

Chartered Institute of Public Relations – response to recommendations made by Public Administration Select Committee on Lobbying

Introduction

The Chartered Institute of Public Relations (CIPR) is the representative body of the UK public relations industry. Established in 1948, and with over 9,500 individual members, the CIPR is Europe's largest professional body for public relations practitioners, and includes in its membership a large number of communications professionals who specialise in public affairs. The CIPR is responsible for promoting the standards of excellence expected of its members and by their clients in their professional relationships and business dealings.

The CIPR was granted its Royal Charter in 2005, after an exhaustive process of examination by the Privy Council. In the course of that process, the Government accepted the CIPR to be fully representative of the public relations industry, and acknowledged that we operate in the public benefit, with a full education and training structure underpinning membership. Crucially, we also operate a rigorous Code of Conduct, to which all members must adhere.

This response to the recommendations in PASC's January 2009 report has been put together following full consultation with the CIPR's membership and takes into account comments received during that process.

Transparency and self regulation

There is a suggestion throughout the PASC report that there is serious problem with the interaction between lobbyists and the lobbied in the UK. We do not recognise that there is such a systematic problem. If anything recent controversies in the House of Lords suggest that the lobbied, rather than lobbyists, should be more heavily policed. However we do recognise that there is a perception in some quarters that there is abuse.

The CIPR's policy is to ensure that all of our members adhere to the highest standards of professionalism as set out in our Code of Conduct, and we support any system that makes this more effective. We have no objection in principle to the idea that members engaged in lobbying should in addition conform to the requirements of a statutory or Parliamentary based system of regulation (as they already do in many areas of their professional lives) provided that:

- It is specified exactly who is controlled by regulation
- Such a system is not merely a 'box ticking' exercise
- Government and other authorities recognise that they have an important role to play in ensuring regulation of the system, and that loopholes such as describing meetings as 'fact finding' or making arrangements involving only junior officials are avoided
- The effect on the quality of public service when extensive restrictions on employment opportunities are imposed also needs to be considered.

- Regulation does nothing to interfere with the essential democratic role of lobbyists to help ensure that governments and regulators have essential information before them when making decisions

Although the report does recognise the crucial value of lobbying in the democratic process, we think that more consideration should be given to this point. As we stated in our original written evidence to PASC, lobbying in its broadest sense enables legislators to have access to expert opinion; allows policy proposals to be 'reality checked'; and allows those with a legitimate interest in the political process to provide comment on proposals which affect them. When the ability to urge caution or provide expert advice is diminished, so too is the quality of legislation. It is our view that the widest possible consultation can only result in better policy decisions and more effective legislation. Public affairs consultancies and practitioners do not only represent the interests of large corporations – many also represent charities and not-for-profit organisations, with some providing pro-bono assistance or reduced rates. All organisations – and their representatives – deserve the right of free access to MPs, Ministers, Civil Servants and Special Advisers. Any attempt to fetter that access would undoubtedly damage the political process. A properly-functioning public affairs profession is therefore, in our opinion, one of the keys to an effective consultation and political process.

Furthermore, insofar as 'corporate' lobbying is concerned, a significant element of the contact which government has with business – and perhaps even the majority of it – is not lobbying at all. Instead, it is high level meetings between ministers and senior officials, and chief execs/directors of businesses. These might be bilateral meetings or multi-party forums, where ministers or officials convene panels involving leaders from a number of businesses and other organisations to help with formulation of governmental policy. Rather than lobbying, these meetings are more general discussions about the business and political environment, which benefit both government and business and in which government and business find out about what each other are doing. Are the chief executive and directors who attend such meetings to be defined as lobbyists?

Regulation must apply to all lobbyists to ensure that there is not a two-tier system of those talking to government. Any system of self-regulation must be seen to have integrity and key points to this are the provision of a level playing field and universality – lobbyists from whatever background or employer must be transparent and honest advocates. It is also important that regulation is financially and administratively accessible to all, from sole traders to larger consultancies.

We accept that there is still an issue over how to bring lobbyists into a self-regulatory system without external sanctions or incentives. Both 'carrot' and 'stick' measures would need to be in place to give individuals an incentive to

participate. There is a need to understand what sanctions can be taken against individuals / organisations.

A combined body as proposed in para 26(i) of PASC's conclusion could be useful and we feel that this option should be vigorously explored. To this end the CIPR has joined a working party with the APPC, PRCA and independent individuals with specific expertise to consider this and other aspects of PASC's recommendations, and this working party will publish its conclusions and proposals separately.

Ethics are fundamentally a matter for individuals. There is certainly merit in companies getting individual employees to sign up to a Code of Conduct. Individual and company codes need not be mutually exclusive, and the proposed Public Affairs Council could help resolve this issue.

Training in ethics and the conduct of business should be encouraged for public affairs practitioners to help drive up standards. If regulation is made statutory then such obligations should be mandatory.

