

## Introducing a Statutory Register of Lobbyists consultation

Response from the Immigration Law Practitioners' Association

### Introduction

The Immigration Law Practitioners' Association (ILPA) is a professional association with over 900 members (individuals and organisations), the majority of whom are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics and non-governmental organisations are also members. Established over 27 years ago, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law, through an extensive programme of training and disseminating information and by providing evidence-based research and opinion and to work towards a just and non-racist, non-sexist immigration and nationality law practice. It is a not-for-profit organisation and is not registered as a charity. ILPA is represented on numerous government, UK Border Agency and other advisory, stakeholder and corporate partner groups.

ILPA is responding in detail only to those questions in the consultation which are relevant to our work. ILPA is a not-for-profit organisation but it is a company, not a charity. We do not have dealings with professional commercial lobbying firms and our "lobbying" work is inextricably connected with our work in providing information and training for practitioners and others, thus improving representation of their clients and immigration and nationality law practice. Many of our briefings to parliamentarians and others simply explain what a proposed law or immigration rule means. But we do also set out to change the minds of officials, Ministers and parliamentarians as to what a law or rule should contain. We are a membership organisation but our work is not solely in the interest of our members, but in the wider arena of pressing for a just immigration and nationality law practice, of benefit to all those affected by the law.

The UK Public Affairs Council stated, welcoming the consultation:

"If the Government's consultation is to deliver greater transparency it will be important for the Government to deliver a register which is universal and captures all those who lobby including those in management consultancies, law firms, trade associations, trade unions and charities. ...To be credible and for a statutory register to work, the definition of lobbying is critical. Without a workable definition there is potential for some to operate outside the statutory register on the basis that they are "not lobbying or lobbyists". I expect there to be considerable debate around this."<sup>1</sup>

The unduly limited nature of the government's register proposal was emphasised by Sir Stuart Etherington of the National Council for Voluntary Organisations,

"..the consultation fell short of its mark, as it proposed to leave out in-house teams, failed to offer a code of conduct and did not call for enough detail of agencies' lobbying activity."<sup>2</sup>

NCVO expanded on this in its oral evidence to the Political and Constitutional Reform Committee:

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<sup>1</sup> Press release from UKPAC, 20.1.2012, at <http://www.publicaffairscouncil.org.uk/en/news/index.cfm/news4>

<sup>2</sup> Quoted in <http://www.brandrepublic.com/news/1120819/> 6.3.12

“... there are two key things that we think are missing. One is setting out clear standards of professional conduct for lobbyists, and the other is making it clear who is lobbying whom. If all those things were in place, we could see a value in terms of charities being involved in that process.”<sup>3</sup>

ILPA agrees that these are important if a statutory register is to be established. Without clarity on who is being lobbied, as well as by whom, any register will be of very limited value.

Tamasin Cave of Spinwatch said to the Political and Constitutional Reform Committee on 2 February:

“The problem is this lack of transparency within the whole of the lobbying industry. Three quarters of the lobbying industry is in-house lobbyists and a quarter is agencies. ... the democratic process is being subverted by a £2 billion professional lobbying industry. May I quote David Cameron? He says, "Lobbying is perfectly reasonable...when it's open and transparent, when people know who is meeting who, for what reason and with what outcome." We do not have that at the moment.”<sup>4</sup>

Transparency on lobbying is important and the present publicly-available records are inadequate to show its extent. The records needed are records of who is being lobbied and about what. Information about lobbying by all external organisations and their meetings with Ministers and civil servants, including those working directly for government departments and for government agencies, such as the UK Border Agency, needs to be available and it should be the responsibility of those being lobbied to provide full records. Any lists of meetings should also include those with lobbying firms and provide information about the organisation and subject about which they are lobbying at that particular meeting.

To turn to the specific questions raised in the consultation:

### **Definition of lobbying**

This is not ILPA's main area of expertise, but the consultation paper does not offer a viable definition for the UK. The government's proposed definition is too narrow, in that excluding in-house lobbying would not achieve transparency, unless there were a very much enhanced record of Ministerial meetings, and that record were extended to civil servants and published in parallel with the register. Similarly, if non-commercial lobbying, such as that of for example Friends of the Earth, or ILPA or Migration Watch on immigration policy, were excluded the register would not give a realistic picture.

