

Written evidence from Spotlight on Corruption¹ (LOB19)

Public Administration and Constitutional Affairs Committee

Lobbying and Influence: post-legislative scrutiny of the Lobbying Act 2014 and related matters inquiry

Introduction

1. Spotlight previously submitted written evidence to the Public Administration and Constitutional Affairs (PACAC) inquiry into *Lobbying and Influence: Post-Legislative Scrutiny of the Lobbying Act 2014*.²
2. In July 2023, following the government's publication of its response to the reports by the Committee on Standards in Public Life (CSPL), PACAC and Sir Nigel Boardman for strengthening integrity and ethics in central government, Spotlight published an assessment of which of the reports' recommendations had been implemented.³ This further evidence draws from that assessment. The full report is available on our website and we have enclosed as an Annex the section dealing with lobbying transparency.⁴
3. We note that CSPL published their own assessment in relation to their recommendations.⁵ We have taken a slightly different view in some areas where we think the government substantively rejected a recommendation and their alternative proposal did not amount to partial implementation.

Recommendations

4. Spotlight reiterates the recommendations in its previous written evidence that have not yet been implemented by the government. In addition, and in light of the government's response to the reports by CSPL, PACAC and Boardman, Spotlight recommends that the government:
 - a. Publish a timeline for the development, deployment and adoption of a single database where all departmental transparency returns will be published; and for when the government will move departments' transparency publications from a quarterly to a monthly basis.

¹ Spotlight on Corruption (Spotlight) 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.

² <https://committees.parliament.uk/writtenevidence/112239/pdf/>

³ <https://www.spotlightcorruption.org/integrity-lite-standards-reforms-stack/>

⁴ <https://www.spotlightcorruption.org/integrity-lite-standards-reforms-stack/>

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1172217/2023-07-20_Upholding_Standards_in_Public_Life_-_government_response_to_recommendations.pdf

- b. Reconsider its response to the recommendations from CSPL and Boardman to widen the application of transparency obligations to include special advisers, given the view of independent bodies that special advisers play a crucial role in formulating government policy and influencing ministers.
- c. Reconsider its response to Boardman's recommendations for improving accountability for departmental transparency returns, in order to increase compliance and standards.
- d. Implement the Information Commissioner's recommendation, made in July 2022, for a "*strategic review into how different, non-corporate communication channels are being used across Government*", including whether the UK should introduce a 'duty to document'.
- e. Close the loophole by which informal lobbying is not disclosed in departments' transparency releases, by including within scope any instant messaging, virtual meetings, phone calls and emails when the representations to government are "*serious, premeditated, and credible, or are given substantive consideration by ministers, special advisers or senior civil servants*".⁶
- f. Widen the scope of the register of consultant lobbyists to address key loopholes, and reconsider its opposition to a requirement for registered lobbyists to meet a statutory code of conduct, and to giving the Registrar of Lobbyists the power to impose tougher penalties for non-compliance.

Analysis of government's response to CSPL and Boardman

Single database for transparency returns

- 5. The government's response included important commitments to enhance transparency in lobbying. In particular, we welcome the creation of a single database to collate and publish departments' transparency returns, the fact that this database will be updated monthly, that it will include better descriptions of what was discussed, and that meetings with senior civil servants will be included. As CSPL identified in *Standards Matter 2*, a single database will make it easier to find records and networks of influence, and to identify discrepancies in the quality and timeliness of departments' data.
- 6. However, the government has not confirmed how long it will take for this database to be designed and adopted, nor when it will move departmental transparency returns from a quarterly to a monthly basis. CSPL's interim findings for *Standards Matter 2* - which included these recommendations for a single database - were published in June 2021.⁷ CSPL's final report was published in November 2021.⁸ In the two years that it has

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1029944/Upholding_Standards_in_Public_Life_-_Web_Accessible.pdf

taken the government to respond to those recommendations there have been a slew of high-profile lobbying scandals and trust in government is now at record lows.⁹ The government should publish a timeline for the prompt development, deployment and adoption of the database, which allows time for careful design and reflects the pressing need for this upgraded system.

