

# Agenda Supplement – Standards of Conduct

## Committee

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Meeting Venue:

**Committee Room 2 – Senedd**

Meeting date: 14 February 2017

Meeting time: 09.30

For further information contact:

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Committee Clerk

0300 200 6565

[SeneddStandards@assembly.wales](mailto:SeneddStandards@assembly.wales)

Please note the documents below are in addition to those published in the main Agenda and Reports pack for this Meeting

## Private – Inquiry into Lobbying

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### 4 Inquiry into lobbying

(Pages 1 – 113)

Attached Documents:

SoC Inquiry into lobbying (e)

1 Electoral Commission (e)

2 Mark Isherwood

3 CLA Cymru

4 NIA Commissioner for Standards

5 APCC

6 Cytûn (e)

7 Neil McEvoy

8 Plaid Cymru

9 Cancer Research UK

10 Deryn Consulting Ltd

11 JOINT SUBMISSION BY UNLOCK DEMOCRACY AND SPINWATCH

12 FSB

13 BMA Cymru

14 WCVA

15 Invicta Public Affairs

16 Public Affairs Cymru



Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales

17 PRCA

18 Positif

19 RSPCA

20 Electoral Reform Society Cymru

SoC inquiry into lobbying back (e)

## Standards of Conduct Committee **Inquiry into lobbying**

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February 2017



The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales, agrees Welsh taxes and holds the Welsh Government to account.

An electronic copy of this report can be found on the National Assembly's website:  
**[www.assembly.wales/SeneddStandards](http://www.assembly.wales/SeneddStandards)**

Copies of this report can also be obtained in accessible formats including Braille, large print; audio or hard copy from:

**Standards of Conduct Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA**

Tel: **0300 200 6565**

Email: **[SeneddStandards@assembly.wales](mailto:SeneddStandards@assembly.wales)**

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# Standards of Conduct Committee

## **Inquiry into lobbying**

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February 2017



**National Assembly for Wales**  
Standards of Conduct Committee

Pack Page 3

## Standards of Conduct Committee

The Committee was established on 28 June 2016 to carry out the functions of the responsible committee set out in Standing Order 22. These include:

- the investigation of complaints referred to it by the Standards Commissioner;
  - consideration of any matters of principle relating to the conduct of Members;
  - establishing procedures for the investigation of complaints; and
  - arrangements for the Register of Members' interests and other relevant public records determined by Standing Orders.
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### Current Committee membership:



**Jayne Bryant AM**  
Welsh Labour  
Newport West



**Paul Davies AM**  
Welsh Conservative  
Preseli Pembrokeshire



**Llyr Gruffydd AM**  
Plaid Cymru  
North Wales



**David J Rowlands AM**  
UKIP Wales  
South Wales East

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## **Overview**

The Standards of Conduct Committee is undertaking an inquiry into the current arrangements relating to lobbying at the National Assembly for Wales and will be carrying out a consultation regarding lobbying and the third sector.

The Electoral Commission plays a role in the regulation of non-party campaigners (also known as third party campaigners), at elections. We register non-party campaigners and provide them with guidance regarding the controls on their spending and related donations for each election. As a result of the part the Commission plays in the regulation of campaign spending, and the fact that some stakeholders associate such campaigning with the phrase 'lobbying', it is possible that some of the feedback that the Committee will receive may be in relation to our regulatory role. This background note provides some context for this.

## **The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014**

The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 ("the Lobbying Act") was an amendment to the Political Parties, Elections and Referendums Act 2000 (PPERA), which is regulated by the Electoral Commission. The Act became known by the term "the Lobbying Act", although only one of the three Parts of the Act was about regulation of lobbying.

Part 1 of the Act was to do with the prohibition of consultant lobbying unless those entities had been registered.

Part 2 of the Act included changing and expanding some of the PERA spending controls on non-party campaigners, who are not standing for election, but are spending money on campaigns to influence electoral outcomes and voters' choices.

You can view the Explanatory Notes regarding the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 here:

<http://www.legislation.gov.uk/ukpga/2014/4/notes/division/5/1>

## **The role of The Electoral Commission and work with Non-Party Campaigners**

The Electoral Commission regulates the spending of non-party campaigners at elections. The law is intended to provide transparency about the spending of all types of election campaigners, whether they are candidates, political parties or non-party campaigners. This ensures that the public can see what campaigners spent on seeking to influence voters' choices and the outcome of an election, as well as know who donated to those campaigns. Non-party campaigners must register with the Electoral Commission prior to spending over a threshold set in legislation, and must not breach the spending limit for that election. Campaigners must complete a spending return for their campaigning during the election period, and this is submitted to the Commission.

Campaigners must ensure that any activities that meet the definition of "campaigning" at elections, where money has been spent to try to influence the voters' choice, must be included within their spending return. The Electoral Commission will then publish spending returns to "PEF Online", which is an online searchable database available to the public for inspection<sup>1</sup>.

To ensure that campaigners are aware of the rules that they must follow, the Commission publishes guidance prior to each election. This includes how and when to register as a campaigner, what counts as campaign spending, and how to report spending post-poll. We have also offered campaigner briefing sessions, to talk to campaigners prior to elections about the rules as set out in our guidance.

## **The Standards of Conduct Committee consultation**

The letter from the Standards of Conduct Committee, includes questions such as, "How is lobbying regulated at the moment?" It is possible that some respondents could associate this inquiry with the passage of the so-called

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<sup>1</sup> Registers of campaigners, donations, loans and spending are published via our website database. The Electoral Commission, PEF Online, <http://search.electoralcommission.org.uk>



“Lobbying Act” during Autumn 2013, which introduced both a register of consultant lobbyists and legislative changes to the UK’s regulation of non-party campaign spending prior to elections. As a result, some of the feedback that is received by the Committee may include reference to the changes introduced by that Act and the regulatory functions carried out by the Commission.

The Electoral Commission would welcome being informed of any feedback from the consultation which refers to the rules set out in the Political Parties, Elections and Referendums Act or Part 2 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act, including any functions which are part of the Commission’s regulatory role.

Cynulliad Cenedlaethol Cymru / National Assembly for Wales  
Y Pwyllgor Safonau Ymddygiad / Standards of Conduct Committee  
Ymchwiliad i Lobïo / Inquiry into Lobbying  
Ymateb gan Mark Isherwood / Evidence from Mark Isherwood

*Taken from the Record of Proceedings 26/06/2013 Debate on the Standards Committee's Report 03-13 to the Assembly on Lobbying and Cross-Party Groups*

As a member of the Standards of Conduct Committee, I consider our report on lobbying cross-party groups to be proportionate and fit for purpose in the context of the Assembly's increased legislative powers. It must be re-emphasised that no complaint against a Member relating to lobbying has been made, so far as the commissioner could ascertain, since the setting up of the National Assembly, that the criminal law already provides for dealing with the improper receipt or giving of gifts or bribes from or to those in public office, and that it was the unanimous view of all consultees that lobbying practices are essentially transparent and adequately policed and regulated here.

Events in Westminster led the UK Government to announce that it is bringing forward legislation to introduce a statutory register of lobbyists before the summer recess as part of a broad package of measures to ensure that the activities of outside organisations that seek to influence the political process are transparent, accountable and properly regulated.

Assembly Standing Orders already specifically prohibit lobbying for reward or consideration, and already provide for the:

'Declaration of any gifts, hospitality, material benefits or advantage'

to the Member, a Member's partner or dependent child, and at a substantially lower level than is the case in the UK and Scottish Parliaments.

The UK Government commenced a consultation process in January 2012 on a proposed statutory register of lobbyists after indicating that it could cover lobbying in the devolved UK Parliaments as well as Westminster. The Assembly's Presiding Officer expressed her view that the Assembly should be responsible for making any decisions on further governance arrangements, and, in May 2012, she asked the Standards of Conduct

Committee to consider additional arrangements that might be needed to strengthen the regime relating to Members.