The Australian definition of what is and what is not included in 'lobbying activities' at page 26 appears the most useful one; lobbying on the awarding of government contracts or grants or funding should certainly be included. The definition for inclusion in the register should include in-house lobbying, from commercial and non-commercial organisations. Including only those firms which engage in lobbying on behalf of a third party client would be irrational.

Details of those involved in formal 'stakeholder' or 'corporate partner' group meetings should be recorded and be publicly available.

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<sup>3</sup> Oral evidence to Political and Constitutional Affairs Committee, 22.3.12, answer to Q 254, at <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmpolcon/uc1809-iv/uc180901.htm>

<sup>4</sup> Oral evidence to Political and Constitutional Affairs Committee, 2.2.2012, answers to Q55-Q57 at <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmpolcon/c1809-i/c180901.htm>

We are concerned at the increasing tendency of civil servants in, for example, the UK Border Agency and Legal Services Commission to want to hold meetings 'off the record' or for those present to share no information with others. This is inherently undesirable, it is also impossible for most organisations, where those present at these meetings are present in a representative capacity and have to canvass the views of those they represent and report back on them. Civil servants should be required to keep a record of all meetings held 'off the record', with lists of those present, the justification for the meeting's being off the record and any objections to this made by attendees and/or others.

Jane Wilson, of the Chartered Institute of Public Relations, gave a succinct definition to the Political and Constitutional Affairs Committee:

"It is seeking to influence public policy and doing so in a professional capacity, regardless of who you work for and what kind of organisation they are."

She followed that up emphasising that the main issue is transparency:

"... transparency is about what an organisation is doing. Whether it is a big supermarket in planning or whether it is an energy company or whether it is an organisation like Greenpeace who is trying to influence energy policy, then what you begin to find out is the sheer volume of the number of people who are engaged in the lobbying process, which will tell you quite something about the level of interest they have in lobbying and the numbers and the cost of the lobbying activity then."<sup>5</sup>

Obtaining transparency is the main focus of the register and if it is to be created it should therefore include all the wide variety of organisations/individuals involved in lobbying, not only third-party lobbyists. If this would make a register too unwieldy to be practicable, enhanced records of meetings held between Ministers and any external organisations could help to provide the openness required.

### **Scope of the register**

The register should, unlike that in Australia, include both commercial and non-commercial lobbyists, charities, community interest companies and other not-for-profit organisations, trades unions and other membership organisations, in the interests of transparency. The information provided should include their substantial contacts with Ministers, civil servants and Members of both Houses of Parliament. It should include ways of attempting to influence decision-makers on current policies, or on changes in policies or practice. It should include the space for organisations with more unusual remits, such as ILPA or the Housing Law Practitioners' Association, which are membership organisations lobbying for changes in law and practice, wider issues than those of direct benefit to their members. It should not include details of the members of membership organisations, beyond their numbers, as this must remain confidential to the organisation.

Solicitors' firms may act for public affairs issues for clients and be instructed to lobby on their behalf. The Law Society has recognised that a voluntary register could give rise to issues of client

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<sup>5</sup> Oral evidence to Political and Constitutional Affairs Committee, 15.3.2012, answers to Q198, and Q234, at <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmpolcon/uc1809-iii/uc180901.htm>

confidentiality, but that this could be waived, by agreement, but also that disclosure of clients would become necessary if all lobbying activity from all sources had to be registered.<sup>6</sup>

Commercial in-house lobbyists should also be included, on a par with other organisations. The consultation document's suggestion that the publicly-available record of meetings with Ministers on [www.data.gov.uk](http://www.data.gov.uk) is sufficient for transparency is flawed. That website is reliant on a non-government organisation checking government department websites for its information. This results in the situation, for example, that it contains no records of any meetings with anyone from the Department of Education. It also does not include records of meetings with ~~senior~~ civil servants or with heads or managers of agencies of government departments, or meetings with lobbying organisations. Those omissions would need to be rectified for this website to offer any alternative to putting in-house lobbyists on the register.