7. The Council of Europe's anti-corruption body, the Group of States Against Corruption (GRECO), published the UK's Fifth Round Second Compliance Report on 25 August 2023.¹⁰ The report was adopted by GRECO in June 2023, before the government had published its response to the recommendations from CSPL, Boardman and PACAC. GRECO had back in 2017 recommended more transparency around meetings that ministers, special advisers and senior civil servants have with lobbyists and other third parties, including more details about the matters discussed.¹¹
8. The Compliance Report notes the ongoing work by the government to enhance transparency. Until these measures have been accomplished, however, GRECO considers this recommendation to be only partially implemented. This underscores the need for the government to introduce these long overdue measures and to be transparent about its timeline. The UK has until 30 June 2024 to show progress in respect of this and other outstanding recommendations. On 25 August, the government published a statement confirming that it will provide an update to GRECO ahead of the June deadline.¹² If the UK continues to not comply with recommendations, GRECO could invoke non-compliance procedures.¹³

Special advisers' transparency obligations

9. We note with concern that the government rejected CSPL's recommendation that meetings between external organisations and special advisers should be included in transparency releases. Boardman had additionally suggested that the government should consider extending transparency requirements to special advisers. Key actors - from CSPL, Boardman and the Registrar of Consultant Lobbyists¹⁴ to GRECO¹⁵ - have recognised the crucial role that special advisers play in formulating government policy and influencing decision-making by ministers. The government's decision to exempt special advisers from transparency releases is therefore a major loophole and should be reconsidered.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/993233/Committee_on_Standards_in_Public_Life_-_Standards_Matter_2_-_Report_of_Findings.pdf

⁸ <https://www.gov.uk/government/publications/upholding-standards-in-public-life-published-report>

⁹ <https://www.gov.uk/government/publications/standards-matter-2-polling-and-focus-group-research;>
<https://www.edelman.com/sites/g/files/aatuss191/files/2023-03/2023%20Edelman%20Trust%20Barometer%20Global%20Report%20FINAL.pdf>

¹⁰ <https://www.coe.int/en/web/greco/-/united-kingdom-publication-of-the-second-compliance-report>

¹¹ <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/168088ea4c>

¹² <https://www.gov.uk/government/news/greco-publish-second-uk-5th-round-compliance-report>

¹³ <https://rm.coe.int/16806cd443>

¹⁴ <https://www.civilserviceworld.com/professions/article/consultants-lobby-spads-should-declare-mps-told>

¹⁵ <https://rm.coe.int/grecorc5-2023-5-final-eng-2nd-compliance-report-uk-public/1680ac58ba>

Accountability for departments' transparency returns

10. Boardman recommended that the government strengthen transparency reporting by designating a properly trained, senior responsible departmental official to supervise returns, annual reporting on the timeliness of publication of transparency returns, and requiring accounting officers to explain to their responsible Select Committees any failure to publish transparency returns in a timely manner. CSPL also identified in *Standards Matter 2* that a centrally managed database would provide more clarity on the responsibility and accountability for poor-quality data releases by departments.
11. In its response, the government stated that it did not believe that there needs to be any significant changes to the accountability structure around departments' transparency releases. This was a missed opportunity for the government to introduce much-needed accountability mechanisms for improving departmental standards, consistency and compliance with transparency obligations. Boardman previously said that this reform would have given the public the *"adequate degree of transparency"* they expect. Its exclusion risks undermining the effectiveness of the new database for transparency returns and the government's wider programme to increase transparency in lobbying.

Updating guidance on the definition of 'official business'

12. In response to recommendations to update guidance on the definition of 'official business', the government referred to its guidance on *Non-Corporate Communication Channels*,¹⁶ issued in March 2023, which superseded 2013 guidance on use of private emails. The 2023 guidance sets out reporting requirements for 'significant government information', described as *"information that materially impacts the direction of a piece of work or that gives evidence of a material change to a situation"*.
13. However, the guidance falls significantly short of the Information Commissioner's recommendation in July 2022 for a *"strategic review into how different, non-corporate communication channels are being used across Government"*, particularly on whether the UK is falling out of step with other western democracies and whether the UK should introduce a specific 'duty to document.'¹⁷ The Commissioner identified that such a duty does not need to be onerous or require much change to current expectation, but it may *"stop the erosion we think may be occurring to the public record due to more modern ways of working."* Implementing the recommended review would enable a strategic, system-wide appraisal of current working practices, learning from other jurisdictions to inform best practice - and would underline the government's commitment to integrity, accountability and professionalism.

