

Written evidence from Spotlight on Corruption (LOB13)

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

Background

Spotlight on Corruption is an anti-corruption charity that shines a light on the UK's role in corruption at home and abroad. We want to see a society with strong, transparent and accountable institutions which ensure corruption is not tolerated and democracy flourishes both in the UK and globally. To achieve this, we highlight corruption and the harm it causes, and campaign to improve the UK's legal systems and enforcement of the law.

Introduction

A series of political scandals in recent years have exposed significant weaknesses in the UK's system for the regulation of lobbying. The UK's standards landscape must be brought up to date to ensure that integrity and ethics in government are regulated in a way that befits a modern democracy; strengthening the Lobbying Act is a central plank of that process. Enhancing the UK's system for lobbying would ensure greater transparency and more equal access to government, with positive consequences for public decision-making and the use of public resources.

Key recommendations

In our view, recent lobbying scandals, including the Greensill affair, have highlighted widely recognised and significant weaknesses in the Lobbying Act and wider system. Urgent reforms to tighten regulation of lobbying, increase transparency and enhance public confidence should include:

- a. Expand the scope of the Lobbying Act to include within the scope of lobbying rules all those who are engaged in lobbying, including in-house lobbyists, as well as those being lobbied, to include special advisers and senior civil servants from Director General and above.
- b. Increase transparency around lobbying with a centrally managed database, which is updated monthly, and stricter guidelines on minimum standards for the descriptions of meetings.
- c. Widen the definition of meetings that are subject to lobbying rules, or include a new category, to include informal events and modern forms of communication.
- d. Widen the definition of "official" business in the Ministerial Code to include significant contacts (including party political contexts) where a matter is raised which has a bearing on official business or where an attempt is made to influence a public policy decision.

- e. Issue guidance to increase departmental awareness about the principle of equality of access, and departments should seek to level the playing field and report on their efforts.
- f. Ensure greater accountability for the quality of departmental transparency releases and where the rules on publication of lobbying data are broken, with sanctions for non-compliance.
- g. Change the Business Appointment Rules to allow government departments and the Advisory Committee on Business Appointments to impose 5-year lobbying bans where appropriate, and prohibit appointments for 2 years where the applicant had significant and direct responsibility for policy, regulation, or the awarding of contracts relevant to the hiring company.

The Lobbying Act – in need of significant strengthening

1. Lobbying is an essential means of ensuring that the government has access to a range of views in order to improve decision-making. But it can also be a route through which private interests have privileged access to ministers in ways that can skew decisions away from the public interest. In our view, the current system for lobbying lacks transparency and accountability, and enables undue influence and unequal access to government. The inadequacies of this system risk undermining the quality of public decision-making and the perceptions of ethical standards in government.
2. The current rules in the Lobbying Act have been widely criticised, not least by industry bodies such as the Public Relations and Communications Association, for being too narrow and limited, in particular by not covering all of those engaged in lobbying or those being lobbied.¹ A series of scandals in recent years have exposed ongoing weaknesses in the current system, including lobbying not being publicly disclosed where it takes place via modern forms of communication, in social settings and at donor or other party political events. The Greensill scandal rightly reignited significant public debate about the adequacy of the rules, particularly whether the two-year ban on lobbying after public service is sufficient for former ministers and prime ministers, where ministers are able to translate extensive and privileged access to government into the potential for private gain.
3. Transparency of lobbying continues to be a significant issue, including the timeliness, quality and accuracy of lobbying data. In their report *Standards Matter 2*, the Committee on Standards in Public Life (CSPL) identified that the framework for lobbying transparency is “*not fit for purpose*”.² We share that view. It is difficult to find out who is lobbying the government and the networks of influence: information is often released late, descriptions are ambiguous and lack

¹ <https://www.publicaffairsnetworking.com/news/prca-welcomes-cameron-inquiry-and-publishes-6-point-public-confidence-plan-for-reform>

² <https://www.gov.uk/government/collections/standards-matter-2>

detail, important information is excluded from data releases, and transparency data are scattered and not easily cross-referenced.