In the event that an umbrella body were to be established, CIPR members would of course continue to be subject to the CIPR's Code of Conduct. There may be procedural issues in dealing with disciplinary cases jointly with other bodies, and in order to accommodate these it may be necessary to amend the CIPR Regulations. Other points to note are:

- Under the CIPR Code, individuals are held accountable for their actions while still in membership even if they subsequently leave the Institute.
- PASC (p16 para 47) suggests that the regulation of individuals cannot affect corporate behaviour. We respectfully disagree. Examples from other industries show that this is not the case. For example surveyors and accountants are regulated as individuals and this regulation has a clear impact on the attitude of their firms.
- The same paragraph also states that the CIPR cannot take corporate sanctions. However we are in the process of drafting amendments to the CIPR Regulations with the aim of stating explicitly that members are responsible for the actions of subordinates or subcontractors in relation to work that has been complained about. These amendments will go to member consultation later this year.

The CIPR is already in the process of recruiting a panel of lay members from outside the public relations profession to sit on its Professional Practice and Disciplinary Committees to consider complaints against CIPR members. This is being done in the public interest.

With reference to para 26(iii) of the report's conclusion, we would note that the CIPR is a professional chartered body rather than a trade association. It is part of the CIPR's commitment under its Royal Charter that it must act for the public benefit – see http://www.cipr.co.uk/charterspecial/charter_170205.pdf para 3.

This sets the CIPR apart from the other bodies representing the public relations / public affairs professions.

Kite mark scheme

A kite mark could provide a commercial advantage and as such may contravene competition law. If it were to be introduced it would have to set a universally high standard, be monitored, regulated and meaningful and should include training provision on Codes of Conduct and ethical issues. It could be a mandatory requirement for lobbyists to attend training in these areas.

There are questions over how this requirement could apply to companies rather than individuals, and whether government would offer assurances that the kite mark would be actively used by government in procurement. It would not be appropriate for only a proportion of staff to undergo training – all would have to be properly trained for a company to achieve the kite mark. The CIPR would be happy to work towards such a scheme as part of a lobbyist licensing process (see response to para 34 below).

A register of lobbyists

A mandatory register would be the only way to guarantee a form of universality – although this would depend on the definition of 'lobbyist' used by the government. Everyone has a legitimate right to lobby the legislature so a level playing field must apply. While the CIPR recognises that there is a difference between activities of 'professional lobbyists' and individual members of the public contacting government, such a distinction should not exist between charities / not for profit / businesses, individually or through associations – whether working for consultancies or not, all of these individuals are paid by their employers or clients to undertake lobbying activity.

The CIPR is concerned that a distinction has arisen in the public mind between "good" and "bad" lobbyists which is harmful to good government. Broadly speaking, this distinction seems to set the activities of corporate lobbyists (the 'bad') against "good" lobbyists who are often identified as those advocates who represent charities, NGOs or environmental campaigners. Whilst such groups tend to eschew the term lobbying, there should be no doubt that this is what they are doing. Standards of scrutiny and transparency must apply to all lobbyists and not just those representing business.

A voluntary scheme could affect only those who tend to comply anyway without addressing those who are less reputable. The CIPR has considerable doubts that a voluntary register could work unless there are adequate incentives to register and sanctions for failure to do so. However, if MPs and members of the House of Lords refused to deal with those not on the register, it would become mandatory by default and this would put the responsibility on government as well as lobbyists. This should apply to contacts with advocacy as the objective, rather than fact-finding.

We envisage three possible options for future regulation of lobbying:

1. Continuing with a self regulatory system (introducing any changes to the existing system that may be necessary to ensure its effectiveness)
2. An external industry regulator – 'OfLob'. This would ensure that individuals who are not covered by membership of one of the existing bodies are regulated, as they could register directly with this regulator. This would address the public interest concerns raised by PASC.
3. Introducing a licensing system for lobbyists, where licences could be issued by either government or the regulatory body and imposed by statute. The CIPR (and other industry bodies) could implement the licensing for its own members. Some may feel that there is a conflict of interest in representative bodies running such a scheme for their own members.

On 34b) the CIPR would not support the recommendation that a register should cover all those outside the public sector only – there is evidence that a large proportion of expenditure on lobbying comes from the public sector. In order to achieve the universality that is key to creating a fair system, it seems illogical that the public sector should be exempt from any rules regulating public affairs consultants from other sectors. We would also note that currently, public sector organisations have to disclose details of any lobbying activity if subject to a Freedom of Information request – would the new regulations give exemption from such requests?

On 34d), it would be useful if a more detailed definition of what '*information of genuine potential value to the general public, to others who might wish to lobby government, and to decision-makers themselves*' entails, and who would ultimately be responsible for deciding this.

Content of lobbying register

Looking at the proposals for the content of a lobbying register (from PASC's conclusions, p. 66 para 35), the CIPR would support points a, c and d. Indeed, on point a) it was noted in discussion of the PASC report among CIPR members that in dealings with legislators, it was simply bad lobbying practice to fail to disclose who you are representing or acting for.