After consulting, our commissioner for standards found that the arrangements currently in place for regulating lobbying of Assembly Members are, essentially, sufficiently robust and fit for purpose. However, he highlighted a number of considerations on which the committee might wish to make recommendations. The actions proposed by the committee, outlined by our Chair, can help to provide reassurance to the Welsh public about levels of openness and transparency and the ability to investigate any future concerns with regard to lobbying. We therefore recommend that the Assembly adopts via resolution the guidance on lobbying and access to Assembly Members annexed to our report.

Public Affairs Cymru, the membership organisation for public affairs professionals in Wales, has developed a voluntary code of conduct that its Members must abide by. As it says,

‘the best way to make access to politics truly transparent is to publish external organisations’ meetings with elected representatives’.

In its view, elected representatives are best placed to make judgments on what constitutes a meeting with lobbyists, or being lobbied, and should be accountable to voters for that judgment. The committee and the commissioner favour a system that does not impose an unnecessary burden on Assembly Members, and the commissioner himself noted

‘the almost impossible task of recording every informal meeting or of having to determine who is a lobbyist’.

I chair five cross-party groups and co-chair a sixth. Properly constituted and managed cross-party groups have a vital role to play in engaging with those who by profession or personal experience have relevant expertise and in holding the Welsh Government to account.

However, mild concerns were expressed in relation to the operation of cross-party groups. Far stronger concerns have been expressed concerning

groups in Westminster, and I note that the chair of a cross-party group there felt the need to emphasise to me this week that none of the politicians involved in the group receive any payment and no-one connected to the secretariat holds a parliamentary pass.

The recommendations in our report should be easily accommodated by all effective cross-party groups. I am surprised that some groups do not already publish minutes of all meetings. An annual general meeting can easily be incorporated into a normal meeting and publication of an annual financial statement can only enhance transparency.

As recommendation 6 states:

‘it is vital that the venues and resources provided to cross-party groups take account of the Assembly’s equality duties’.

Personally, I am thinking of issues such as loop systems and broader disability access. As recommendation 2 states, the First Minister should consider our report’s findings in relation to Welsh Government Ministers, where

‘the lobbying of Ministers...represents the greatest potential reputational risk to the Assembly going forward’.

This should be addressed in the ministerial code of conduct and records of meetings with Ministers should be made publicly available, as they are for the UK Government.

## 1. CLA Cymru: Our Lobbying Mission

1.1 *We create and sustain understanding between politicians and our membership community.* As a representative organisation, we care about the rural economy and rural communities, providing information, advice and services for about 3,200 members.<sup>1</sup> The demographics of our membership are broad: we represent landowners, farmers and rural businesses of every-size and type from large agricultural and land-based enterprises to small businesses and sole-traders. A significant community of our members run rural businesses or provide professional services to the rural community.

1.2 In that work we *increase* and maintain participation in politics from our broad and significant community. Equally importantly, as a non-partisan representative body, we provide a necessary counterpoint to political parties' potential dominance in our areas of concern.

1.3 An important aspect of our work is to engage with government and political representatives on behalf of our members . We have succeeded in bringing about change in policy, strategy and delivery in a range of areas. Today we “lobby” on economic, agricultural, environmental and natural resource management issues, and rural affairs matters including topics such as infrastructure (for example: mobile-phone and broadband connectivity), housing and rural services.

1.4 On some issues we raise awareness of political arguments to our members without taking-sides. On the EU Referendum in 2016 we believed

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<sup>1</sup> The CLA represents over 30,000 members in England and Wales.

that this approach was most helpful for our membership and facilitated continued engagement with political stakeholders during and after the referendum campaign. This shows how our political engagement work is a two-way process which facilitates open and informed debate and good government. The capacity to stand-back and focus on practical issues affecting our membership has served our lobbying-activity well and we have been unique in this in our sector on this matter.

1.5 Political engagement is important to us because sometimes the breadth and complexity of the rural community is under-represented or misunderstood in the political process. The role of Regional AMs may help here, but even these tend to be more urban-focused. We do believe that the rural voice needs to be heard. As much as one-third of the Welsh population lives in rural areas and our rural economy supports some 459,000 people engaged in the broadest possible range of economic activity. In Wales rural business totals nearly 105,000 enterprises. That this community can seem to be “invisible” is illustrated by CLA research which showed that over £1 billion is invested into the rural economy every year – making this one of the most dynamic sectors of the Welsh economy. Consequently our lobbying mission is to raise awareness of facts like this and ensure that our sector is proportionately represented in government decision-making.

## **2. Is There a Need for Change?**

2.1 “Lobbying” has long been seen as a normal part of the policy making process. Nevertheless there have been instances of bad practice elsewhere, and the term itself does grave disservice to those who work to represent members or organisations. The Senedd itself has not been visibly affected by such issues and there appears to be a strong positive working culture among representatives, government and politically-engaged bodies. However all parties are vulnerable and it may be timely to capture this embedded culture into a positive way-of-working as our devolved constitution continues to

develop. Equally we should encourage more competent representative bodies to engage with the political community. We have the luxury now of creating the right political environment in the absence of issues. “Repair-jobs” can be rushed, botched and unsightly.

2.3 In Westminster the more adversarial nature of party politics is supported by parliamentary privilege in free-speech. This, itself, encourages concerted opposition and challenge of how politicians gain their information and whom they represent. Parliamentary privilege exists in the National Assembly too, but an informed, subjective view is that debate is less challenging in this respect.

2.4 Those who challenge the efficacy and process of political influence question transparency, equality of access, integrity of motive and potential for conflict of interest. Consideration might be given to the introduction of an independently managed register of bodies seeking to influence government.

2.5 Critically, we believe that the term “lobbying” is misunderstood by the general public. It is often seen as a sinister and possibly unethical. Capturing what is good about lobbying – and creating a transparent working machine to evolve as part of Welsh democracy – will provide channels for involvement and valid expertise and also ensure that political representatives are accessible and accountable to the electorate.

### **3. What do you Understand by the Term Lobbying?**

3.1 To members of CLA Cymru staff, lobbying is one of the fundamental services we provide for our members.<sup>2</sup> We:–

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<sup>2</sup> We have 5 key areas of services: lobbying, information, advice, membership-engagement and services (insurance, foreign exchange, utilities and healthcare).

- Proactively communicating our point of view directly to the political community –raising issues – offering solutions, strategies, ideas and information supporting our message
- Engage with the political process by volunteering our expertise and opinion in Assembly inquiries or government strategic groups and consultation exercises – and following–up this work appropriately
- Providing opportunities for our members to take part in the above as “live–examples” supporting our message

These are conventional forms of engagement which benefit all parties.

3.3 Recent research within the CLA membership in England and Wales confirms that our membership values our achievements from engagement with the political community. However, interestingly, the same exercise suggested that some members looked negatively at “*lobbying*” as something different from the conventional activity above – covert, possibly sinister – and for which the results can be ambiguous. We believe that the introduction of some oversight which encapsulates the positive contribution that can be made by parties engaging with the political process, improves transparency about the source of influence – and its message – will assist the wider public in understanding the value of this work. As members of the public are more likely to be members of representative organisations than political parties (and even trades unions) suggests that there is much to be gained from this positive engagement.

#### **4. How is Lobbying Regulated at the Moment?**

4.1 The Register of Interests founded in the 1970s for the House of Commons was probably the first step towards regulation of this type. Many have since commented that a forward–looking “Register of Aspirations”



might have been even more effective. The result of more recent Nolan Report established The Seven Principles of Public Life and a Ministerial Code. The “Nolan Rules” have hitherto tackled conflict of interest in public appointments. The recent Westminster Expenses Scandal has understandably focused minds on possible abuse within the political establishment everywhere and brought issues of propriety within the political process into reality.

4.2 Through a mix of adoption of standards and procedures and cultural osmosis, the best parts of this appear to be at work in Welsh politics. A National Assembly for Wales report was produced on Lobbying and Cross-Party Groups in 2013 in which the Commissioner’s assessment was that the then arrangements are “sufficiently robust” and “fit for purpose.” Nevertheless this report did make a series of recommendations with relation to Cross-Party Groups. Proposals with regard to “lobbying” were discussed but withheld owing to difficulties with the definition of the term and those who carry it out. In the meantime lessons may be learned from the Lobbying (Scotland) Act 2016. Wales shares many of the challenges and opportunities as its devolved counterpart in Scotland.

