

## **Public Relations and Communications Association (PRCA) response to the National Assembly of Wales' Standards of Conduct Committee Inquiry into Lobbying**

### **Executive summary**

- The status quo for lobbying regulation in Wales is industry regulation. Lobbying has changed significantly in the past decade: it has become more interdisciplinary and multidisciplinary than before.
- With 80% of lobbyists working in-house, there has been an increase in lobbying activities from charities, think tanks, law firms, management consultancies, accountancies, trade unions, and those involved in the public sector.
- The PRCA – working with a parliamentary draftsman and other parties – defined lobbying in 2013 effectively as influencing government or advising others how to influence government. This is subject to the standard reasonable man test and a series of obvious exemptions.
- When exploring how lobbying is regulated at the moment, interested parties must keep in mind that many lobbyists are not only on the PRCA Public Affairs and Lobbying Register and the statutory Register of Consultant Lobbyists, but are also compelled to appear on Brussels' own register or the Republic of Ireland's newer register. In the very near future, a great many will feature on the Lobbying Register in Scotland.
- Whilst it is encouraging to see that the Standards Commissioner has had no complaint against lobbying in Wales, in 2013 the Fourth Assembly Standards of Conduct Committee advised that stricter guidance on lobbying was necessary. There are a number of ways in which lobbying is covered by current arrangements.

### **Introduction**

- The PRCA is the UK professional body representing PR, communications, public affairs, and lobbying practitioners. Our membership includes consultancies (including around 75% of the "PR Week Top 150"), in-house teams (including banks, charities, and the entire Government Communications Service), and also individual practitioners. We represent around 380 consultancies and 280 in-house teams. We are the largest association of our type in Europe.
- Of the 20,000 individuals who are members of the PRCA, around 1,500 are lobbyists.
- There are currently 104 members on the PRCA Public Affairs and Lobbying Register. This includes the largest consultancies such as MHP Communications, Weber Shandwick, H+K Strategies, and Edelman, alongside specialist and smaller organisations. We also represent in-house teams for organisations as diverse as the NSPCC, John Lewis, AXA, Visa, and Local Government Association.

## 1. Is there a need for change?

- The status quo is self-regulation. The PRCA currently regulates more relevant public affairs and lobbying practitioners than any other association: every single member has to abide by the specific PRCA Public Affairs and Lobbying Code of Conduct and these members must also declare their offices, employees, and clients on the PRCA Public Affairs and Lobbying Register (submitted quarterly and retrospectively). Across consultancies, in-house teams, and individual practitioners, there are currently 104 entries on the last completed register.
- Over the past decade, lobbying has become much more interdisciplinary and multidisciplinary. The act of lobbying itself is now more integrated with other services carried out. With 80% of lobbyists working in-house, there has been an increase in lobbying activities from charities, think tanks, law firms, management consultancies, accountancies, trade unions, and those involved in the public sector. Any discussion of lobbying in Wales (and the UK more broadly) must recognise that the Westminster “lobbying scandals” which have received significant media coverage in the past few years have not involved a single lobbyist.
- The PRCA is – in principle – in favour of the introduction of a statutory register of lobbyists and our members are committed to transparency. We believe that lobbying should be open and transparent. A proper statutory register would allow anyone to properly view the offices that offer lobbying, the employees conducting lobbying, and the clients on whose behalf this lobbying takes place. Lobbying is not merely to influence: lobbyists seek to inform as well as influence policy so that policymakers can make decisions with the best possible understanding of the effect and implications legislation or regulation will have. A transparent lobbying register will help to dispel the myths and stigma that is unhelpfully attached to any debate on lobbying.
- The PRCA believes that well-developed legislation is necessary and appropriate for achieving transparency. The primary reason for legislation is that it provides a statutory mechanism that requires all lobbyists to register. Legislation should not exist to pre-empt any supposed “problem” or remedy what campaigners against democratic engagement see as “corporatism” or as “undermining” to public policy. Rather, it should exist to recognise the need for transparency and the vast range of organisations and practitioners that the Assembly relies upon to carry out its work.
- Importantly, any lobbying register must be universal in order to capture all those who perform the act of lobbying in a professional capacity. A truly inclusive register must create a level playing field. If it excluded pro-bono lobbying, for example, it goes some way to suggest that there exists a class of paid lobbyists and a class of voluntary lobbyists whose work is so radically different that the former is required to register and the latter is not. Similarly, if in-house lobbyists were not included a majority of lobbying would be completely absent from the register. This risks creating the impression that lobbying is only carried out by specialist third-party practitioners and confined to those clients who outsource some or all of their lobbying activities.

