

Public Administration and Constitutional Affairs Committee

Propriety of governance in light of Greensill

Evidence submitted by Professor Justin Fisher (Brunel University London)

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Justin Fisher is Professor of Political Science at Brunel University London. He was special advisor to the Public Administration Select Committee inquiry into lobbying in 2007/8, and was a witness to the Political and Constitutional Reform Select Committee hearing on the government's proposals on a statutory register of lobbyists in 2012. He also advised the Committee on Standards in Public Life on its response to the government's proposals on a statutory register of lobbyists in 2012. He was a member of the working party, which ultimately led to the establishment of the UK Public Affairs Council (UKPAC).

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I wish to respond to the following questions:

1. How should lobbying activity be regulated?
2. How far does the Lobbying Act provide an effective statutory basis for the regulation of lobbying?
3. Are key aspects of lobbying omitted and, if so, how can they be addressed?
4. Are sanctions for those who breach the current rules sufficient?

Executive Summary

- Lobbying is a positive aspect of democratic life and is undertaken by a broad range of political actors – not just the private sector.
- The Register of Lobbyists covers only a tiny proportion of lobbying activity.
- There has been progress in self-regulation of lobbying conduct via the Public Affairs Code, but its coverage is far from complete.
- The Register of Lobbyists should be expanded to cover all professional lobbying activity.
- The existing Public Affairs Code should apply to all professional lobbyists.
- An independent self-regulatory body should be established to oversee and enforce the Public Affairs Code.
- Failure to establish such an independent body within a reasonable timeframe should result in statutory enforcement of the Public Affairs Code.

1. How should lobbying activity be regulated?

- 1.1 Lobbying is a positive aspect of democratic life. It provides a means by which interests can be represented to decision-makers, frequently provides specialist expertise which may otherwise be unavailable, and is a further link between civil society and the state.
- 1.2 Lobbying is undertaken by a broad range of political actors. In this and in other enquiries, there has been a tendency to focus only on lobbying as it relates to the private sector. Extensive lobbying also takes place in the charitable, not-for-profit, trade union, and public sectors. There are no good kinds or bad kinds of lobbyists – there are just lobbyists.
- 1.3 Like all political actors, such as political parties, lobbyists require a form of regulation to deliver transparency, high standards of conduct, and as with party finance regulation, seek to deliver an environment where relative wealth does not enjoy a disproportionate advantage.
- 1.4 The current system for the regulation of lobbying is a combination of statutory regulation (as delivered by the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014) and self-regulation through bodies such as the Public Affairs Board. Coverage of both – especially statutory regulation - is far from extensive, and the Greensill case has exposed the inadequacy of current arrangements.
- 1.5 Questions relating to the regulation of lobbying are not new. But, both government and the wider lobbying industry have failed to respond to them adequately.
- 1.6 I would recommend that the Committee re-examines the proposals made by the Public Administration Select Committee published in 2009.¹
- 1.7 In respect of the regulation of lobbying, the committee considered the scope of who was regulated and whether any regulation should be delivered via self-regulation or by statutory means.
- 1.8 Its key recommendations in this respect were twofold. **First**, that there should be a single body to regulate the whole lobbying industry via a code of conduct. Such a body should be independent of the organisations that promote and represent those involved in lobbying activity. The committee's view was that the industry should be given the opportunity to create that body and bear the cost of its creation and maintenance. In the event of the failure of the industry to deliver a single body to enforce a code of conduct, the committee's recommendation was that statutory regulation should be introduced. **Second**, the committee recommended the creation of a body separate from both government and the industry to manage and enforce a register of all those involved in lobbying.

¹ Public Administration Selection Committee (2009) *Lobbying: Access and influence in Whitehall* HC36-1 Available at: [Microsoft Word - CRC 3-12-08 - Final - Vol1 redone by PLO.doc \(parliament.uk\)](#)

- 1.9 While the lobbying industry has made some important progress on self-regulation, there has been a failure to deliver an independent industry-wide body. While the UK Public Affairs Council (UKPAC) was initially created in 2010, the Public Relations & Communications Association (PRCA) - then representing 'in house' public affairs - withdrew in 2011, and UKPAC closed in 2015.
- 1.10 The merger of the Association of Professional Political Consultants (APPC) – which represented multi-client public affairs agencies – and PRCA in 2018 does mean that there is, in effect, a single body overseeing the self-regulation of both multi-client and in-house lobbying companies via The Public Affairs Board. It also means that there is a single code of conduct governing the activities of members – The Public Affairs Code.²
- 1.11 The Public Affairs Code is extensive and provides a good basis for an industry-wide code of conduct. It also includes a helpful definition of public affairs,³ the previous absence of which was problematic in drawing up an industry-wide code of conduct.
- 1.12 However, membership of the Public Affairs Register is far from comprehensive. There are 129 organisations listed on the current iteration of the register (1st December 2020 - 28th February 2021).⁴ Few, if any, are charities despite the fact that the Public Affairs Board definition of public affairs explicitly includes charities and the not-for-profit sector. The PRCA does have a Charity and Not-For-Profit group, but their Public Affairs activities are not listed. ***In effect, while the innovation of the Public Affairs Board is to be welcomed, its coverage in terms of self-regulation of the industry is nowhere near complete.***
- 1.13 There may also be concerns if a self-regulatory body is part of the same organisation that also represents and promotes the industry. If a self-regulatory route is to be chosen, the separation of those functions must be considered for the self-regulatory body to be regarded as being credible.
- 1.14 In sum, ***regulation of the lobbying industry must include both a register of activity and also a code of conduct enforced by an independent body.*** Critically, both should cover all professional lobbying activity. If the industry can deliver this via an independent body, then self-regulation may be a more effective means of delivering clear principles under which lobbying can take place. However, the industry has so been unable to deliver this on a scale that is necessary. That being so, statutory regulation of the entire industry should be considered as an option.

