The Statutory Register of Lobbyists – Consultation on Compliance

Executive summary

- We welcome this opportunity to contribute: the Public Relations Consultants Association (PRCA) has engaged with the Lobbying Act from the very start and we hope that this consultation will result in an informed, proportionate and engaging compliance process for registrants.
- Matters of compliance are generally clear. We believe that engagement, particularly around the need to join the Register before carrying out any lobbying as defined by the Act, is the most appropriate and fruitful way to encourage compliance.
- We are concerned, when it comes to offences, that over-declaration could be treated as non-compliance. We believe that members should be permitted to adopt approaches which protect their integrity and reputation and therefore believe that over-declaration should be facilitated. In relation to the wider discussion of offences in this consultation, we also believe that registrant details should not be updated more regularly than information returns. It is inconsistent and creates a two-tier system which supposes that one is prioritised over the other.
- We also seek reassurances that standard business practices will not result in an information notice. We believe that efficiently allocating the resources of the Office and the proposal to serve an information notice due to a registrant "substantially" increasing or decreasing "the volume of clients they declare without sufficient explanation" cannot be reconciled. There are inherent flaws with this qualifier.
- There is a sound argument that appearance in a Ministerial diary return on its own, for instance, is a fair criteria for investigation. Many of the other proposed criteria listed, however, are not reason enough on their own.
- We welcome the fact that the Office has shared a proposed version of the information notice and would suggest that an amendment stating "Public affairs, wider communications and other lobbying work which does not necessitate the joining of the Register may have also taken place" would be particularly helpful both parties involved.

Introduction

- The PRCA is the UK professional body representing the public relations, public affairs and communications industry. 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 350 consultancies and 250 in-house teams
- We represent over 1,000 lobbyists and professionals conducting public affairs.
- There are currently 98 members (Consultancy, In-House and Individual) on the PRCA Public Affairs Register. This includes the largest consultancies such as MHP Communications, Weber Shandwick, H+K Strategies and Edelman, for instance. We also represent in-house teams for organisations as diverse as the NSPCC, Nationwide, Visa, Local Government Association and The Law Society. 31 of our members are currently on the statutory Register of Consultant Lobbyists.[1]

[1] As of Wednesday 10th June 2015.

Matters of Compliance

1. Is there any aspect of the proposed obligations which the Registrar has a duty to monitor, that are unclear?

We agree that these proposed obligations are in-line with the Act.

The duty of the Office of the Registrar of Consultant lobbyists is clear in this matter.

2. Is there any aspect of the proposed categories that are unclear or that you disagree with?

To provide a background to the specific examples of non-compliance raised, there are evident disparities between the statutory Register of Consultant Lobbyists and the PRCA Public Affairs Register that should frame our understanding. In relation to the material particular(s), such as the names of all Directors, we should note that our voluntary disclosure does not cover these individuals unless they are conducting public affairs and lobbying.

Whilst not a matter of disagreement, non-compliance resulting from "lobbying without first joining the Register" merits some discussion. Lobbying as defined by the Act pre-exists it. This statement can be readily adapted and applied to almost every example of regulation but, in the case of our industry, comes with an added dynamic. The initial approach to the matter taken by the Office was welcome and there was generous understanding that some organisations would require time to assess whether the work they carried out would necessitate joining the Register. We would suggest that communications from the Office continue to make clear that registration must precede the work.

We welcomed the clear recognition and suggestion that "there may be circumstances where relevant lobbying is carried out without having registered in advance […] In these circumstances, I envisage that the consultant lobbyist will then register by the end of the quarter in which the lobbying activity took place" in the *Conclusion on the Consultation on the Scope of Guidance for the Register of Consultant Lobbyists* (Tuesday 23rd December 2014). We would like to see this approach continued.

3. Do you agree that matters of administrative error should be elevated to matters of non-compliance in the instances stated?

The PRCA has consistently campaigned for a statutory register of lobbyists that includes sanctions. In our experience running the industry's voluntary Public Affairs Register, errors are promptly corrected once highlighted and subsequently not repeated.

We agree with the Office that the most appropriate step would be engagement; to escalate an administrative error to non-compliance in usual circumstances and early in the process serves no purpose.

We do not foresee that registrants from our industry would make anything other than non-purposeful administrative errors, especially given the industry's commitment to greater transparency. We also do not foresee that correcting these errors within a reasonable timeframe and with guidance of the Office would be a particularly burdensome task.

Offences

4. Is there any part of this interpretation of who is liable for an offence under the Act that you find unclear or that you disagree with?