## 2. What do you understand by the term lobbying?

- The PRCA – working with a parliamentary draftsman, industry expert, legal professionals, and other associations – defined lobbying in 2013. This was created to ensure that any government intent on creating a statutory register of lobbying had at their disposal a proper, workable definition: specifically, it was made necessary by the UK Government’s Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014.
- “Lobbying” or “lobbying services” means activities which are carried out in the course of a business for the purpose of influencing government, or advising others how to influence government. Activities are to be taken as having the purpose specified here if a reasonable person would assume, having regard to all the circumstances, that the activities were intended to have the effect described.
- Government here includes (within the United Kingdom): central government, devolved government, and local government; members and staff of either House of Parliament or of a devolved legislature; Ministers and officials; and public authorities (within the meaning of Section 6 of the Human Rights Act 1998).
- There are a number of obvious exemptions to this working definition of lobbying. This definition does not apply to: anything done in response to or compliance with a court order; anything done for the purpose of complying with a requirement under an enactment; a public response to an invitation to submit information or evidence; a public response to a government consultation exercise; a formal response to a public invitation to tender; anything done by a person acting in an official capacity on behalf of a government organisation; or an individual making representations solely on his or her own behalf. These exemptions contribute significantly to the definition’s overall workability: they ensure an employee presenting a policy proposal to their governmental employer or the constituent raising their own issue with their local representative are not considered lobbyists for our purposes here.
- “Influencing”, as deployed here, includes information but the act of making information or opinions public (for example, through advertising or attributed articles in a newspaper) is not the provision of lobbying services.
- “Business” needs clarifying here. As far as lobbying is concerned, this can include charitable and not-for-profit undertakings. Services provided by or on behalf of an undertaking are provided “in the course of business” even if the persons providing the services are acting on a pro-bono, voluntary, or not-for-profit basis.

### 3. How is lobbying regulated at the moment?

- Every single member has to abide by the specific PRCA Public Affairs and Lobbying Code of Conduct and these members must also declare their offices, employees, and clients on the PRCA Public Affairs and Lobbying Register (submitted quarterly and retrospectively). With this in mind, there is a great deal of information already available to the end-user (the public or politicians) about the lobbying which takes place. This sits alongside other transparency aspects, such as diaries, public meetings, and Freedom of Information requests, which offer a structured approach to obtaining information.
- Whilst details of industry regulation are covered elsewhere in this response, what should frame any consideration here is the fact that many organisations feature on multiple statutory registers (one or more on the Westminster, Holyrood, Brussels, or Irish registers) and industry registers (often the PRCA Public Affairs and Lobbying alongside one of the smaller associations' registers). Any attempt to bring about a statutory register for those lobbying the National Assembly for Wales – whilst noting that our members who do this already feature on our register – should work with existing registers and avoid adding significantly to the burden of compliance which already exists.

4. Do you consider yourself a lobbyist? How is lobbying regulated within your sector at the moment? E.g. if you are a private business, third sector, professional organisation.