## **5. How Do We Regulate Lobbying within our Organisation?**

For lobbying – and all activity in Wales – we are accountable to our membership. At a Wales-level our public affairs strategy is endorsed directly via a “Polisi Cymru” senior membership committee and four regional committees in Wales. These meet regularly and are formally managed. Information about our work in political engagement is communicated to members directly via a regular online newsletter, a printed monthly magazine and through themed events. Spontaneous information is provided via social media. That the CLA abides by well-established, clear standards of government demonstrates that we meet high standards of representation

based on clear principles. We have a similar structure and approach to UK political activity – to which CLA Cymru contributes on an equal basis with the English regions.

## **6. Have You Encountered any Problems with the Current Arrangements?**

We have not witnessed or become indirectly aware of abuse in the Welsh lobbying community. However it is important to point out that we “earn” our right to engage with the political community through our ability to provide well-informed recommendations, contribute constructively to emerging strategies or influence representatives through building on our credibility as an effective organisation. It is impossible to assess to what degree we may not have been excluded from appropriate influence – (*“You don’t miss what you never had”*) – but there may be occasions when we felt our informed and representative view should have been considered.

## **7. Are There Areas you Consider to be Unregulated...Which Pose a Risk to the Accountability & Reputation of Governance in Wales?**

7.1 A greater risk of abuse exists where there is less transparency and fewer clear standards than where clarity and clear-rules are in-place and managed. As the Welsh political system becomes more distinct and devolution delivers more responsibilities to Wales, we need to ensure proportionate safeguards are established. In addition we need to make more protective provision for our political process from external influences – be they other governments or organisations. It is important to add that fiscal devolution may provide new hazards in defining fiscal thresholds and managing a process which will have a major affect on commercial enterprise.

7.2 The Senedd is yet to see evidence of the more extreme examples of lobbying. This may be a consequence of more placid times – or it may reflect

the new-found power of social media. We do not support political attention-seeking by violence or illegality – or creating obstacles for function but this inquiry should address how legal demonstration can be seen to be part of a healthy democracy and not a sign that it is failing. If Welsh farmers, landowners and those dependent on the rural economy feel they must campaign to protect their livelihood when the UK replaces the Common Agricultural Policy, this should be possible within a caring and effective democracy.

Cynulliad Cenedlaethol Cymru / National Assembly for Wales  
Y Pwyllgor Safonau Ymddygiad / Standards of Conduct Committee  
Ymchwiliad i Lobïo / Inquiry into Lobbying  
Ymateb gan Gomisiynydd Safonau Cynulliad Gogledd Iwerddon / Evidence  
from Northern Ireland Assembly Commissioner for Standards

1. Thank you for the opportunity to respond to the recent consultation paper. However, as the answers to the specific issues on which views are sought require a detailed knowledge of the nature and extent of lobbying in Wales which I do not possess, I shall confine myself to more general comments.
2. Lobbying has not been a significant issue in the Northern Ireland Assembly. There is no register of lobbyists nor, so far as I am aware, any plan to establish one. Any interaction between Members (MLAs) and lobbyists is, so far as the MLAs are concerned, governed by the Members Code of Conduct. There have been no complaints to me in relation to lobbying since my office was established in 2012. The Committee on Standards and Privileges has issued Guidance for Members on dealing with Lobbyists which can be viewed at <http://www.niassembly.gov.uk/globalassets/documents/standards-and-privileges-2011-2016/guidance-on-dealing-with-lobbyists/guidance-for-members-on-dealing-with-lobbyists.pdf>.

**Douglas Bain CBE TD Advocate**

**Northern Ireland assembly Commissioner for Standards**

## **INTRODUCTION**

1. The APPC, which has over 75 public affairs organisations in membership, welcomes the Committee's inquiry into the current arrangements relating to lobbying at the National Assembly of Wales and specifically whether those arrangements remain fit for purpose.
2. A number of APPC's members are based in Wales and those that are not may well act on behalf of clients in respect of the National Assembly of Wales.
2. The APPC believes that lobbying serves an important function in politics – by putting forward the views of stakeholders to policy makers, it helps in the development of better legislation provided that it is open and transparent. This is why, for over 20 years, the APPC has provided a public register of our members' clients and consultants. APPC's register is publicly available at [www.appc.org.uk](http://www.appc.org.uk).
3. Noting the Committee's reference to the introduction of lobbying legislation in Westminster and Scotland, the APPC would like to reiterate its support in principle for those statutory registers, providing that they apply equally to all those who engage in lobbying on a professional basis. We welcome the fact that this will be the case in the Scottish Parliament's register, but continue to criticise the Westminster register for its failure to do so.
4. Our response seeks to reflect the views expressed by our members following the publication of the consultation paper. Inevitably, with such a large number of consultancies in membership, it is not possible to write a response which reflects the views of all members on every

point. Where there is a divergence of views on significant issues, our response seeks to reflect that.

## **EXECUTIVE SUMMARY**

- The APPC welcomes the proposed publication of the diaries of Welsh Government Ministers.
- The APPC believes that such publication will be sufficient to ensure transparency in respect of the National Assembly of Wales, possibly accompanied by the publication of Assembly Members' diaries.
- The APPC believes that, following such publication, there is little or no need for any further regulation and that the case for a separate register has certainly not been made.
- Should the National Assembly of Wales wish to consider a separate register of lobbying, the APPC would recommend that it should apply equally to all lobbyists, and that it should not be bureaucratic or costly. The APPC would also recommend strongly that the National Assembly of Wales should certainly wait until the effectiveness of the Scottish Parliamentary Register has been evaluated.

## **THE COMMITTEE'S QUESTIONS**

### **1, Is there a need for change?**

The First Minister, in response to a question in the Senedd in December 2016, announced the proposal for Welsh Ministers to publish their Ministerial diaries on a quarterly basis in arrears so that people scrutinising the Welsh Government can know who has met

whom. Alongside the publication of how decisions have been made, this will give a strong degree of transparency.

APPC welcomes the proposed publication of Ministerial diaries, and notes the further proposal that AMs should also publish their diaries.

If any further action is required, it needs to provide a level playing field of lobbyists, making similar demands on both in-house as well as consultant lobbyists. This means that, as well covering lobbyists who work for multi-client agencies, the far larger number of lobbyists who work for law firms, management consultancies, planning consultancies, think tanks, trade associations, trade unions, charities, NGOs and in-house for businesses, should also be covered by any regulation or register. To exclude such lobbyists would mean any regulation or register would fail to improve transparency and build public confidence.

Any further actions or regulations need to be proportionate and not overly burdensome in terms of bureaucracy and in terms of cost.

Any regulation or register should exclude lobbying by individuals, so there should be an exemption for “the normal activity between constituents and MPs”

## **2. What do you understand by the term lobbying?**

The APPC has adopted the following definition:

*Lobbying means in a professional capacity making any oral or written communication (including an electronic communication) to any member of the Government, advisers or officials or member of either House of Parliament or their staff or advisers with regard to the formulation, modification, or adoption of legislation; the formulation, modification, or adoption of any rule, regulation, order, policy, or position; the administration of any Government programme or policy,*

*including the negotiation, award, or administration of a contract, grant, loan, permit, or license; or any other official act or decision.*

In brief, lobbying activities are undertaken with a view to influencing public policy, Government decisions or legislation. Lobbying serves an important function in politics – by putting forward the views of stakeholders to policy makers, it helps in the development of better legislation, provided that it is open and transparent.

The APPC considers a lobbyist to be anyone who undertakes lobbying [by reference to the definition above] or anyone who advises others on lobbying or lobbying campaigns and strategies, or who plans and prepares those campaigns and strategies.

### **How is lobbying regulated at the moment?**

Lobbying is self-regulated by public affairs organisations choosing to join the APPC or a similar organisation.