On point 35 b:

We understand that at present full disclosure of client lists is part of the PRCA and APPC codes and we understand that to be rigorously enforced. The CIPR Government Affairs Group code insists that advocates disclose who they are working for to those being lobbied. There is no requirement for this to be made public on a website.

Valid reasons have been put to us for respecting a client's desire for confidentiality. Amongst these are:

- Consultancies carrying out public affairs work on behalf of a client which may be linked to other work that they may not wish to disclose;
- The risk of harassment of practitioners based on their client lists if these are 'controversial' or 'difficult' clients. This has already happened.
- What is the position on overseas contracts? UK consultancies often work for clients outside the UK – would disclosure apply to international clients? If so, there could be a commercial disadvantage to UK firms, which are large net exporters of services.
- There seems to be a conflict between what PASC is asking for and a consultancy's duty of care towards their clients. This information belongs to the client organisation, and not to the lobbying agency / consultancy
- This information is only relevant to those being lobbied
- Smaller consultancies and sole traders have reason to believe that larger consultancies may use published client lists to target and 'poach' clients.

We are working with PRCA and APPC for a better mutual understanding of how their members deal with these issues.

In the interests of creating a level playing field, it should be noted that lawyers undertaking lobbying activities argue that they are protected from disclosing client lists under Solicitors' Regulation Authority (SRA) rules. Transparency must apply to all if it is to be effective.

It is not clear whether the proposals on disclosure would apply to in-house lobbyists – for example, would they be obliged to share details of all members and every funder including those who advertise or sponsor?

It could be a condition of receiving a lobbying 'licence' or kite mark that certain questions are asked about client lists - but these need not be made public if not absolutely necessary. Government could contact the licence-granting body to find out details of clients, but these need not be in the public domain.

The question of how transparency is best safeguarded in the CIPR's own Code of Conduct will be reviewed through the Professional Practices Committee and Executive Board. However, if this were to result in amendments to the CIPR's Code, there could be specific, defined examples of legitimate exceptions to a duty of disclosure.

On point 35e:

Freedom of Information laws are already in place and there is potential conflict between these and some of PASC's proposals which do not seem to respect commercial confidentiality (as FOI laws do). Existing FOI laws are broadly effective and before making any changes, it would be necessary to prove that this is not the case.

The CIPR also feels that full disclosure of minutes could have damaging effects. For example:

- Disclosing market sensitive information could have a negative impact on a company's share price. There are cases where disclosure of details of meetings would not necessarily be in the public interest – for example, financial rescue packages for banks & other institutions
- Disclosure of lobbying activity related to procurement could compromise the confidentiality of the tendering process on both sides.
- Sections of the media are hostile to lobbyists particularly those who represent business interests. They seize upon information relating to perfectly legitimate meetings as examples of how the system is bent. We fear that if such information was published as a matter of course it would harm the democratic process. Civil servants and Ministers who feared media attack would be much less likely to meet with advocates and would therefore be less well informed.
- Disclosing meetings which relate to UK policy positions within the EU, the OECD or the G20 for example would have a detrimental impact on UK negotiations
- The proposals are drawn so widely as to include informal meetings between for example, MPs and civil servants who attend receptions and have conversations with advocates. For example at a recent CIPR reception an MP met with a number of individual advocates. It is impracticable that the MP or the lobbyist would be expected to register the “minutes” of such “meetings”.
- Routinely disclosing all minutes of meetings and contacts between business and government might make both government and business less inclined to engage with each other and to engage in full discussions. This could harm both ‘UK plc’ and the effectiveness of government policy.

An alternative option may be to amend the proposals to take these circumstances into consideration e.g. release this information within a specified time frame unless it is stamped as ‘confidential’.

Another possible effect of requiring this kind of detailed information might be that government / decision makers would be less inclined to have meetings or conversations for other purposes, such as seeking information, and the democratic process would therefore be harmed. Creating barriers to dialogue in this way makes government more ‘divorced’ from the rest of the world and destroys the proper relationship between government and citizens.

Requiring such information also contradicts PASC’s suggestion (in paragraph 34 (e)) that any system of regulation should primarily draw on information which is already collected for other purposes.

Conclusion

While we welcome PASC’s report and the opportunity it offers to raise awareness of the importance of ethical conduct and professional standards,

we nonetheless have some serious concerns about some of the committee's proposals. Further consideration needs to be given to areas such as how to define lobbying, the content of a register of lobbyists and ensuring any mandatory or statutory registration / regulation are applied across the board (including, for example, the public sector).

We are committed to working with our own members and with other bodies representing lobbyists to ensure that public and government trust in the industry are founded on a system of rigorous and effective regulation. At the same time, government has a responsibility to take action to address those areas which fall directly within its own remit.