- The work done by the Public Affairs, Policy, and Research practitioners within the Communications department at the PRCA constitutes lobbying in every meaningful sense of the world: we appear on the PRCA Public Affairs and Lobbying Register and we will appear on the Lobbying Register in Scotland when it becomes operational. We do not appear on the statutory Register of Consultant Lobbyists because the definition is so narrow (it concerns itself with UK Ministers and Permanent Secretaries) and its remit so small (it excludes in-house lobbyists like ourselves who make up 80% of the industry).
- More broadly – and to provide an example true of many other organisations – lobbying is not confined to these two practitioners: it involves multiple parties. Internally, the Director of Communications, Director General, and Communications Assistant might all contribute towards the work. Externally (to emphasise the importance of including pro-bono public affairs and lobbying on any register) there are a number of PRCA members who either plan or participate in our public affairs and lobbying activities. For example, the Chairman of the Public Affairs and Lobbying Group join us for any meetings with politicians or civil servants about the Lobbying Act 2014 and the Chairman of our Health Group would be involved in work aimed at the defending the reputation of that industry. For our meetings with the Minister for Parliamentary Business in the last session of the Scottish Parliament, we were joined by the Vice-Chairman of our Scotland Group who lobbied in a pro-bono capacity.
- Our situation is not unique in this respect: members of associations are frequently involved in the actual work carried out on their behalf.

## 5. Have you encountered any problems with the current arrangements?

- The current arrangements relating to lobbying regulation are limited to guidance on lobbying for Assembly Members, publication of meeting between cross party groups and lobbyists, and publication of meetings between Ministers and those lobbying them.
- We appreciate that Section 2.5 of the Code of Conduct for Assembly Members provides guidance on lobbying and access to Assembly Members. In addition, the Ministerial Code also stipulates that Ministers should record their meetings with outside groups. The PRCA has always argued that the onus to be transparent should fall equally on lobbyists and public officials. There is a tendency for lobbying regulation to focus solely on the ethical behaviour of the lobbyists; this, in practice, often places an unfair burden on the industry. Furthermore, we appreciate that all Assembly Members must comply with the Code of Conduct (with non-compliance resulting in an investigation): the PRCA has consistently argued that any lobbying regime must enforce sanctions in order to uphold public officials and lobbyists to the highest standards.
- Finally, the guidance on Cross-Party Groups ensures the recording of meetings with lobbyists and voluntary or charitable organisations in an annual report. This inclusion of in-house lobbyists is vital given they make up 80% of lobbyists. There is a tendency for lobbying regimes such as the statutory Register of Consultant Lobbyists to solely focus on consultant lobbyists. Failing to include in-house lobbyists hinders transparency as it effectively excludes most of the lobbying which actually takes place.
- The guidance on Cross-Party Groups should be expanded to include all in-house lobbyists not and just “charitable” or “voluntary” organisations. It is important to recognize that professional bodies like the PRCA, trade associations, and a variety of organisations lobby the Assembly as well. Therefore, expanding the definition would ensure that everyone lobbying would be covered by the guidance on Cross-Party Groups.
- It is encouraging see that the Standards Commissioner has had no complaints about lobbying in Wales: in 2013 the Fourth Assembly Standards of Conduct Committee advised stricter guidance on lobbying but stopped short of calling for a statutory register.
- As it stands, the information on meetings with lobbyist is not housed on one page. The current system is not user-friendly nor is it easily accessible. It would be in the interest of transparency and the public if this information was housed under one register.
- The 2013 review mentioned the lack of a formal industry regulation. However, there is an existing self-regulatory structure managed by the PRCA (and, for example, the APPC). Our registers include a list of members who lobby in Wales. Similarly, the Public Affairs Cymru code of conduct compels members to behave in an ethical manner. A statutory register would work alongside this self-regulatory regime and could deliver the utmost openness and transparency.

- It is also worth mentioning the problems with the current arrangements for the statutory Register of Consultant Lobbyists in Westminster. In considering a statutory register in Wales, the Standards of Conduct Committee should avoid replicating the mistakes in the statutory Register of Consultant Lobbyist. The Westminster model is unfit for purpose as it only covers consultant lobbyists, effectively excluding 80% of the industry. In addition to this, the Act's narrow definition hinders transparency as it only captures written or oral communications with Ministers and Permanent Secretaries. The current statutory Register of Consultant Lobbyists does not paint an accurate picture of all the lobbying activities directed towards Westminster, Whitehall, and the UK Government. In contrast, the PRCA Public Affairs and Lobbying Register – based on a broader, workable definition of lobbying - lists more clients than the statutory register and also includes in-house lobbyists.

