



**Public Relations Consultants Association (PRCA) submission to the Political and Constitutional Reform Committee Inquiry on the Transparency of Lobbying Bill, Non-party Campaigning and Trade Union Administration Bill**

**Submitted by:**

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**Executive summary**

1.1 In the absence of pre-legislative scrutiny, the PRCA fully supports the Select Committee's decision to hold a further inquiry into the Government's Transparency of Lobbying Bill.

1.2 The PRCA is deeply disappointed with the Bill, which we see as unfair and unfit for purpose. It is unfair as it targets a tiny number of lobbyists that will have to pay significant costs to register. It is unfit for purpose as it will reduce, rather than enhance, transparency by covering fewer organisations, employees, and clients than are currently covered on existing voluntary models.

1.3 The PRCA strongly supports in principle a statutory register of lobbyists that increases transparency. Therefore we are strongly against this Bill for failing to achieve this aim, and because it will unnecessarily harm the industry's reputation in the process.

1.4 We believe that no statutory register is a better outcome for transparency and for the industry than this Bill.

**PRCA Code of Conduct and Voluntary Register**

2.1 The PRCA is the professional body that represents around 500 corporate members from the UK public relations and public affairs industry, in the public, private and charitable sectors, as well as individual and freelance practitioners.

2.2 Members of the PRCA that conduct public affairs or lobbying services are bound by a Public Affairs Code of Conduct, and must submit their details to a Public Affairs Register that is updated quarterly and posted to the PRCA website.

2.3 The Register is retrospective, covering those who have conducted lobbying activity in the three months prior to publishing, and includes the following details: an office address and contact information, a list of all staff that conduct lobbying services, and a list of all clients who benefit from these services.

2.4 The latest copy of the Register can be found at [www.prca.org.uk/paregister](http://www.prca.org.uk/paregister). Currently there are a total of 83 organisations represented on the PRCA Public Affairs Register, with 1,093 individuals and 1,330 clients. This includes 55 public affairs consultancies and 28 in-house lobbying departments.



## Is the definition of “consultant lobbyist” in clause 2 of the Bill likely to lead to a register that enhances transparency about lobbying?

3.1 The definition of a “consultant lobbyist” in clause 2 and the list of exceptions in Schedule 1 are likely to reduce, rather than enhance, the amount of transparency currently available to the public around lobbying in the UK.

3.2 The parts of the definition likely to reduce transparency are as follows:

### Clause 2

- (1) ...a person carries on the business of consultant lobbying if-
- (3) ...communications... are oral or written communications made **personally** to a **Minister of the Crown or permanent secretary**.

### Schedule 1, Clause 3

- (1) A person does not carry on the business of consultant lobbying if –
  - (a) the person... carries on a business which is **mainly a non-lobbying business**, and (if) the making of communications...
  - (b) is an **insubstantial** proportion of that business.”

3.3 First, the vast majority of professional lobbyists work in organisations that are “*mainly a non-lobbying business*”, which the Government seeks to exclude. In our previous submissions to the Government and this Committee we called for the Bill to capture the 80% of the industry that work in-house. They are all automatically excluded by Schedule 1, clause 3(1(a)). However, it also excludes a great deal of lobbyists who work “in return for payment” and “on behalf of another” that the Government seeks to include in clause 2(a).

3.4 For example, a majority of the consultancies on the PRCA Public Affairs Register conduct lobbying services for clients, but lobbying is just one of a number of services our members perform. The most common is public relations or communications. In some of our largest members the lobbying function is not the *main* function of that business. This also applies to other businesses that perform consultant lobbying on behalf of a client in return for payment including management consultancies, think tanks, trade bodies, lawyers and accountancy firms. If these organisations were captured on the Register it would undoubtedly increase transparency. Therefore the PRCA strongly holds that this exception is unnecessary and counter-productive to the Government’s stated aim to increase transparency.