In relation to Part 1, section 12 of the Act, this interpretation suggests that Directors or Partners would be the individuals liable for the offence under section one of the Act. Clear reference is made to "any individual who, not being entered in the Register, engages in lobbying in the course of that business". A great many of the individuals conducting lobbying as defined by the Act, therefore necessitating the need to join the Register, will not be "entered" as they are not Directors or Partners. It is – *prima facie* – impossible for these "certain individuals" to be entered on the Register and therefore impossible for them to commit an offence.

Given our previous engagement with the Office and previous indications, we know that this reading is almost certainly not aligned with your understanding of the situation.

In explaining exemptions from liability, schedule 1, paragraph 4 of the Act is raised – "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".

As the PRCA understands, this is to be interpreted as a reference to the estimated 80% of our industry represented by in-house professionals.

5. Do you agree with the interpretation of these terms?

The interpretation of materials particular(s) is clear.

The interpretation of administrative errors is also clear. We would however – as it is a referenced example in this consultation paper – place some emphasis on the accurate reporting of codes of conduct. Typos can be neatly categorised as administrative errors, but we would seek reassurance that declared codes not pre-loaded for selection on the Register will be held to the same standards of availability and relevance as pre-loaded codes, such as the PRCA's own.

The interpretation of non-compliance is appropriate. The PRCA campaigned for the amendment which resulted in the recognition of registrants' adherence to our code of conduct and therefore would support the false declaration of our code as non-compliance.

It should also be noted that there is a particular risk facing organisations which do not technically have Partners or Directors. In attempting to fulfil their compliance duties, there is the real risk of unintentionally making an inaccurate submission in respect of listed individuals.

6. Do you agree with the interpretation of these terms?

The interpretations here are clear and generally agreeable.

We would, however, suggest that in some circumstances "failing to disclose clients correctly" is much less an act of non-compliance and instead centres on the appropriate client name. It would be in the spirit of transparency to allow and encourage registrants to include their client's trading name (if applicable) alongside the client's registered name.

The above reform is also appropriate to Q2. posed by this same consultation, specifically in relation to "inaccurate or incomplete client names".

7. Do you agree that over-declaration of clients should be considered non-compliance?

The PRCA allows its members to err on the side of caution: it is built into our broad and real-world definition of lobbying and public affairs. Organisations can declare on the PRCA Public Affairs Register any clients that fall under this definition but who –whether internally or client-wise – might not strictly be considered as lobbying and public affairs accounts or project work. To provide a working example, that might mean the inclusion of a corporate communications client for whom work has taken on even a small political aspect.

Guidance has previously stated that organisations can appear on the Register without any plans to carry out lobbying. A number of organisations have taken up the offer, whether that be for marketing purposes, reputation purposes or simply to lessen the administrative task of joining the Register before they carry out lobbying as defined by the Act.

This is, in itself, a matter of over-declaration as there is no statutory requirement for these organisations to be on the Register.

Consistency considered, we do not believe over-declaration of clients should be considered non-compliance. PRCA members and other registrants – when in doubt as to whether they have acted in accordance with the Act – should be permitted to adopt approaches which protects their integrity and reputation.

We would also like to note PRCA members' concerns that over-declaration could come from a change in political circumstances, a change in the planned work for the client or the loss of an account or employee.

Taking a consequentialist view, a great deal of this information will already exist in the public domain. Readily available to the public, businesses and politicians on the PRCA Public Affairs Register, clients outside this narrow remit and those employees actually carrying out the lobbying and public affairs work (including clients for whom this is carried our pro-bono) can easily found and searched.

8. Do you agree that an organisation should be given 15 working days to update their information from the point of it changing?

We fully support the Office's decision to gather a range of stakeholder feedback during the technical development process. As raised by this consultation paper, the end result of this is that registrants can complete information returns at any point, rather than simply every quarter as provided for in the Act.

We therefore appreciate that this comes with some responsibility. However, we cannot see any justification for the idea that returns must be quarterly but information regarding Directors, for instance, must be updated more regularly. It is inconsistent and create a two-tier system which supposes that one is prioritised over the other.

9. Is my interpretation of historic inaccuracies clear, and if not, what further clarification would be helpful?

Historical inaccuracies will fall into two, distinct categories.

Firstly, there will be circumstances where the registrant understands lobbying as defined by the Act, declares the client(s) and then does not carry out any work which would have necessitated joining the Register. This could be because of personnel changes (on both the registrant-side and client-side), account moves, or a change in the remit of the consultant lobbying activities.

Secondly, there will be circumstances in which the registrant has not understood lobbying as defined by the Act. For example, a registrant might wrongly assume that the Act's definition covers a wider array of activities and practices than it does in reality.