6. Are there any areas you consider to be unregulated in this area which pose a risk to the accountability and reputation of governance in Wales?

- Without a formal statutory register, it is hard to assess where regulation is lacking. For example, it is clear to see that the statutory Register of Consultant Lobbyists inadequately regulates in-house lobbyists. It also inadequately regulates meetings between lobbyists and special advisers given that it only covers communications with Ministers and Permanent Secretaries.
- It is also important to question what is meant by “unregulated” here. The notion that the lobbying industry in Wales is unregulated is a misconception. There is an existing structure of self-regulation through industry registers administered by professional bodies such as the PRCA. The industry is already committed to transparency and in many ways the industry registers offer more transparency than the statutory Register of Consultant Lobbyists. Declaring these activities is a condition of membership, therefore all PRCA members have a duty to declare their public affairs and lobbying activities on the PRCA Public Affairs and Lobbying Register. All of our members also follow the PRCA Public Affairs and Lobbying Code of Conduct which regulates and informs their actions as a condition of membership. Furthermore, the PRCA and its members have supported the implementation of a statutory register in Westminster and Scotland and – despite some unfit and unworkable aspects in both pieces of legislation – we are broadly supportive of statutory registers.
- It is important to note that a statutory register works alongside Ministerial Diaries, Code of Conduct for Assembly Members, and the Freedom of Information Act. Assembly Members must also make meaningful efforts to achieve the highest levels of transparency; this means that their diaries, as well as Cross-Party Groups’ annual reports, must be thorough and timely.

7. What would you consider to be the impact of introducing a new regime to deal with lobbying?

- The impact of introducing a new lobbying regime would very much depend on the type of lobbying regime. As mentioned, the right statutory register could deliver the utmost transparency and openness if it covered in-house lobbyists and adopted a broad definition lobbying. A watered-down version, which excludes in-house lobbyists will undermine democracy and the public's trust in the institutions of Wales. In addition to this a narrow register could place a burden on the public purse while only capturing a handful of lobbyists.
- In 2013 the Cabinet Office conducted an impact assessment of the statutory Register of Consultant Lobbyists, which estimated that at least 720 lobbying firms would register on the statutory register, with the lowest estimate being 550. It also estimated that the average fee per lobbying firm at the 720 threshold would be between £322 and £644. In reality, due to the narrow definition of lobbying and the exclusion of in-house lobbyists there are currently only 145 consultancies, this number also includes several firms who have ceased to conduct lobbying activities as per the Act's definition of lobbying. Furthermore, the cost of registering increased from £750+VAT to £1,000+VAT in its second year of operation. Finally, the Registrar's annual statement in the first year of operation revealed that a very small amount was raised from registration fees, while the register's cost was £264,340.
- Similarly, in 2015 the Scottish Parliament estimated that the set-up cost of a Lobbying Register in Scotland under the Lobbying (Scotland) Act 2016 would range from £230,000 - £400,000 during the initial set-up period. The ongoing costs thereafter would range from £130,450 - £209,000. Given that there is no cost to join the register, none of these costs will be recovered. It is hard to assess the validity of these costs given that the register is not currently in place but, given that the register will cover in-house and consultant lobbyists, it will almost certainly have far more registrants than the register in Westminster.
- The cost of running such a register should not discourage the Welsh assembly from implementing a statutory register. We appreciate that there have been no complaints about the lobbying industry and yet the 2013 review into the Assembly noted that the Committee believed in the importance of a system that gives as much transparency as possible about who professional lobbyists are meeting with.
- If the Committee truly believes in the importance of transparency, then it must proceed with a statutory register of lobbyists. The Assembly could avoid burdening the public purse by introducing a register which would cover consultant and in-house lobbyists with a low and flat fee. The PRCA campaigned for this throughout the Transparency of Lobbying Bill, Non-party Campaigning and Trade Union Administration Bill 2014.