**Case Study** - PLMR has 27 employees and 32 clients listed on the PRCA PA Register. It would like to appear on the Statutory Register, but cannot do so: “*(The proposed register) is so narrow that we, a company called ‘Political Lobbying & Media Relations’, wouldn’t even be eligible to be on it. Why? Because we do media relations too, and crisis communications, digital strategy, media training and campaign advice. So that makes us a ‘mainly non lobbying business’ in line with the Bill’s definition. And that means we can’t sign up.*”

3.5 Second, even if the “mainly non-lobbying” exception is removed, none of the organisations in 3.4, including public affairs consultancies, would be captured due to Schedule 1, clause 3(1(b)). The PRCA has yet to see evidence that any “consultant lobbyist” spends a *substantial* amount of its business communicating *personally* (oral or written) with Ministers or permanent secretaries.

3.6 Lobbying consists of a range of skills, services and strategies. Lobbyists that are employed by public affairs consultancies may contact Ministers sporadically, but these organisations are hired by clients primarily for their expertise and advice. Anecdotal evidence suggests it is more likely to be the in-house lobbyist, working for the client who will be contacting the minister personally. If the key aim of this bill is transparency, then it is wrong to focus solely on the fewer than 1% of meetings that take



place by consultancies without the client present<sup>1</sup>. The Bill fails to understand this important point, which again demonstrates why the “mainly a non-lobbying business” exception is flawed.

**Case Study** - Connect Communications has 19 employees and 49 clients listed on the PRCA PA Register, but would not be covered on the Statutory Register for this reason: *“Connect provide a range of services to clients to help them monitor the political environment and analyse its impact on their organisation. We work with our clients to research and test political analysis, develop strategy, design programmes of activity geared to communicating and developing their messages. We organise events, produce research, arrange meetings, and advise on broader corporate communications programmes for clients.*

*“We believe in the principle that the client is the best advocate, which is why all of our strategy is geared around supporting the client to lobby. We facilitate or prepare our clients for meetings with Ministers and if we attend a meeting with the client it is in a supportive capacity – usually taking a note of the meeting. We do not usually directly lobby on behalf of a client. Engaging with Ministers and permanent secretaries is by no means the focus of the vast majority of our work with clients.*

*“Under the Bill as published we believe we would be considered a ‘non-lobbying’ business, both because of the lack of direct lobbying we actually undertake and because activity focused on Ministers and permanent secretaries is an ‘insubstantial’ proportion of our work.*

*“For these reasons, and whilst we are a dedicated political communications agency based in Westminster, we do not believe that we would be required to register under the Government’s proposals for a statutory register of lobbyists.”*

3.7 The Government is therefore wrong to only capture the direct lobbying of **Ministers of the Crown and permanent secretaries**. It would be far more appropriate to declare employees and organisations that speak to MPs, SpAds, and a broader range of civil servants. The PRCA, Chartered Institute of Public Relations (CIPR) and Association of Professional Political Consultants (APPC), produced a definition of lobbying, which captures influencing “government” including:

- (a) central government, devolved government, local government,
- (b) members and staff of either House of Parliament or of a devolved legislature,
- (c) Ministers and officials, and
- (d) public authorities (within the meaning of section 6 of the Human Rights Act 1998).<sup>2</sup>

3.8 This would undoubtedly cover more organisations and increase transparency. Simultaneously, we produced sensible exceptions such as residents lobbying a local MP on a constituency issue, which could not be described as professional lobbying.

3.9 Consequently, the Bill’s interpretation of lobbying is so specific that we expect it to cover only a tiny proportion of the lobbying industry. The PRCA conducted a snap poll of the 83 organisations on our Public Affairs Register after the Bill was published, with fewer than 25% agreeing that they *might* be required to Register.<sup>3</sup> The 28 in-house teams recognised they are automatically excluded, and we have yet to have a member confirm to us that they would be required to register as the Bill stands. Therefore it is impossible to agree with the Government’s Impact Assessment that there will be “approximately 1,000 consultant lobbyists” (circa 720 organisations) affected by the Statutory

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<sup>1</sup> A recent study has shown that out of 6,700 ministerial meetings between May 2010 and June 2011, fewer than 20 were with multi-client consultancies: [Who’s Lobbying Blog](#)

<sup>2</sup> [PRCA, CIPR, APPC Definition of Lobbying](#)  
[Definition of Lobbying FAQ](#)

<sup>3</sup> <http://news.prca.org.uk/just-23-of-lobbyists-believe-they-will-be-captured-by-statutory-lobbying-register>



Register. Instead of increasing transparency, it is likely to capture fewer organisations than are covered already by existing voluntary models.