The APPC's rigorous self-regulatory regime requires members to adhere to its Code of Conduct, to carry out an annual Code compliance procedure, and to provide an updated entry to the APPC Register every quarter, listing the names of clients and consultants. Any complaint of an alleged breach of the Code of Conduct is dealt with by the independent Centre for Effective Dispute Resolution under the terms of APPC's Complaints & Disciplinary Rules & Procedures.

### **3. Do you consider yourself a lobbyist?**

The APPC is the self-regulatory and representative body for professional political organisations, most of which are consultancies.



These organisations carry out a full range of public affairs services for clients or members, which may well include lobbying.

**4. Have you encountered any problems?**

Whilst this does not apply to the APPC itself, we should like to point out that none of the “lobbying scandals” of the last few years have involved “lobbyists”, but rather journalists and politicians. Again, this would support our view that there is no immediate need for regulation.

**5. Are there any areas you consider to be unregulated which pose a risk to the accountability and reputation of governance in Wales?**

There are none of which we are aware.

**6. What would you consider to be the impact of introducing a new regime to deal with lobbying?**

This would depend on the nature of the regime and whether the impact would be assessed from the point of view of the Welsh Government, the National Assembly of Wales, citizens or practitioners.

APPC

January 2017

This submission is made by Cytûn – Churches Together in Wales – following consultation with our members. Cytûn is an umbrella body for the principal Christian denominations and organisations in Wales. Our 16 member denominations claim some 172,000 adult members, and they and the other member organisations have substantial contact with many more adults, children and young people in every community in Wales. A complete membership list can be found on our website at: [www.cytun.org.uk/us.html](http://www.cytun.org.uk/us.html)

Cytûn employs a part-time Policy Officer to maintain contact with the Welsh Government and the National Assembly on behalf of its members. The current officer (Revd Gethin Rhys) is a member of Public Affairs Cymru and is committed to its [Code of Conduct](#).

Cytûn is a registered charity, and its member churches and organisations are either registered or excepted charities. They are therefore restricted by charity law in terms of the kind of lobbying in which they may engage, especially in election periods. Each member denomination and organisation has its own internal arrangements for coming to and publicising its opinions on public policy. Cytûn expresses a view on controversial policies only when its members have asked it to do so. On other occasions, we enable our members to express their own distinctive opinions, and this may on occasion mean enabling the expression of contradictory views. When Cytûn responds to public consultations on behalf of its members, it always permits the publication of these responses in full.

Cytûn helps its members to co-operate in public affairs by convening a Laser Group of its members' church and society officers (paid or voluntary), and the Evangelical Alliance Wales is also a member of this group. Its meetings are an opportunity to exchange information, and it does not form a collective view on policy matters nor make public statements.

Here are our initial responses to the questions asked by the Committee:

**1. Is there a need for change?**

In outline, our response to this is 'No'. We believe that the National Assembly for Wales has established a pattern of open and inclusive government which

gives the opportunity to all kinds of organisations, as well as individual electors, to influence in an open and democratic way elected representatives and government. The existence of a post within Cytûn liaising with the Assembly since its foundation in 1999 means we have established a healthy direct relationship with the institution and its members. Being a small country of 3 million people enables a close relationship between government, civil society and people, and we are proud of that culture. On the whole, we have not come across any examples of misuse of the current open governance culture by organisations within or beyond our sector.

## **2. What do you understand by the term lobbying?**

We accept the definition of lobbying used by Public Affairs Cymru, viz. “All activity associated with representing the interests of a client, employer or organisation as regards any matter of public policy. This includes the provision of information and advice, as well as the actual advocacy of a point of view.” However, “lobbying” is not the word we would choose to describe the work which we do. ‘Lobbying’ is, in some people’s minds, a pejorative term implying undue influence. Instead we might describe our work as liaison, engagement, information sharing, advocacy or relationship-building. We are much more comfortable with the Australian parameters, which specifically exclude from the [lobbying code of practice](#) charities, not-for-profit organisations, professional associations etc. and confine the term ‘lobbying’ to the profit-making side of the profession.

## **3. How is lobbying regulated at the moment?**

We are aware of the non-statutory [National Assembly For Wales’ Guidance on Lobbying and access to Assembly Members](#), which we consider offer sensible guidelines for individual AMs. We are not entirely clear, however, why a distinction is drawn in these guidelines between paid and voluntary advocacy. Third sector organisations such as ourselves often use a mixture of paid and voluntary advocates, and we would expect the same guidelines to apply to engagement with all. If a distinction is to be drawn, we suggest that it should be between organisations which contact AMs in order to gain financially and those that do not (for example, there is a difference between a church which is engaging with a view to itself benefiting from a grant programme and a church which is lobbying on behalf of a section of the community which is in need and would itself gain nothing by success).

The principle legislative requirements affecting our work are charity law and the guidance issued by the Charity Commission, and Part 2 of the Transparency in Lobbying, Non-party Campaigning, and Trade Union Administration Act 2015. The trustees of Cytûn, and the trustees of our members, are all careful to keep within the constraints of charity law in their work, and we believe that the regulation of lobbying and partisan activity contained within this legislation is proportionate.

The 2015 Act, however, is a different matter. We made extensive contributions to [the fourth report of the Commission on Civil Society and Democratic Engagement](#) (September 2015) expressing deep concern about our experience of seeking to work within that Act during the 2015 General Election.

*“As an umbrella body we regularly publicise campaigning activity by member churches and bodies, and sometimes provide some resource support for these. We were very unclear as to whether this amounts to a ‘common plan’; or what counted as a ‘committed supporter’ – do all supporters of all our member bodies so count? (This is difficult to define in the case of churches anyway). Trustees decided that during the regulated period we should send out only factual information about our members’ campaigns, rather than anything implying endorsement for the campaign.*

*“We were unclear whether promotion of campaigns at a stage removed was regulated activity or not. Because of this, it was difficult to conceive of a way of documenting compliance”*

*“Local groups organising ‘selective’ hustings of parliamentary candidates required considerable guidance with regard to how to select the candidates to include, the nature of local publicity and the recording of expenses”*

We have subsequently gained further experience with the Assembly election and European referendum in 2016, which reinforce our initial conclusions. In 2016 two “regulated periods” overlapped, creating further difficulty. We are clear that the National Assembly should not seek to go down a similar road, and that extending the kind of regulation contained in this Act beyond election periods would create a bureaucratic nightmare.

**4. Do you consider yourself a lobbyist? How is lobbying regulated within your sector at the moment? E.g. if you are a private business, third sector, professional organisation.**

It is a statutory requirement for the Welsh Government to have a Third Sector Scheme, and the Third Sector Partnership Council established as a result gives a formal opportunity to engage with Welsh Ministers in every policy area. Cytûn currently leads for the 'Religion' sector of TSPC on behalf of the Inter-faith Council for Wales, and this gives us direct access (with others) to every Welsh Minister. These meetings are minuted and the minutes are published, but these formal meetings often lead to further informal activity. Any attempt to include such meetings within a definition of regulated 'lobbying' would create enormous difficulties. For example, volunteers from other religions assist us in this work. Any requirement upon them to register would make it far harder than it already is to find willing volunteers.

**5. Have you encountered any problems with the current arrangements?**

In the case of the Assembly, no. With regard to the 2015 Act, see our answer to Qn 3.

**6. Are there any areas you consider to be unregulated in this area which pose a risk to the accountability and reputation of governance in Wales?**

- a. We note the statement of the First Minister that ministers of the current Welsh Government do not meet with professional lobbyists. There have been calls by some AMs to publish the diaries of Ministers, in order that it may be seen with whom they have met, and we would not object to that.
- b. We are concerned at some aspects of the arrangements for the unofficial Cross-Party Groups which meet in the Senedd. We work closely with the Cross-Party Group on Faith and believe that it is a useful forum for sharing ideas and to invite faith communities to contribute to public debate. The same is true of a number of other such groups which are supported by the third sector. However, we have the impression that some groups are being financed and serviced by commercial companies which use them to gain access to AMs and other attendees. We wonder if the term 'Cross-party

Group' adequately distinguishes these informal groupings from official Assembly Committees, and we believe that further consideration might be given to regulating the access of commercial organisations to such groups.