4. As Transparency International has noted, *“the current arrangements require members of the public to cross reference multiple datasets to form a more holistic view of what is happening. Initially, users have to compare data from departmental disclosures – published under the ministerial code – with entries on the statutory register of lobbyists to see who a consultant may be representing. Having to cross- reference these two datasets is neither intuitive nor accessible, and it is incredibly time-consuming.”*³ There are few consequences for departments that fail to disclose ministerial diaries and other lobbying data promptly, despite obligations to do so. There is an urgent need to improve the descriptions of lobbying activity, and steps taken by the government in response to lobbying.
5. The Ministerial Code says that a minister who *“meets an external organisation or individual and finds themselves discussing official business without an official present – for example at a social occasion or on holiday – any significant content should be passed back to the department as soon as possible after the event.”* However, there is a lack of clarity around the distinction between *“official”* ministerial business and party political or personal business, which may be independent of a minister’s official responsibilities. Ministers have previously withheld lobbying information on the basis that they claimed it was not official, fuelling concerns around secret lobbying and unequal access.⁴
6. This is a particular risk area with the system of high-level donor access developed by the Conservative party. Individuals who donate at least £250,000 per year to the party are eligible to join the ‘advisory board’.⁵ These wealthy donors, some with reported links to Putin, have obtained significant access to senior ministers under a system described by one donor as *“access capitalism”*.⁶ Members of the board have been granted the contact details of ministers and advisers, and lobbied ministers for regulatory and policy changes – including against raising taxes on high net-worth individuals – with no transparency, no minutes taken and no civil servants in attendance. Some of these individuals have received lucrative public contracts, honours and help applying for public appointments.
7. The Cabinet Office refused to provide us with details of Mr Johnson’s meetings with advisory board members under the Freedom of Information Act, on the basis that the information is *“party political”*, and that events Mr Johnson holds or attends as an MP or Leader of the Conservative Party are not a matter for the Cabinet Office. The implication is that individuals

3

<https://www.transparency.org.uk/sites/default/files/pdf/publications/Understanding%20Access%20and%20Potential%20Influence%20in%20Westminster.pdf>

⁴ <https://www.reuters.com/article/us-britain-politics-truss-exclusive-idUKKBN25U1LA>

⁵ <https://www.thetimes.co.uk/article/the-ultra-rich-tory-donors-with-access-to-boris-johnsons-top-team-96bvcwcl>

⁶ <https://www.thetimes.co.uk/article/access-capitalism-scandal-a-dinner-with-prince-charles-then-the-begging-letter-arrived-kngk0xqfk>

are paying £250,000 each year to meet the MP for Uxbridge and South Ruislip or the then head of the Conservative party in a private capacity, and that Mr Johnson – and other ministers – attended these meetings in a capacity that was entirely removed from their official position in government. Because individuals will be donating to the party based on the political position of the minister or prime minister, this assertion is not tenable and creates serious risks of political corruption.

8. HM Treasury also failed to provide details of Rishi Sunak's meetings with members of the advisory board, but did provide Mr Sunak's diary for September 2021.⁷ One in five of the meetings listed for that month were redacted and labelled "*political*". Mr Sunak was generally spending a few hours each day on apparently unofficial business, outside the scope of transparency laws or lobbying rules, with no explanation about who he was meeting or why. Impactful lobbying often takes place in the blurred lines between social and party political events, such as party conferences or private dinners. Where lobbying takes place, it should be treated and recorded as such. Access capitalism, in this grey area between official business and party political activity, has long shielded attempts to influence government decision-making, and the consequences of that lobbying, from public view.
9. Nigel Boardman's review into supply chain finance recommended more frequent, detailed information be published by departments on ministers' and civil servants' meetings, including expanding this information to "*non-public interactive dialogue*". This would include instant messaging platforms which, as the Greensill scandal showed, are regularly used by politicians and lobbyists, but fall outside the scope of existing rules. The Cabinet Secretary told CSPL that the underpinning principle regarding ministerial discussions with external individuals or organisations is that "*government business is government business however it is conducted and by whatever means of communication.*" On that basis, any lobbying of ministers through informal channels or alternative technologies should be reported to civil servants, which should in turn be published through transparency releases.
10. Boardman further recommended greater transparency in the lobbying register, with a statutory code of conduct for lobbyists and more meaningful penalties for non-compliance – with knowingly deceiving in the process of lobbying made a criminal offence. Under Boardman's recommendations, former civil servants and ministers who engage in lobbying would be required to register as consultant lobbyists and significant loopholes would be closed or severely curtailed, such as 'incidental lobbying'. Boardman also proposed that the government consult on requiring think tanks and research institutes to declare who they are funded by and whether they should have to register as consultant lobbyists.
11. Boardman emphasised that "*an effective lobbying regime ought also to be designed to encourage those who do not have privileged access nonetheless to have a voice. I therefore suggest that government should further strengthen equity in lobbying.*" He said that departments should develop innovative ways to level the playing field, gather the widest

⁷ <https://www.opendemocracy.net/en/boris-johnson-government-refuse-to-publish-pandemic-diaries/>

possible consultation and the most diverse range of views before making any proposal. CSPL raised similar concerns about equal access in a report nine years earlier.⁸ Their recommendations to strengthen lobbying transparency included calling for publication of information on any “*significant contact*” where a matter is raised with a bearing on official business, and guidance to ensure the principle of ‘equality of access’ is respected.