**Is the definition of “consultant lobbyist” in clause 2 of the Bill and the list of exceptions in schedule 1 of the Bill likely to have any unintended consequences?**

4.1 The Bill produces two harmful, unforeseen consequences to the industry: it unfairly distorts the market, and it potentially prevents legitimate organisations from lobbying.

4.2 It unfairly distorts the market by capturing only a few consultancies that are already signed up to existing voluntary models, such as the PRCA Public Affairs Register. The lobbying industry wants increased transparency, but it also wants a level playing field. The Government has yet to answer successfully why a small section of the industry should be legally required to pay significant costs (see 6.4) to declare its clients and not its competitors in management consultancies, law firms etc., as well as in-house teams. The Government failed to recognise that it will distort the lobbying market in Annex G (1) in its Impact Assessment, where it did not see any “available substitutes” that might affect demand.<sup>4</sup>

**Case Study** - MHP Communications, which is the largest organisation on the PRCA Public Affairs Register with 160 employees and 129 clients registered, said: *“It is commercially unfair and morally wrong to differentiate between different classes of ‘consultant lobbyist’. It harms democracy to allow some organisations to hide behind claims of client confidentiality and so not reveal for whom they are working. If the Government is going to change its flawed Bill, it should start here: make sure everyone involved in consultant lobbying is actually covered by its provisions.”*

4.3 The second unintended consequence is that the Bill could potentially prevent legitimate organisations from performing their lobbying activities. The Bill states:

**Clause 1: Prohibition on consultant lobbying unless registered**

(1) A person must not carry on the business of consultant lobbying unless –  
(a) the person, or  
(b) the person’s employer,  
is entered in the register of consultant lobbyists.

**Clause 12**

(1) *It is an offence for a person to carry on the business of consultant lobbying in breach of section 1(1) (lobbying whilst unregistered).*

4.4 The PRCA agrees that sanctions are necessary to deter non-compliance. However, due to the Bill’s narrow definition there are likely to be legitimate lobbyists and their organisations being prevented from performing their professional services. If they are ignored by policymakers because they do not appear on the Register then it could also have an adverse effect on free speech, which in turn will lead to policymakers taking increasingly uninformed decisions.

**Is the information that the Bill requires to be listed on the register sufficient to enhance transparency about lobbying?**

5.1 No. Further to 3.9, it is likely that there will be a smaller number of organisations, employees and clients on the Statutory Register than available on existing voluntary models. There will be fewer organisations and clients due to the narrow definition. There will be fewer employees because the Bill stipulates:

**Clause 4**

(2) *The entry for each registered person must include –*

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<sup>4</sup> <http://www.parliament.uk/documents/impact-assessments/IA13-22A.pdf>



- (a) *in the case of a company –*
- (ii) *the names of its directors and of any secretary or shadow directors.*

5.2 This means that only directors that spend a *substantial* part of their time directly communicating with Ministers or permanent secretaries will be required to register. This will take out a significant majority of the 1,093 employees currently on the PRCA Public Affairs Register.

5.3 The Bill also does not require pro bono clients to be registered by focussing on “return for payment” in clause 2 (1(a)). This will also reduce the number of clients on the Statutory Register compared to industry models.

### **Are there any potential problems with the role envisaged for the Registrar?**

6.1 The PRCA has two fundamental concerns with the role envisaged for the Registrar: its ability to decide who should go on the Register, and its cost.

