration requirement

The requirements of the Act apply only to UK VAT registered entities. I assume that this was intended to exclude small organisations from registration.

It seems likely that there are lobbyists who fall below the current VAT threshold of £85,000 per annum, but who are undertaking significant lobbying. It is hard to see how their exclusion from the requirement to register supports the Act's transparency intention.

In addition, the VAT test automatically, and probably unintentionally, exempts foreign businesses from the requirements of the Act.

The Act's transparency purposes would be supported by the removal of the VAT registration test, possibly replaced by a different de-minimis test. This would require primary legislation.

7 Incidental exception

Schedule 1, part 1, section 1 of the Act provides that:

> A person does not, by reason of making a communication, carry on the business of consultant lobbying if:
> (a) the person carries on a business which consists mainly of non-lobbying activities, and
> (b) the making of the communication is incidental to the carrying on of those activities.

This is colloquially known as 'the incidental exception'. Both the policy intention and the meaning of this provision are unclear and it is the most contentious, vague and problematic drafting in the legislation.

For example, in my 2021 investigations of the activities of the Rt Hon David Cameron and of Lord Hammond of Runneymede, both legitimately invoked the incidental exception to demonstrate that communications that would otherwise have constituted registrable consultant lobbying fell outwith the requirements of the Act.

Section 2 of the schedule also refers to 'incidental' in the context of representative organisations.

My formal guidance (paragraph 5.1) provides a more detailed explanation of how I exercise my function in relation to the incidental exception. However, the guidance is complex, reflecting the lack of clarity in the legislation. This adds potential jeopardy for registrants and others and makes compliance activity more challenging.

I have no views on the policy intention behind the incidental exception, but it would be extremely helpful if this could be resolved and then expressed clearly and unequivocally in the Act.

8 Employees

The Act excludes in-house lobbyists from its regime. Schedule 1 provides that: 'An individual does not carry on the business of consultant lobbying by reason of making communications as an employee in the course of a business carried on by the individual's employer.'

In March 2021 I investigated the Rt Hon David Cameron's activities in relation to Greensill and concluded that he had not engaged in registrable consultant lobbying as defined by the Act because he was an employee of Greensill.

This engendered considerable comment about the effectiveness and purpose of the Act and Nigel Boardman's report addresses this in detail.

It would be helpful if the Committee were to consider whether this part of the Act meets current policy needs.

9 Positions equivalent to permanent secretary

Communications with those 'equivalent to permanent secretary' are registrable. The Act lists those positions as:

> Cabinet Secretary; Chief Executive of Her Majesty's Revenue and Customs; Chief Medical Officer; Director of Public Prosecutions; First Parliamentary Counsel; Government Chief Scientific Adviser; Head of the Civil Service; Prime Minister's Adviser for Europe and Global Issues.

I am not aware of any issues in relation to this list, but given the passage of time, it might be advisable to consider whether it continues to meet the Act's policy purposes.

10 Incapacity or conflict of interest of Registrar

The Act assigns duties solely to the Registrar of Consultant Lobbyists, with no provision for potential incapacity of the Registrar or a conflict of interest in relation to an investigation.

To date, neither situation has arisen, but it may be advisable to consider whether and how this could be dealt with and, if necessary, amend the Act accordingly.

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