Widening the range of declarable communications

14. The government stated in its response that departments will be required to disclose diarised phone calls and virtual meetings which occur in place of an in-person meeting,

¹⁶ <https://www.gov.uk/government/publications/non-corporate-communication-channels-for-government-business>

¹⁷ <https://ico.org.uk/media/about-the-ico/documents/4020886/behind-the-screens.pdf>

as well as in-person meetings. However, the government will not expand those transparency requirements to include letters, WhatsApp messages, impromptu phone calls or emails, “*which do not alone evidence a substantive lobbying engagement*”. The government’s response adds that, where an informal lobbying approach is granted time or resource by the government, it should be diarised and therefore recorded.

15. This carves out a considerable discretion for ministers and officials to keep their communications secret. It also creates a presumption that only pre-planned ‘informal lobbying’ will be within scope of transparency obligations, overlooking the fact that informal lobbying which is granted time or resource by the government can and will take place without being diarised. The government should revise the categories of published information to include instant messaging, virtual meetings, phone calls and emails when the representations to government are “*serious, premeditated, and credible, or are given substantive consideration by ministers, special advisers or senior civil servants*”.¹⁸ Widening the range of declarable communications would help to maintain public trust after a series of lobbying scandals involving informal communications, and press reports about the government’s use of WhatsApp.

Widening the register of consultant lobbyists

16. The government rejected Boardman’s recommendations to extend the requirement to register as a consultant lobbyist, require registered lobbyists to meet a statutory code of conduct, or to consider giving the Registrar of Lobbyists the power to impose tougher penalties for non-compliance. This package of recommendations would have substantially increased transparency and accountability in the UK’s lobbying regime. As GRECO highlighted, the register of consultant lobbyists “*gives a very partial view*” of the number of lobbyists seeking to influence government decision-making because most large firms and organisations employ in-house lobbyists, who are not required to register.¹⁹

September 2023

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1029944/Upholding_Standards_in_Public_Life_-_Web_Accessible.pdf

¹⁹ <https://www.coe.int/en/web/greco/-/united-kingdom-publication-of-the-second-compliance-report>

Annex

Analysis of Government's Response to Recommendations on Transparency of Lobbying²⁰

4.1 The Format of Departmental Transparency Releases	CSPL #26		<p>CSPL recommended that the Cabinet Office collate all departmental transparency releases and publish them in an accessible, centrally managed and searchable database. Under the present system, transparency releases are scattered across departmental releases, as well as the Register, meaning that any attempt to obtain a clear picture of one company or organisation's attempts to influence government is difficult and time consuming.</p> <p>In its response the government has confirmed that it is developing a single database where all departmental transparency returns covering meetings, gifts, hospitality and travel will be published.</p>
4.2 Minimum Standards for the Description of Meetings	CSPL #27		<p>CSPL and Boardman recommended that the Cabinet Office should issue stricter guidelines on minimum standards for meeting descriptions and ensure that departments comply. In its report, CSPL found that transparency notices still too often describe meetings in ambiguous language and terms, and fail to provide the public with the minimum information necessary to understand what representations the government is receiving on a particular policy issue. It also noted that 2018 guidance from the Cabinet Office, published under FOI, states that "<i>departments should make every effort to provide details of the purpose of the meeting</i>", but suggested that this is not consistently followed in transparency returns.</p> <p>In its response, the government said that new government guidance will set stricter minimum standards for meeting descriptions and make clear that meeting descriptions contain relevant and useful information.</p>
4.3 The Frequency of Departmental Transparency Releases	CSPL #28		<p>CSPL and Boardman recommended the government publish transparency returns monthly, rather than quarterly, in line with the MPs' and peers' registers of interests. CSPL noted that under the current quarterly approach, departments often miss deadlines meaning that transparency releases are delayed making it more difficult for Parliament and the media to scrutinise the activity of government as it happens. CSPL also argued that publishing returns more regularly will help transparency become part of private offices' regular routine, rather than a one-off task which can be too easily delayed.</p> <p>In its response, the government has suggested following the development, deployment, and adoption of an integrated transparency platform it will look to move to a monthly reporting basis, but does not offer a specific commitment to do so. CSPL has assessed this response as only partially meeting its recommendation.</p>
	Boardman #13 (part 2)		