## **7. What would you consider to be the impact of introducing a new regime to deal with lobbying?**

In our response to the Harries Commission (Qn 3), we said:

*"We are deeply concerned at the 'chilling' effect of the [2015] Act and the consequent reduction in third sector campaigning in the run-up to the election. This may well be one reason for the restricted and repetitive nature of most media coverage and the stranglehold of the political parties' machines on the news agenda"*

In addition to the practical difficulties for organisations such as ours (see Qn 3 above), we are concerned that the regulation introduced by the 2015 Act impacted severely on public discussion around the 2015 and 2016 elections and the 2016 referendum. We published a substantial amount of material for the two elections, but we were very aware of the need to be scrupulously unbiased, especially as the definitions in the 2015 Act do not relate to the motivations of those who publish material, but whether they might have influenced the result in the view of a "reasonable person". This makes it very difficult to predict how a court might decide should a case be brought. We believe that at times this may have made our material rather dull, as we were so careful to avoid expressing any kind of opinion. We believe that this created a contrast with previous campaigns, when the voices of charities, voluntary organisations and trades unions could be heard intervening in the discussion between political parties, and adding new and different dimensions to media reporting.

We know that many of our third sector partners, including some of our member organisations, felt that they did not have the resources of staff or finance necessary to meet the registration requirements for the election, nor to keep records of expenditure. Consequently, they chose either not to take part in the 2016 election campaign at all, or published their material before the end of 2015, to avoid the regulated period, and then did not update it subsequently. Some also decided that they could not respond to media requests to comment during the campaign, inhibiting efforts by the media to

hear voices beyond those of political parties, paid commentators, and those individuals who ring in to phone-in programmes.

Many commentators have expressed the view that the 2016 referendum campaign was unsatisfactory in terms of the range of voices heard and the repetition of the same issues for many weeks. The effect of the 2015 Act and the restrictive advice offered by the Charity Commission created a similar effect to that seen in the 2016 election, and the two events meant that the voice of the third sector in Wales was effectively silenced for six whole months in 2016. We believe that the democracy and public life of Wales were injured as a result.

In attempting to regulate inappropriate influence on the electoral process, the unintentional result of the 2015 Act has been to restrict the ability of the public to hear a multi-faceted public discussion on contemporary issues and to avoid repetitive debates on the media. We would wish to warn the Assembly therefore against any legislation or regulation which might exacerbate this situation further.

1. Is there a need for change?

- 1.1. Yes. There seems to be no real protection for the public, for politicians or for lobbyists at the moment. And there seems to be confusion amongst the Welsh Government about lobbyists' access to Welsh Ministers.
- 1.2. On 12 July 2016 the First Minister stated to me in plenary that "commercial lobbyists don't have access to Welsh Ministers". After my short debate on bringing lobbying out into the open the Leader of the House and Chief Whip, Jane Hutt AM, stated the government's position. She said "It is a very straightforward position. I'm very glad to make it clear today that Ministers do not meet commercial lobbyists..."
- 1.3. But clearly it isn't that straightforward because I later produced photographic evidence of Welsh Ministers with commercial lobbyists. One, the Cabinet Secretary for Finance, was on a panel with a commercial lobbyist, while the Cabinet Secretary for Communities and Children was the keynote speaker at an event hosted by a commercial lobbying firm. When I asked the First Minister to explain his inconsistency he was initially flustered, stating that "I mean, Ministers do speak at events that are organised by organisations..." Then he gave a clear picture of precisely why we need change and a full register of lobbyists in Wales. He said "...Ministers do not have formal meetings with lobbyists." Herein is the problem. The First Minister accepts that Ministers meet with lobbyists but he acknowledges that these meetings are informal. That is the very worst situation. Informal influence by lobbyists is a recipe for corruption and is the very situation my calls for a register of lobbyists seeks to avoid.



- 1.4. The First Minister then went on to say “If he [Neil McEvoy] is saying that no Minister should ever meet, either formally or informally, with anybody who is remotely connected to a lobbying organisation, that's just impractical”. That shows that the First Minister does not understand what I am saying. I have never suggested to him that Ministers should not meet with lobbyists. That is not the change I'm calling for. My campaigning has been to bring lobbying out into the open. That means lobbyists being identifiable on a formal Welsh register, formal meetings between Ministers and lobbyists taking place with these meetings made public, and the details of the contracts of lobbying firms also put in the public domain e.g. how much money is involved and what the lobbying contract is trying to influence.
- 1.5. The clear confusion surrounding lobbyist access to government ministers shows why a formal regulatory regime is needed.
- 1.6. Furthermore, Wales has opted not to introduce robust legislation on lobbying, choosing not to implement even the very modest reforms at Westminster. Scotland meanwhile has taken the lead in the UK context with the Lobbying (Scotland) Bill. This risks leaving Wales behind and putting us in a situation where we have the most lax regulation on lobbying in the UK.
- 1.7. Lastly, the lobbyists themselves are supporting reform. On 25 July 2016 Deryn, one of Wales' largest lobbying firms, stated that “We are members of the APPC – the UK-wide body and register all of our clients publicly with them, we would also be happy to see a Wales specific register.”<sup>1</sup> Daran Hill, of Positif Politics has also repeatedly called for reforms. It's notable that in 2011 he said:
- 1.8. "When you give someone legislative powers, it's a game changer. People in the business sector will look at the legislative programme and think, is there an opportunity here or is there a threat here? That often mobilises people to become more engaged with politics.”<sup>2</sup>

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<sup>1</sup> <http://www.walesonline.co.uk/news/politics/plaid-politician-been-criticised-over-11659526>

<sup>2</sup> <http://www.walesonline.co.uk/business/business-news/daran-hill-man-politicians-ear-1825047>

1.9. Welsh politics has changed. We now have an Assembly with full law-making powers that presides over a budget of more than £15 billion. As a result, people are mobilising. Further devolution, particularly over taxation, means the Welsh Government will have enhanced financial powers. With Welsh democracy changing the regulation governing people trying to influence our democracy must also change. The political context has also clearly changed, with public trust in politics lowering and focus on vested interests growing all the time. This would not be the time, therefore, for the Standards Committee to conclude that lobbyists should not be regulated, with further commitment to open government not needed.

2. What do you understand by the term lobbying?

2.1. When I'm talking about lobbying I'm usually referring to third party lobbyists who act on behalf of their clients for a paid fee in order to influence Government and legislation. However, consideration of regulation for 'in house' lobbyists, including those working for legal firms, should also be given. People who try to influence voluntarily, either individually or collectively through community campaigns, I do not consider to be lobbyists.

3. How is lobbying regulated at the moment?

3.1. Lobbying at the moment is left largely for Ministers and lobbyists to regulate themselves. Ministers are regulated by the Ministerial Code, which makes only one mention of lobbying: '5.25 On leaving office, Ministers will be prohibited from lobbying Government for two years.'

3.2. Lobbyists have the option of a voluntary register and code through the Association for Professional Political Consultants (APPC) as well as a voluntary code through Public Affairs Cymru. A voluntary register and code fails for a number of reasons.

- 3.3. The banking industry was left to regulate itself, to disastrous consequences with the financial crash in 2007. In addition, the voluntary register is a UK register, not a Welsh one. That means that for a lobbying firm that operates in more than one of the UK's four nations it's impossible to know which government they're trying to influence. To take as an example, Grayling is a UK-wide firm. If I look at its profile on the APPC voluntary register I see a list of its clients throughout the UK. It's impossible to know which of their clients are attempting to influence the Welsh Government and Welsh legislation.
- 3.4. The voluntary register also tells us nothing about the nature of the contracts i.e. how much money is involved and what influence the client is seeking. Hence, the register fails to be useful in any way.
- 3.5. In discussions with the APPC it was made clear to me that if any extra requirements were added to the voluntary register then their members would simply leave. This shows a real lack of commitment from their members to open government and to having a robust register. This, to me, is an argument in favour of a statutory register. If lobbyists are left with a voluntary code they will only provide the minimum of information they can. Through statutory regulation they will have to be registered and to make public the nature of their contracts with their clients.
4. Do you consider yourself a lobbyist? How is lobbying regulated within your sector at the moment? E.g. if you are a private business, third sector, professional organisation.
- 4.1. No. I'm an Assembly Member.
5. Have you encountered any problems with the current arrangements?
- 5.1. As identified in my responses above, there are significant problems with the current arrangements:
- 5.1.1. There is no statutory register and relying on the lobbying industry to police itself is negligent.