2. How far does the Lobbying Act provide an effective statutory basis for the regulation of lobbying?

- 2.1. The Lobbying Act provides an almost wholly ineffective statutory basis for the regulation of lobbying. It covers only registration rather than conduct, and

² [Public Affairs Code February 2021 23.2.2021.pdf \(prca.org.uk\)](#) (Accessed 4th May 2021)

³ [Definition of Public Affairs PDF.pdf \(prca.org.uk\)](#) (Accessed 4th May 2021)

⁴ [Current Register - Public Affairs Board \(prca.org.uk\)](#) (Accessed 4th May 2021)

those requiring registration represent only a tiny proportion of the industry – multi-client agencies. An academic estimate puts this at 1% of the industry.⁵

2.2. ***For lobbying regulation to be effective and meaningful, it must cover all professional activity in the industry***

3. **Are key aspects of lobbying omitted and, if so, how can they be addressed?**

3.1 As indicated above, the current arrangements exclude the vast majority of lobbying activity.

3.2 This should be addressed by a register and code of conduct that covers all professional lobbying. Inevitably (as when UKPAC was being created) there may be lengthy discussion of who should be classified as a lobbyist. This is important, because any new regulation should avoid capturing amateur lobbying efforts by citizens. The Public Affairs Board definition of public affairs⁶ is helpful in this respect and should form the basis of any future definition.

4. **Are sanctions for those who breach the current rules sufficient?**

4.1 Overall, no. This illustrates a significant reason why an industry-wide code of conduct is important. PASC proposed an elegant solution such that adherence to the Code of Conduct would attract a 'kite mark'. Breaches of the code could result in the removal of the 'kite mark'. The principle was that this would incentivise compliance on commercial grounds, particularly if the absence of a 'kite mark' could limit certain kinds of activity with government or parliamentarians.

4.2 The Public Affairs Register has a disciplinary process for breaches of the code, which allows the Public Affairs Board to warn, reprimand, require remedial action, suspend membership or expel a member. Such decisions are published at the discretion of the Public Affairs Board Executive (except where there is suspension or expulsion, where publication is mandatory)

4.3 The Public Affairs Register goes some way to realising the 'kite mark' principle. However, the limited membership of the register means that it is not fully effective.

4.4 Consideration should be given to whether enforcement of the code of conduct should be on a statutory basis or on a self-regulatory one. Self-regulation would only be credible if the code was applicable to the whole industry.

⁵ Parvin, Phil (2021) 'UK lobbying rules explained: why no one seems to be in legal trouble' The Conversation. Available at: [UK lobbying rules explained: why no one seems to be in legal trouble \(theconversation.com\)](https://www.theconversation.com/uk-lobbying-rules-explained-why-no-one-seems-to-be-in-legal-trouble)

⁶ [Definition of Public Affairs PDF.pdf \(prca.org.uk\)](https://www.prca.org.uk/Definition-of-Public-Affairs-PDF.pdf) (accessed 4th May 2021)

- 4.5 ***The case for statutory regulation*** is firstly, that the political activities of key actors in the democratic process are already regulated by law. Political parties are regulated by the Political Parties, Elections and Referendums Act (PPERA) and the Political Parties & Elections Act; trade unions are regulated by the Trade Union Act 1984 (superseded by the Trade Union and Labour Relations (Consolidation) Act 1992); companies are regulated by PERA and the Companies Act 1967 (superseded by the Companies Act 1989); 'third parties' are regulated by PERA and the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014. It is therefore consistent that actors seeking to influence the policy process should themselves be subject to statutory regulation.
- 4.6 Existing self-regulation arguably has no effective sanction and only statutory regulation can guarantee appropriate standards of conduct as legal sanctions are available.
- 4.7 ***The case against statutory regulation*** is that it would require enforcement. While the Office of the Registrar of Consultant Lobbyists has now been established, the expansion of the register to include the whole industry would be a significant step, together with the enforcement of a code of conduct. In addition, clear rules would need to be established to ensure that statutory regulation did not hinder small-scale political activity and also lead activists to breach the law unintentionally.
- 4.8 Existing self-regulation has delivered good progress on drawing up standards of appropriate conduct via the Public Affairs Code
- 4.9 The establishment of The Public Affairs Code means that a single code would not be difficult to implement across the industry.
- 4.10 The lobbying industry is arguably best placed to comprehend changes and update codes of conduct accordingly.
- 4.11 Organisations signing up to the code of conduct would become accredited. Government could effectively enforce accreditation by limiting interaction with non-accredited organisations
- 4.12 Self-regulation of a code of conduct would result in low cost (financial and bureaucratic) to government.
- 4.13 Questions remain, however, about whether The Public Affairs Code should be independent of the PRCA, given that the PRCA also represents and promotes the industry

5. Recommendations

- 5.1. The register of lobbyists should be expanded to cover all professional lobbying activity.
- 5.2. The Public Affairs Code should apply to all professional lobbyists

- 5.3. An independent self-regulatory body should be established to oversee and enforce the Public Affairs Code.
- 5.4. Failure to establish such an independent body within a reasonable timeframe should result in statutory enforcement of the Public Affairs Code.