<p>4.4 Accountability around Departmental Transparency Releases</p>	<p>Boardman #13 (part 3)</p>		<p>Boardman recommended the government strengthen its transparency reporting by designating a senior responsible departmental official who is properly trained to supervise the transparency returns, reporting in their Annual Report on the timeliness of the publication of its transparency returns, requiring accounting officers to explain to their responsible Select Committees any failure to publish transparency returns in a timely manner. Boardman suggested this would give the public the ‘adequate degree of transparency’ they expect.</p> <p>In its response the government stated that it did not believe that there needs to be any significant changes to the accountability structure around departments' transparency releases insofar as:</p> <ul style="list-style-type: none"> ● under existing guidance ministers' should clear their own returns prior to publication while Permanent Secretaries retain ultimate responsibility for clearing Senior Officials' returns and overall departmental performance ● Permanent Secretaries are already accountable to their Select Committees for all aspects of departmental performance.
<p>4.5 Widening the Application of Transparency Obligations to Senior Civil Servants and Special Advisers</p>	<p>CSPL #29</p>		<p>CSPL recommended that the government should include meetings held between external organisations, directors general, and directors in transparency releases. Under the present system, the lobbying of directors general and directors is not always disclosed despite these roles having significant authority, often with more direct responsibility for an area of government policy than the relevant minister or permanent secretary.</p> <p>In its response the government has agreed to update its transparency guidance to include all directors general, finance and commercial directors, and senior responsible owners in the government's Major Projects Portfolio, reflecting senior civil service roles most likely to be subject to lobbying approaches.</p>
	<p>CSPL #30</p>		<p>CSPL recommended the government should include meetings held between external organisations and special advisers in transparency releases to recognise the influence that these individuals now have in government. CSPL recommended that the full diaries of special advisers' external meetings be published, which goes beyond the current requirement that only special advisers' meetings with “<i>newspaper and other media proprietors, editors and senior executives</i>” are published. Boardman additionally suggested that the government should consider extending transparency requirements to special advisers.</p> <p>In its response, the government stated that it did not believe that</p>

²⁰ <https://www.spotlightcorruption.org/integrity-lite-standards-reforms-stack/>

			transparency obligations should be extended to equivalent special advisers, as unlike ministers and senior civil servants (via the Carltona Principle), special advisers cannot authorise public expenditure nor exercise any statutory powers.
4.6 Updating Guidance on the Definition of Official Business	CSPL #31		CSPL recommended that the government should update guidance to make clear that informal lobbying, and lobbying via alternative forms of communication such as WhatsApp or Zoom, should be reported to officials. CSPL noted that recent controversies have focused attention on the fact that significant attempts to lobby government can occur through private messages and phone calls, rather than formal face-to-face meetings. Boardman also recommended that the government publishes an appropriate set of principles to define when an interactive communication should be deemed official business and therefore disclosed.
	#Boardman 15		<p>In its response, the government noted that it had issued new guidance on 'Non-Corporate Communication Channels' in March 2023 which supersedes the 2013 guidance on use of private email. The guidance makes clear that "<i>Substantive government information' is information that materially impacts the direction of a piece of work or that gives evidence of a material change to a situation</i>" and lays out reporting requirements.</p> <p>Although CSPL has assessed the government's response as fully met, this guidance falls significantly short of the Information Commissioner's recommendations for a strategic review of non-corporate communications channels, with a particular focus on whether the UK is falling out of step with other western democracies in this regard, and whether the UK should introduce a specific 'duty to document.'²¹</p>
4.7 Widening the Range of Declarable Communications	CSPL #32		CSPL recommended the government should revise the categories of published information to close the loophole by which informal lobbying is not disclosed in departmental releases. CSPL concluded that the current categories of published information – gifts, overseas travel, hospitality and meetings – effectively exclude the disclosure of informal lobbying, which appears to be an increasingly common way for external organisations to attempt to influence government. Boardman additionally recommended that the government extend the definition of 'meeting' to include all forms of non-public interactive dialogue which, were it face to face, would constitute a meeting requiring inclusion in the transparency return.
	Boardman #14		<p>In its response the government has stated that it will expand transparency obligations to include the disclosure of diarised phone calls and virtual meetings, but it will not include letters, WhatsApps, impromptu phone calls or emails, which do not alone evidence a substantive lobbying engagement.</p>