5.1.2. There is no Welsh register – statutory or voluntary – meaning it’s impossible to identify which clients of lobbying firms are trying to influence legislation or Ministers in Wales.

5.1.3. The voluntary register does not include useful information, especially how much money is involved in a lobbying contract and what or whom the lobbying firm is seeking to influence.

5.1.4. As lobbyists are not officially registered through a Welsh register it’s not possible to keep a public record of when Government representatives meet with registered lobbyists.

6. Are there any areas you consider to be unregulated in this area which pose a risk to the accountability and reputation of governance in Wales?

6.1. Yes I do and it’s clear that the public is increasingly feeling the same way. As noted above, the lobbying industry is simply not regulated in Wales.

6.1.1. There is no statutory register of lobbyists.

6.1.2. Ministers don’t publish their diaries so we don’t know when they meet with lobbyists

6.1.3. There is no specifically Welsh register, including a voluntary one

6.1.4. The public and the people lobbyists try to influence don’t have access on information relating to the money involved in a lobbying contract and what the purpose of the contract is i.e. what they’re trying to influence.

6.1.5. The UK Parliament and especially the Scottish Parliament now have a significantly enhanced regulatory regime on lobbying compared to Wales.

6.2 As a result, clear conflicts of interest keep arising in Welsh politics, which are being made public:

6.2.1 Last September there was a call for a probe into an ex-Special Advisor’s connection with a lobbying firm<sup>3</sup>

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<sup>3</sup> <http://www.walesonline.co.uk/news/politics/call-probe-ex-special-advisers-11889623>

6.2.2 Last July the media covered my calls for a register after I challenged the First Minister that lobbyists are selling access to decision makers in Government<sup>4</sup>

6.2.3 Also in July the Director of a lobbying firm was publicly criticised for sitting on the governance committee of Associated Community Training (ACT), while also maintaining ACT as a client of her lobbying firm.<sup>5</sup> ACT received significant Government funding. I note that the same Director also sits on Ofcom's Advisory Committee for Wales, while also maintaining Ofcom as a client of her lobbying firm.

6.2.4 In spite of the Government's reticence on the need for regulation the media keeps pointing out the anomaly of Scotland and the UK Governments having regulation but not Wales<sup>6</sup>.

6.3 With a lack of regulation it is clear that there is risk to the accountability and reputation of governance in Wales. We're relying on the lobbying industry to police itself, which it just won't do. As previously stated, the APPC has made clear that if it implemented a more robust voluntary register then its members would simply leave. And when it comes to the other voluntary organisation policing lobbyists in Wales, Public Affairs Cymru, I note the criticism of one of Wales' foremost lobbyists and founder of PAC, Daran Hill, who said:

6.3.1 'It [PAC] has become more interested in the quality of the buffet than the quality of our democracy.'<sup>7</sup>

7. What would you consider to be the impact of introducing a new regime to deal with lobbying?

7.1. Through the right regime lobbying would be brought out of the shadows and into the open. The public and legislators would know who the lobbyists are, we'd know how much money was involved in lobbying contracts and what legislation or government figures lobbyists were trying to influence.

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<sup>4</sup> <http://www.walesonline.co.uk/news/politics/assembly-member-claims-lobbyists-selling-11605691>

<sup>5</sup> <http://www.walesonline.co.uk/news/politics/plaid-politician-been-criticised-over-11659526>

<sup>6</sup> <http://www.bbc.co.uk/news/uk-wales-politics-37949267>

<sup>7</sup> <http://www.iwa.wales/click/2016/03/lobbyists-need-to-be-transparent-too/>

- 7.2. That, in itself, would be invaluable information. If any questionable decisions were made then we'd be able to see the meetings and influence being put on government in the lead up to the decision.
- 7.3. Legislators and lobbyists would also be better protected by having a clear and formal regime regulating how lobbying takes place in Wales.
- 7.4. But most of all a robust lobbying regime would give added protection to the public and would show to them that it's their interests, rather than vested interests, that are driving Government in Wales.

Cynulliad Cenedlaethol Cymru / National Assembly for Wales  
Y Pwyllgor Safonau Ymddygiad / Standards of Conduct Committee  
Ymchwiliad i Lobïo / Inquiry into Lobbying  
Ymateb gan Blaid Cymru / Evidence from Plaid Cymru

Jayne,

The Plaid Cymru Assembly Group supports the establishment of a Register of Lobbying Organisations.

Yours,

Dr Dai Lloyd  
Plaid Cymru Assembly Group Chair

**Cancer Research UK welcomes the National Assembly of Wales' Standards of Conduct Committee inquiry into Lobbying. We believe that lobbying and campaigning activity is a hugely important tool for charities, whether used to encourage change or maintain a positive status quo, raise awareness, provide expertise to strengthen strategy, or otherwise help to achieve their vision. Cancer Research UK would support the introduction of a lobbying register in Wales. We believe the register would increase transparency of lobbying and help the public understand its role in the public policy process.**

1. Cancer Research UK is the largest single funder of cancer research in the UK. Last year we spent over £4m on cancer research in Wales. Our unique position allows us to inform political debate and provide expert advice on the issues that matter to cancer scientists, doctors, nurses and the thousands of people in the UK living with cancer. Our Public Affairs team works in Europe, England, Northern Ireland, Scotland and Wales to ensure cancer stays at the top of the political agenda.
2. Campaigning or lobbying is a legitimate and important activity for charities to be involved in. Charity campaigning should be celebrated as a vital part of Welsh society which provides an opportunity for many people to participate in government decision making and the democratic process.
3. Cancer Research UK has been at the forefront of supporting a robust fundraising regulatory environment – including around campaigning.
4. We support the principle of the introduction of a lobbying register for Wales. We believe a register would increase the transparency and reputation of the practice of lobbying, and to bring Wales in line with Westminster and Scotland, which have legislated for the introduction of lobbying registers.



5. Cancer Research UK would support the adoption in Wales of a lobbying register similar to the model currently being introduced in Scotland.
6. We believe that any register should be comprehensive and apply to all professional lobbyists, both in-house and external. A universal register would achieve parity between in-house lobbyists in private organisations and those working within charities.
7. Similarly to Scotland, we believe an individual should be included when the primary purpose of their role within their organisation is to campaign or lobby. In Cancer Research UK, for example, this could include campaigning and public affairs officers and managers. Those who occasionally undertake lobbying activity but whose role is to support the broader aims of an organisation should not be included, such as the chief executive officer of the charity.
8. A lobbying register for Wales would need to be compulsory, to prevent those who fail to adhere from simply unregistering to avoid penalties.
9. We see the register as being a way to enable the public to understand the impact lobbyists are having on the public policy process.

### **Further information**

We would be happy to provide any further information or detail as required. Please contact Gregor McNie, Senior Public Affairs Manager (Devolved Nations) using [Gregor.McNie@cancer.org.uk](mailto:Gregor.McNie@cancer.org.uk) or 0131 718 6358.

### **About us**

Cancer Research UK is the world's leading cancer charity dedicated to saving lives through research. We support research into all aspects of cancer through the work of over 4000 scientists, doctors and nurses. Cancer Research UK spent over £4 million last year in Wales on some of the UK's leading scientific and clinical research. The charity's pioneering work has been at the heart of the progress that has seen cancer survival in Wales move from 1 in 4 in the 1970s to 2 in 4 today.

## Introduction

1. Deryn Consulting Ltd welcomes the inquiry by the Standards Committee into the current arrangements relating to lobbying at the National Assembly for Wales and in this paper we outline our views for members to consider. We would also be pleased to provide the committee with oral evidence.