### **Information to be included in the register**

-The current voluntary register provides details of lobbying organisations and the organisations for which they lobby, but no connection can easily be made between that information and the separate and incomplete record of meetings with Ministers. It is important that records of meetings with commercial lobbying organisations record on which organisation or business' behalf they are lobbying at the meeting. This should be recorded either in this register, or by taking over and expanding, so it becomes comprehensive, the functions of [www.data.gov.uk](http://www.data.gov.uk), or creating easy links to it or any improved successor, so that all these connections can be made. The records of meetings and lobbying should also include those about bid templates for proposed government Bills and on the process of drafting and preparing impact assessments for them, and on specifications for government tenders.

-ILPA does not have a view on the amounts of payments which should be registered, but for ease of compilation they should be in bands. The government should also consider the feasibility of recording non-pecuniary benefits and other *quid pro quo* which are the result of lobbying contacts, such as internships.

### **Frequency of returns**

ILPA's main concern is that the registration returns should be as simple as possible and not be disproportionately onerous. This would discourage smaller organisations and charities from registering and thus lessen their influence on government policy and practice if they felt unable to continue their activities. A six-monthly frequency should be adequate, and after the initial registration it might only need to be updated with the changes that had taken place in the intervening period.

### **Additional functions**

ILPA has no view on any additional functions of a register.

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<sup>6</sup> The Law Society, Written evidence to Political and Constitutional Affairs Committee, LB 24, at <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmpolcon/writev/1809/lb24.htm> and in oral evidence from John Wotton, President, 22 March 2012, Q 302, at <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmpolcon/uc1809-iv/uc180901.htm>

## **How should the register be funded?**

Given that there is nothing forthcoming from public funds, then the lobbying industry will have to fund it. But its funding should be from commercial organisations, with fees depending on their size and their number of employed lobbyists, or of clients. Charities and not-for-profit organisations and membership organisations should not be charged for registering. The National Council for Voluntary Organisations has stated:

“It remains important, that we do not discourage interaction with the political system as we believe the Government makes better decisions when it is informed by the knowledge and experience of organisations working on the ground.”<sup>7</sup>

ILPA agrees that involvement with the democratic processes should not be restricted by the level of fees for inclusion on the register – to do so would reintroduce the idea of ‘cash for access’ if smaller charities and voluntary groups could not afford to register, and therefore scaled down their lobbying and influencing activities. Any fees charged to register must be proportionate and should not impose an undue extra burden on charities and not-for-profit organisations.

## **What sanctions might be appropriate**

There should not be a new criminal offence of failing to update the register, the penalties should be civil penalties, mainly the organisation or individual being taken off the register and thus being unable to carry out lobbying activities, suspended from specific activities for a fixed period, or a fine proportionate on the turnover of the organisation. There should be the right to make representations to the operator of the register against any such proposed sanctions.

The question of any potential liability for the trustees of a charity or directors of a not-for-profit organisation for the activities of their employees needs to be clarified.

## **Who should run the register?**

The most important criterion for any body running the register is that it has to be independent both of government and of the commercial lobbying industry and should not have representatives of the lobbying industry or other interest groups being regulated on its board. ILPA does not support the establishment of a new body. If an existing body might extend its remit, it is important that the government should have detailed discussions with that body before suggesting publicly which it should be. A further specific consultation on the structure and terms of reference of the responsible body should be held once a firm proposal is decided.

ILPA has no particular views on which organisation should run the register, apart from its being independent of government. Various existing organisations might be appropriate to carry out this function, including the Parliamentary Commissioner for Standards, which deals with rules and codes of conduct for MPs and is based at Parliament though independent of it, or the Committee on Standards in Public Life, which promotes high standards of behaviour in the public sphere through the seven principles of public life expressed by the Nolan Committee – selflessness, integrity,

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<sup>7</sup> NCVO, Written evidence to Political and Constitutional Reform Committee, LB 22, at <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmpolcon/writev/1809/lb22.htm>

objectivity, accountability, openness, honesty and leadership, or the Electoral Commission, which already maintains registers on donations and loans to political parties.

As the register would be on-line, it could be updated regularly, or almost continuously, whenever organisations passed on new information, in whatever way is technically easiest. There should also be an annual report about its operation.

ILPA

April 2012