12. Equality of access enables decision-makers to make decisions fairly and based on merit, using the best available evidence, rather than as a result of the influence of individuals or organisations with privileged access. Access is not currently equal in the UK, and equality must be strengthened to level the playing field and avoid situations where one company or vested interest captures the minister’s ear. We agree with the OECD that “*countries should provide a level playing field by granting all stakeholders fair and equitable access to the development and implementation of public policies.*”⁹ The Uber Files – amongst a series of other scandals – have shone a light on a system that is rigged in favour of very large corporations with expensive lobbyists and those who can gain privileged access to those in power.¹⁰ Until that inequality is addressed, decision-making will necessarily benefit those with privileged access and the deepest pockets, rather than the wider public interest.

Recommendations

In our view, the Lobbying Act – and the surrounding system for lobbying transparency, equality of access to decision-makers and compliance with the rules – requires significant strengthening in order to properly ensure high ethical standards are adhered to in the nexus between lobbying and government, that decisions are taken fairly and for the right reasons, and that the system is fit to retain public trust. In order to address these critical issues, we recommend the following:

- a. **Expand the scope of the Lobbying Act to include all those who engage in lobbying**, including in-house lobbyists, as advocated by the Public Relations and Communications Association, as well as those being lobbied, to include special advisers and senior civil servants from Director General level and above. That legislative reform should require lobbyists to report monthly on their communications with the government, as is the case in Canada.
- b. **Increased transparency about the content of lobbying and logging of steps taken in response to lobbying.** We agree with CSPL that the Cabinet Office should collate all departmental disclosures and publish them in one centrally managed, accessible and searchable database, which is updated monthly. The Cabinet Office should provide and, as

8

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/407530/2901376_LobbyingStandards_WEB.pdf

⁹ <https://www.oecd-ilibrary.org/sites/cf72ac12-en/index.html?itemId=/content/component/cf72ac12-en>

¹⁰ <https://www.spotlightcorruption.org/press-release-uber-files-are-a-massive-wake-up-call-for-western-democracies-and-the-uk-to-get-their-act-together-on-lobbying-transparency/>

set out below, enforce stricter guidelines on minimum standards for the descriptions of meetings.

- c. **Widen the definition of lobbying to include informal events.** As the Greensill affair highlighted, lobbying can take place through various informal means. We agree with CSPL that the 'meetings' category of disclosures should be broadened or a new category should be added to include informal lobbying – by instant messaging, emails, virtual meetings and other means – where it is serious, premeditated or credible, or substantively considered by the government.
- d. **Widen the definition of “official” business in the Ministerial Code that ministers should report back to their departments where an official is not present,** to include significant contacts (including private meetings and party political contexts) where a matter is raised which has a bearing on official business, or where an attempt is made to influence a public policy decision
- e. **We agree with CSPL that any guidance on lobbying should remind public office holders of the principle of equality of access** and the need to proactively consider, after meetings, whether a balance of views should be obtained. The Cabinet Office should issue discrete guidance to departments that makes this clear. Departments should in turn develop ways to level the playing field and ensure that they consult widely and gather a diverse range of views, rather than formulate decisions based on the most effective lobbying activity. Departments should identify steps taken to level the playing field in their annual reports and accounts.
- f. **There should be greater accountability for the quality of departmental transparency releases and where the rules on publication of lobbying data are broken.** The Cabinet Office should lead by example when providing oversight and accountability for the quality of departmental returns, and when overseeing sanctions for those who fail to follow the rules.
- g. **The Business Appointment Rules should be changed to allow government departments and the Advisory Committee on Business Appointments to issue a lobbying ban of up to five years** where they consider the circumstances to be appropriate, to ensure that ministers and officials - and their new employers - do not privately benefit from their time in public office. As recommended by CSPL, the Rules should also be amended to prohibit for two years appointments where the applicant had significant and direct responsibility for policy, regulation, or the awarding of contracts relevant to the hiring company.