2. Established in 2012, Deryn is now one of Wales's leading Public Affairs companies. Our directors and staff have considerable cross party experience of politics, communications, campaigning and government in Wales and Westminster, and to a certain extent, Brussels.

3. We are members of the Association of Professional Political Consultants (APPC) and we comply with, and actively promote, its code of practice. We joined the APPC because we are fully committed to the principles of openness and transparency and have chosen to enter the name of our clients and consultants on a voluntary public register for that reason.

4. Deryn is also a member of Public Affairs Cymru (PAC), a membership organisation for public affairs professionals in Wales. Membership of PAC is open to all individuals within public affairs and government relations in Wales. The organisation has around 200 members from the public, private and voluntary sectors, including in-house and agency public affairs practitioners.

5. Deryn is fully supportive of any measures which are designed to raise standards and enhance openness and transparency as long as these measures are

- proportionate and fair
- applied to all lobbying activity undertaken, including all those who seek to engage
- enacted in such a way that ensures all information published is verifiable

- do not impose an unreasonable financial burden on those who engage, or a
- particular cohort of organisations that seek to engage.

A definition of lobbying and its purpose

6. We agree with the APPC's definition of lobbying:

*Lobbying means in a professional capacity making any oral or written communication (including an electronic communication) to any member of the Government, advisers or officials or member of either House of Parliament or their staff or advisers with regard to the formulation, modification, or adoption of legislation; the formulation, modification, or adoption of any rule, regulation, order, policy, or position; the administration of any Government programme or policy, including the negotiation, award, or administration of a contract, grant, loan, permit, or license; or any other official act or decision.*

7. For its statutory register of lobbying, the UK Government proposed a very narrow definition of lobbying which only covered consultant lobbyists whose business is predominantly lobbying and who themselves lobby Permanent Secretaries (or equivalent as specified by the Act) or Ministers of the Crown. We believe the definition should be wider and should apply to in house lobbyists, and anyone whose activities fall under the definition above.

8. Lobbying is a very important aspect of a healthy democracy, and the National Assembly for Wales has traditionally valued the openness and accessibility of its members. 9. With regard to our experience, we spend the majority of our time educating, informing and advising charities and companies on how to engage with the Welsh Government and the National Assembly for Wales, rather than lobbying on behalf of clients directly.

10. The main thrust of our work is to inform our clients of the political landscape in Wales and to provide strategic information and advice as to how decisions are made by democratic bodies and executives in Wales and how these decisions affect them – as well as to advise our clients on how they can engage effectively with these institutions and processes. In addition to this, we arrange events on behalf of our clients, provide senior strategic

communications advice and support and facilitate strategy sessions for senior management teams.

#### An Evolving Context

11. As the power and the influence of the devolved administrations has grown over time, so has the interest in the nature of the government in Wales and decisions taken.

12. There are many individuals within organisations who engage directly with the Welsh Government and the National Assembly as part of their wider professional and representational role – and this may represent the vast majority of direct engagement with Ministers and Assembly Members. Any registration of meetings or individuals that does not take this into account is likely to disregard the significant majority of what constitutes lobbying in Wales.

13. There has been a growth in the amount of in-house lobbying undertaken i.e. organisations employing public affairs staff to engage directly with politicians and to influence decision making. Public affairs consultants now often serve more as a source of additional capacity to in-house communications, public affairs or external affairs teams rather than being the only or primary mechanism of such activity.

14. The consultancy sector across the UK has become much more inter-disciplinary in its nature, with public affairs and political communications sometime integrated with a range of other services such as media advice, legal advice and event management.

15. Not all practitioners in Wales are of course members of the APPC.  
APPC Members in Wales

16. The APPC has a membership of over 80 organisations throughout the UK, and the APPC Register for 1st September 2016–31st November 2016 includes six members who operate from offices in Cardiff.

17. Other APPC-registered companies located across the UK may have contact with Ministers or AMs, and the APPC is currently considering whether

it should amend its register to identify the institutions where its members are active. We would support this move, so that it is clear which APPC members operate in Wales. We would also support measures to promote membership of the APPC to all agency and individual practitioners, and the benefits of both a strong code of conduct and the independent scrutiny process that follows any complaints.

18. Its Code of Conduct regulates the conduct of all APPC members and these quarterly registers offer transparency to anyone wanting to find out which clients are represented by its members. The APPC has also established Complaints & Disciplinary Rules and Procedures which allows anyone to lodge a complaint against a member firm of the APPC. This process has an independent adjudication element. It is partly as a result of the leading role played by the APPC over more than two decades that the professional political consultancy business in the UK today has one of the best ethical track records of any in the world. The APPC has published a voluntary register of its members' clients for nearly 20 years.

19. There are a number of agencies and independent consultants who operate in Wales who are not members of the APPC, and are therefore not listed on any voluntary register, and have not signed up to comply with the Code of Conduct The APPC Code of Conduct

20. The principal condition of membership of the APPC is that the member firm should accept and abide by the APPC Code of Conduct. The Code regulates the conduct of all APPC members and promotes high ethical standards. It offers detailed rules based on two principles: transparency and an absolute ban on any financial relationship with politicians or their advisers. There are also rules including not holding passes and keeping separate any duties practitioners may have on behalf of political parties as office holders.

21. The Code is reviewed regularly and updated as required. All members must sign and endorse the Code (which binds firms, their staff and non-executive consultants) as a prerequisite for joining the APPC. All new staff must sign the Code and receive training when they sign their contracts of employment.

22. Members are required to re-endorse the Code of Conduct each year and to produce an annual statement of compliance. Each member must designate a senior executive as the firm's compliance officer. Members must provide an updated entry to the APPC Register every quarter, listing the names of staff and clients and complete an annual compliance procedure with the APPC Code of Conduct as at 31 May each year.

#### Reviewing lobbying practices in Wales

23. Although there have been unsubstantiated allegations made by one AM, we are not aware of any current problems, or a widespread perception of a problem, around lobbying in Wales. We are not aware of any breaches of the APPC's code of conduct by APPC members.

24. That does not however mean we are complacent. We continue to review how we work and promote transparency and openness in our day to day activities. We believe that from the perspective of maintaining high standards and ethical practices, the APPC Code of Conduct and Register is effective for those who comply with the former and sign up to the latter. We cannot account for the practices of those who are not APPC members.

25. A number of AMs have raised issues since the Assembly was established, where they believe there may have been a conflict of interest, or have challenged a decision by Ministers on specific matters such as funding or governance for individual charities or companies. It is important to note that in all these matters, consultant lobbyists have not been involved. Therefore, introducing new legislation that simply covers consultant lobbyists would not, in our view, be proportionate or effective.

26. We support wholeheartedly measures to promote transparency and openness. The APPC continuously seeks to enhance standards by reviewing and tightening its code of conduct and by actively seeking more consultants to operate within its framework. We would support a proposal made to the APPC to reform its register in order to explicitly list which organisations are active in Wales.

27. Deryn would also fully support the strengthening of the Public Affairs Cymru (PAC) Code of Conduct and a requirement that all PAC members sign this annually and abide by the code. PAC would subsequently hold a publicly available register of lobbyists in Wales who are signatories to the PAC Code of Conduct where members would routinely disclose their client list.

28. In strengthening the PAC Code of Conduct, Deryn would support a requirement that PAC members should not hold a pass to the Assembly. We would also endorse a requirement for practitioners to keep strictly separate from their activities, any personal activity or involvement in a political party, including as an office holder or candidate for office. In such circumstances, it would be incumbent upon PAC to promote the benefits of its membership among those who would qualify as lobbyists as described in paragraph (vi) above.

29. All should be mindful however, that there will always be individuals and organisations who choose not to seek membership of PAC, the APPC or any other organisation. If there is currently a perceived problem with of a lack of transparency, then such a register only of consultant lobbyists and in house public affairs practitioners. would not necessarily be sufficient to address such a perception. We believe that the vast majority of engagement activity with ministers, civil servants and AMs does not involve either cohort of public affairs professionals.