10. Should corrections be signposted on the Register for the sake of transparency?

We do not disagree with the spirit of transparency that signposting represents.

However we are concerned that signposting must be a positive, informative process. It must involve adequate details and explanation to ensure that such signposting does not contribute to a false narrative that our industry might seek to avoid regulation. It must be clear, unless the situation falls under one of the various exemptions, why such a change was made and how the resolution was reached. They must not discourage companies from making these corrections.

The PRCA does not publish corrections on the industry's own Public Affairs Register. However, the fact that our transparency register is retrospective, quarterly and a requirement of membership ensures that anything other than rare administrative errors take place. For circumstances where a complaint might be made about the content of the Public Affairs Register, please see the PRCA's response to Q20 posed by this consultation for the full details of how a change might be signposted outside the Register following due process.

Information Notices

11. Is there any aspect of the situations in which a registrant may be served with an information notice that are unclear or that you disagree with?

12. Are there any other situations in which you feel it appropriate for an information notice to be served on a registrant?

Prima facie, we agree with the situations listed in which an information notice may be served.

We would require clarity on this notion of a registrant "substantially" increasing or decreasing "the volume of clients they declare without sufficient explanation". Lobbying, by its very nature, is shaped by the practicalities of the parliamentary cycle: recess, general elections, the ending of sessions and conference season. A noticeable increase in the number of clients declared during this latter example, for instance, would not in any way be unusual and should not be a cause of concern.

Agency growth and current political events will also result in a change in the name of clients: a reshuffle or election, for example, often leads to a significant increase in clients.

Additionally, the narrow definition of lobbying found in the Act is relevant here. It may be that the client number remains constant but the nature of their public affairs work does not normally necessitate direct communication with a Minister or Permanent Secretary.

We would seek reassurance that normal and appropriate business practices for our industry would be considered when the "substantially" qualifier is applied.

For the sake of transparency, as noted in our response to Q12 posed by this consultation, it may be appropriate to add "whistle-blowing from a reputable source".

13. Do you agree that one or more of these criteria could be considered reasonable grounds for believing an organisation to be conducting the business of consultant lobbying?

14. Are there any other criteria which would suggest that an organisation is carrying out the business of consultant lobbying?

This consultation makes reference to a "relevant trade body membership list" and the PRCA is just one starting point. We must reiterate that the mere fact of belonging to the general membership list of the PRCA is by no means an assurance that the organisation conducts public affairs.

The meaning of "incidental", as mentioned in a response to the Office's previous consultation, must not become a means by which other industries – legal and financial, for example – receive far less scrutiny, particularly in light of our long standing commitment to transparency. Given reassurances from the Registrar and the current makeup of the Register, we are confident that the Office has recognised this and acted accordingly when the Register was launched. We hope that this continues when it comes to identify potential non-registrants in the future.

The narrow definition of lobbying in the Act means that simply having a public affairs team is by no means any guarantee that any work requiring the organisation to join the Register is being carried out. We would appreciate if this was made as clear as possible on the information notice (please see the PRCA's response to Q15 posed by this consultation). Considering the other side of the matter, an example we previously raised – and we believe to be relevant again here – where teams that structure themselves by sector rather than discipline or who might not consider their work to be lobbying. This

is a matter of education, given the multiple co-existing definitions of lobbying which exist in the industry.

Addressing the reference to "whistle-blowing from a reputable source", across government this is frequently used to refer to a worker who suspects wrongdoing by their employer. The PRCA has always upheld and preserved the right for any individual to make a complaint against our industry: giving access to due processes is the most effective way of dispelling myths and properly addressing falsehoods, as well as ensuring the continuing high ethical standards of the industry. An individual or organisation does not need to be a member of the PRCA to make a complaint against a member, as noted in our response to Q20 posed by this consultation.

With relations to the above, we continue to have concerns centred on the differentiation between formal and informal communications with Ministers and how this ought to be recorded. Consultant members of the PRCA regularly engage with Ministers and Government officials at events and on other occasions. This is often not on behalf individual clients. This issue remains subject to interpretation and ambiguous when simply considered on its own. Whistle-blowing, on top of this, adds a further dynamic. We believe that various information notices or further investigation will be the result of whistle-blowing hinged upon whether or not the communication with a Minister or Permanent Secretary necessitates joining the Register or is indeed informal.

Framing this all, there is a sound argument that appearance in a Ministerial diary return or whistle-blowing from a reputable source are fair criteria for further investigation in themselves. The other criteria listed are not, individually, reasonable grounds for investigation.