6.2 The Bill is right to create a Registrar that is independent of government and industry. This is the only way to ensure public confidence in the Register. However, the Registrar must not have the power arbitrarily to decide who should and should not be required to register:

#### **Clause 21**

*(1) The Registrar may give guidance about how the Registrar proposes to exercise the functions under this Part.*

*(2) The Registrar may do so, in particular, by publishing guidance—*

*(a) as to cases which the Registrar would, or would not, regard as falling within any of the exceptions in Part 1 of Schedule 1;*

*(b) otherwise as to the circumstances in which the Registrar would, or would not, consider that a person is carrying on the business of consultant lobbying;*

6.3 Guidance from Parliament by this Bill must make it clear to the Registrar who should be required to register. The PRCA does not wish to see a Registrar take a unilateral decision to require certain organisations that do not necessarily comply to register. In particular, this could lead to unfair “offences” and corresponding sanctions.

6.4 The potential cost of the Registrar is alarming. As stated above (3.13), the PRCA believes that the Government will fall well below the central estimate of 720 organisations it expects to register. This has a serious impact on its calculations on how much it will cost each organisation to register. The PRCA agrees with the Government that the Register should be paid for by the industry (i.e. those on the Register). However, the Government expects the Register to cost £500,000 in its first year to set up and then £200,000 annually thereafter. Therefore we cannot support a system that may require a small number of consultancies to pay thousands of pounds annually for the simple act of registration. The PRCA made clear in its consultation submission that the cost of registration must act as an *incentive* to register.

6.5 It should also be noted that in the Impact Assessment it states that in-house lobbyists might have to pay £20 to ascertain that they do not have to register (and then £10 annually thereafter). It is absurd that an in-house team would have to pay this for not registering. Instead such a fee level should be used as an incentive for all lobbyists to register.

### **Does the absence of provision for a statutory or hybrid code of conduct in the Bill present any problems?**

7.1 The Bill has failed in its only aim of increasing transparency. We also do not see any evidence to suggest that lobbying (especially public affairs consultancies) requires external regulation in addition to a statutory register. Thus the PRCA is concerned that proposals for a statutory code of conduct



would distract the Bill from achieving increased transparency. Returning to the Government's narrow definition of lobbying, it would be unfair to regulate one section of the industry and not others.

7.2 The PRCA is committed to raising ethical standards, and welcomed the suggestion by the Committee of a hybrid code, which we do not envisage would create an added regulatory burden, but may serve to encourage more lobbying organisations on a statutory register to sign up to existing, robust voluntary codes. On the other hand it would be a great concern to see consultancies join a statutory code of conduct, which could have the adverse effect, particularly in regards to cost, of consultancies leaving voluntary models, which would reduce transparency and reduce the high ethical standards set by existing codes.

7.3 It should also be noted that the PRCA is currently updating its own code of conduct to include the definition of lobbying it produced with the APPC and CIPR (see 3.7) following a consultation with our membership earlier this summer. An advantage of voluntary codes - compared to a potential statutory code - is their flexibility; we can change our code to reflect the changing lobbying and political environment relatively quickly. They also nurture high ethical standards – our members join the PRCA to demonstrate to their boards and/or to their clients that they uphold these standards.

**Are there any further issues raised by Part 1 of the Bill, including drafting issues, that you would like to draw to the Committee's attention?**

8.1 The PRCA is disappointed that the Bill has been drafted, without pre-legislative scrutiny, in response to a series of Parliamentary scandals, none of which involved "consultant lobbyists".

8.2 The PRCA still strongly supports in principle a statutory register of lobbyists that increases transparency. However, this Bill fails in this aim, and has been drafted in a way that appears to have ignored the views of the industry and interested stakeholders. We fear that the industry's reputation will suffer as a result if the Register is not seen to increase transparency or prevent further Parliamentary scandals.

8.3 The lobbying industry is united in favour of a universal statutory register and our members already disclose their staff and clients. We believe that transparency can be increased if a statutory register covers all lobbyists not currently on the existing voluntary models.

8.4 Therefore the PRCA remains in favour of a statutory register of lobbyists, but it does not support this Bill. We believe that no statutory register is a better outcome for the industry and for transparency than what is currently proposed.