<p>4.8 Widening the Application of Transparency Obligations to Communications with Senior Civil Servants and Special Advisers</p>	<p>CSPL #33</p>		<p>CSPL recommended that consultant lobbyists should also have to register on the basis of any communications with special advisers, directors general, and directors.</p> <p>In its response the government accepted in principle that the scope of departments' transparency returns should be mirrored in the requirements of the Register of Consultant Lobbyists. It also noted that the government will be assessing the impact of expanded transparency returns on departments before introducing such a change in primary legislation.</p> <p>CSPL has assessed the government's commitment as partially meeting its recommendation despite the government not including the requirement for consultant lobbyists to register on the basis of any communications with special advisers. In 2022 the Registrar of Consultant Lobbyists identified special advisers as a key route for influencing the government and suggested that bringing them within the scope of disclosure could be done through amending regulations instead of legislation.</p>
<p>4.9 The Format of the Register's Transparency Returns</p>	<p>CSPL #34</p>		<p>CSPL recommended that consultant lobbyists should have to declare the date, recipient, and subject matter of their lobbying to mirror the declarations that ministers make. CSPL noted that under the current system lobbyists do not have to declare which minister or permanent secretary they lobbied, when they lobbied, or what the subject matter was making it unnecessarily difficult for both the Registrar and interested parties to corroborate data in the register with ministerial diaries.</p>
	<p>Boardman #17 (part 1)</p>		<p>In its response the government agreed in principle that consultant lobbyists should have to declare the subject matter of their lobbying and will look to implement this via secondary legislation. However, the government stated that it does not agree that they should have to declare individual instances of lobbying (date and recipient), as this would change the nature of the Register from a list of consultant lobbyists' clients to a list of individual instances of lobbying. These are recorded in the departmental transparency returns, against which the Register of Consultant Lobbyists can be cross-referenced.</p> <p>Not including individual entries is a failure to recognise risks.</p>
<p>4.10 Expanding the Definition of a Consultant Lobbyist</p>	<p>Boardman #16</p>		<p>Boardman recommended extending the requirement to register as a consultant lobbyist to include:</p> <ul style="list-style-type: none"> ● lobbyists employed by more than one organisation ● any former senior civil servant or minister who engages in lobbying ● removing or severely curtailing the exemption for 'incidental

²¹ <https://ico.org.uk/media/about-the-ico/documents/4020886/behind-the-screens.pdf>

			<p>lobbying’</p> <ul style="list-style-type: none"> ● removing the exemption for those not registered for VAT. <p>In its response, the government stated that it did not believe the requirement to register as a consultant lobbyist should be expanded, as this would fundamentally change the nature and purpose of the Register. It additionally confirmed that it will not bring forward primary legislation to remove the exemption for those that fall below the VAT registration threshold, as recommended by Boardman.</p>
4.11 Disclosure of the Ultimate Beneficiary of a Lobbying Attempt	Boardman #17 (part 2)		<p>Boardman recommended the government strengthen the rules regarding the transparency of lobbyists by requiring lobbyists to disclose the ultimate person paying for, or benefitting from, their lobbying activity. The government has agreed to this recommendation and has committed to implement this via secondary legislation.</p>
4.12 Introduction of a Statutory Code of Conduct and Review of Sanctions	Boardman #17 (part 3)		<p>Boardman recommended the government strengthen the rules regarding the transparency of lobbyists by:</p> <ul style="list-style-type: none"> ● requiring registered lobbyists to meet a statutory code of conduct, setting minimum standards ● government keeping under review whether the Registrar of Lobbyists should be able to impose more meaningful penalties for non-compliance, particularly in the event a statutory code of conduct (which seeks to police behaviour) is introduced; 23 and making knowingly deceiving in the process of lobbying a criminal offence. <p>In its response the government stated that it did not believe that consultant lobbyists should be subject to a statutory code of conduct. It suggested that industry already operates its own recognised codes to which most consultant lobbying organisations are signatories. It also stated that it did not believe it appropriate to introduce a new, separate statutory code of conduct against which it could exercise sanctions. It additionally stated that it believes the existing civil penalties scheme remains sufficient.</p>