Addressing the question of other criteria, a number of promotional and reputation activities – blogs and credentials, for instance – would be sensible additions.

15. Is there any aspect of the content of/approach to the proposed information notices that is unclear or that you disagree with?

To show an appreciation of the wider contexts and, indeed, the wider lobbying and public affairs work that sits outside of the Act's definition, we suggest that the information notice be amended to include the following under the existing subheading "Information requested":

> The information requested here relates to specific definition of lobbying found in the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014. Public affairs, wider communications and other lobbying work which does not necessitate the joining of the Register may have also taken place.

This would be a helpful prompt to organisations served with an information notice who have not previously engaged with the Registrar formally or informally. There will also be organisations which may have limited experience of voluntary industry regulation and this should properly colour the approach taken to ensure they do not pay little attention to this particular definition of lobbying and the nuances of the Register.

We believe that the Office should be focusing its attention on those companies and organisations who conduct lobbying as defined by the Act but, sitting outside of the traditional industry, continue to act beyond the scope of the Register. This risk based approach should be properly considered when it comes to efficient allocation of the resources of the Office.

16. Is there any aspect of these limitations that is unclear or that you disagree with?

These limitations, specifically those related to legal advisers, are clear, appropriate and workable.

They also go some way to recognising the Office's reassurances to PRCA members that the Act's reference to "incidental" lobbying would not become means by which engagement with the legal profession would result in non-registration.

17. Is there any aspect of the interpretation of this offence that is unclear or that you disagree with?

Fabricated information, information that is incorrect and information which fails to address all requests made in an information return are clear offences and we believe that has been appropriately interpreted here.

It should be reiterated that a potential registrant might non-purposefully provide incorrect information due to a limited understanding of lobbying as defined by the Act. We recognise the Office's standing commitment to be educative – rather than punitive measures – in relation to situations such as this.

Defences

18. Do you agree that these circumstances constitute due diligence to comply with the requirement to Register?

We welcome the suggestion that a genuine belief that the guidance is incorrect in its interpretation of the Act, or belief that the Act does not apply to their business, could be taken into account as a defence.

Members of the PRCA have consistently engaged with the Act and the Office, particularly when it comes to their view of the correct or incorrect interpretation of the Act. For example, a previous consultation from the Office (*Conclusions on the Consultation on the Scope of Guidance for the Register of Consultant Lobbyists* – published Tuesday 23rd December 2014) made reference to the "spirit of the legislation" and sought views on the suggested disclosure of the Minister with whom a particular communication was made. Members were clear that they deemed this an incorrect interpretation of the Act.

19. Are there any other measures that an organisation could take to exercise due diligence?

Attendance at the Office's event, hosted at 1 Horse Guards from 17:00 – 18:00 on Monday 23rd March, goes some way to suggest that the organisation has exercised due diligence. As an event held in standard working hours and before the Register launched, it therefore represents some form of commitment to attentiveness (opportunity cost, among other noteworthy reasons, considered).

All PRCA guidance on the topic, including our bulletins relaying guidance and the launch of the Register, reiterated that points of clarification ought to be made directly with the Office.

20. Do you agree that the Registrar should disclose conclusions to enforcement matters public interest to do so?

21. Should the Registrar record enforcement activity taken against a registrant on the Register?

The PRCA has a set Arbitration and Disciplinary Procedure, a mechanism whereby the Professional Charter of the PRCA is seen to be capable of enforcement. It also provides an effective and fair mechanism for processing any complaints and provides the option of arbitration and settlement by mutual agreement. Our Professional Practices Committee is empowered to impose sanctions which it may publish. This is not published on our Public Affairs Register itself but is kept separately in the newsroom of our website.

The reasons given in the consultation are to "provide an education", "help clarify a position" and that "the issue is already in public domain and publishing details would help to mitigate incorrect speculation".

The third reason is agreeable and aligned with the PRCA's own work to correct misconceptions that exist around the lobbying industry. However, the purpose of the first and second reason would be best served by the issuing of guidance. If a lack of clarity or a position of contestation has led a registrant to the point of enforcement, it is clear that the problem may well be structural rather than individual. To ensure the efficient allocation of the Office's resources, guidance ought to be issued.

Registrants ought not to be a test-cases for matters best addressed with guidance.

22. For how long should disclosure of enforcement activity be kept in the public domain?

This consultation paper makes an earlier reference to the Information Commissioner's Office (ICO) and its occasional publication of enforcement activities. Their policy is to keep enforcement notices in the public domain for two years. We believe this would be an adequate length of time.