30. We believe that the publication of AMs and Ministers' diaries would be more valuable and efficient in serving this purpose. As such, we welcome the confirmation given on the 20<sup>th</sup> January 2017 that Ministers' meetings with external organisations and attendance at engagements will be published to the Welsh Government's website quarterly. We would urge the Assembly Commission to consider whether Assembly Members should require to do the same in light of the influence all parties potentially have on policy decisions, legislation and budgets due to the frequency of the election of minority governments in Wales.

31. Should the committee decide, however, to recommend that the Assembly Commission introduces a register in Wales, members may want to consider focusing on those who are lobbied rather than the lobbyists as there appears

to be much greater clarity over what constitutes an act of lobbying than there is in relation to the definition of a lobbyist. If there is to be a register then it should be one which provides information on who is lobbying whom and on what issues, and it should certainly address the weaknesses of the Westminster model by taking account of all those who undertake lobbying. This would cover not only public affairs and political communications consultants, but also those working for businesses, trade unions, management consultancies, charities, NGOs, planning consultancies, think tanks, trade associations, and in-house lobbyists.

32. A strong, professionally delivered consultancy sector means that essential help in steering a path through the political process is available to organisations of relatively modest means. But such services are easily eclipsed where very large organisations can afford sufficient in-house capacity to undertake their own engagement activities. If, as we would argue, the purpose of registration is to improve transparency, it would be counter-intuitive to exclude from the register those companies and organisations who probably have the greatest resources available.

33. Furthermore, any new regulations to this effect should be based on evidence, and to date, no detailed analysis of engagement with Ministers or AMs has been undertaken.

34. There should of course be an exemption for individuals who are lobbying AMs on personal or constituency matters in a non-professional capacity. However, should the committee be minded to recommend that a register is introduced, the information contained should extend wider than activities involving Welsh Ministers. As minority governments are a regular feature of Welsh democracy, it is fairly often the case that every AM has the potential to influence the decisions of the executive body. All Assembly Members should therefore be included within the scope of any such register.

Summary of recommendations

35. In summary, Deryn would recommend that the Committee considers the following course of action:

a) Continues to work with the APPC and PAC to enhance transparency within the industry, and to consider how to extend those voluntary registers to all



consultant lobbying and in-house practitioners, whilst recognising that this will only capture a small minority of lobbying that takes place.

b) Undertakes detailed research into the nature of engagement with Ministers and AMs before any regulations are considered.

c) Ensures that any regulations cover as broad a range of engagement and lobbying as possible, and is not restricted to consultant lobbyists and in-house public affairs professionals, otherwise the regulations will fail to include the vast majority of lobbying in Wales.

d) Recommends that the diaries of all AMs, as well as Ministers, are published with an exemption for information relating to individuals who are lobbying AMs on personal or constituency matters in a non-professional capacity

## Introduction to submitting organisations

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**Unlock Democracy** is a campaign that exists to put power in the hands of the people. The organisation believes that a vibrant, inclusive democracy makes everyone's lives better, and campaigns on issues including lobbying transparency and electoral reform.

**Spinwatch** has led the campaign for greater transparency in lobbying in the UK since 2007, when it set up a coalition of trade unions and NGOs, called the [Alliance for Lobbying Transparency \(ALT\)](#), to campaign for a statutory register of lobbyists. ALT works to highlight the impact that commercial lobbying has on political decision making in the UK.

## Submission

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### Is there a need for change?

1. Unlock Democracy and Spinwatch recommend that the Welsh Assembly introduces a comprehensive statutory register of lobbyists. We believe that lobbying is part of a healthy pluralist democracy, however, problems arise when lobbying activity is not transparent or subject to scrutiny from the public and the Welsh Assembly. Policymakers and those seeking to influence them should be accountable for their actions.
2. Failure to ensure transparency and accountability can leave institutions open to the accusation that special interests have undue influence on policymaking processes, and can give the perception of corruption. This can undermine public trust in politicians and political institutions. We believe existing advisory guidance on lobbying the Welsh Assembly is

insufficient to provide the transparency necessary for proper scrutiny, and instil confidence that democratic processes are not being undermined.

3. All paid lobbyists should be required to register and submit quarterly returns detailing any communication with Assembly Members (AMs), their Special Advisers (SpAds), or other public officials.
  
4. The information contained on this register should include:
  - a. The name and business details of the lobbying organisation
  - b. The name(s) of individual lobbyists
    - i. Any public office held in the past 10 years
  - c. The name(s) of any clients (if consultant lobbyist)
  - d. The subject matter of the lobbying activity
  - e. Any relevant legislative proposal, Bill, resolution, regulation, policy, program, grant, contribution, financial benefit or contract which is or is planned to be the subject of lobbying activity
  - f. The public official at whom the lobbying activity is being directed
  - g. Any communication techniques the registrant expects to use in relation to lobbying efforts
  - h. The amount spent on lobbying activity
  
5. Statutory lobbying registers are already in place in Scotland and Ireland, as well as many other countries around the world. A more limited register covering only consultant lobbyists is in place in Westminster, which the Welsh Government has opted out of. The Welsh Government is currently far behind its counterparts when it comes to transparency. It was rated third out of the four UK governments for ministerial transparency and integrity regulations by Transparency International<sup>1</sup>. Statutory regulation is required to bring Wales into line with the rest of the UK, but there is

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<sup>1</sup> <http://www.transparency.org.uk/publications/liftthelid/>

also an opportunity to lead the way with more comprehensive transparency regulation.

6. The First Minister of Wales, Carwyn Jones, has argued that legislation on lobbying is unnecessary, claiming that lobbyists do not have access to ministers<sup>2</sup>. However, a number of examples have been raised of cases where ministers or AMs have met with lobbyists<sup>3</sup>, and there have even been accusations of lobbyists successfully influencing funding grant decisions<sup>4</sup>.
7. Although there have been no *major* scandals regarding lobbying in Wales as of yet, countless scandals in Westminster have demonstrated that self regulation of the sector does not work. It is foreseeable that members of the Welsh Assembly may be embroiled in a lobbying scandal in the future, particularly as more powers are devolved to the Welsh Assembly the risk becomes greater. Introducing a comprehensive lobbying register now would prevent such a scandal and help the Welsh Assembly achieve the highest standards of transparency, which should be a goal in its own right.
8. The trajectory towards greater devolution of powers to the Welsh Assembly is likely to result in the rapid growth of the Welsh lobbying industry. A helpful comparison is the lobbying industry in Scotland, which grew as more powers were devolved, with many Westminster agencies setting up a dedicated Scotland office as they saw lobbying opportunities increase. We also know that the lobbying industry views Brexit as presenting a multitude of opportunities for expanding their influence.

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<sup>2</sup> <http://www.bbc.co.uk/news/uk-wales-politics-37833739>

<sup>3</sup> Neil McEvoy AM provided evidence that one minister had attended an event with commercial lobbyists and that another was a keynote speaker at a commercial lobbyist event. <http://www.bbc.co.uk/news/uk-wales-politics-37833739>

<sup>4</sup> Neil McEvoy claimed that a whistleblower alleged that a decision not to approve funding for GlobalWelsh was overturned after a lobbyist got in touch with a Minister on their behalf. <http://www.assembly.wales/en/bus-home/pages/rop.aspx?meetingid=3999&assembly=5&c=Record%20of%20Proceedings&keyword=mcevoy%20lobbying#433492>

Professional lobbying agencies see Brexit as a marketable and profitable opportunity, where they can help clients “enter the debate”<sup>5</sup>.

9. There is a need for change as existing transparency mechanisms are insufficient to permit scrutiny and promote accountability in the Welsh Assembly. There is evidence that ministers and AMs are meeting with lobbyists. There is the potential for scandals which could do irrevocable damage to the reputation of the Welsh Assembly and its members. A comprehensive lobbying register should be introduced pre-emptively not reactively.

### **What do you understand by the term lobbying?**

10. Unlock Democracy and Spinwatch understand lobbying to be any form of communication with a public official with the intention of:

- a. influencing a particular policy or position
- b. seeking the award of a government contract or financial benefit
- c. convincing an official to carry out parliamentary activity on your behalf

11. We understand a lobbyist to be someone that undertakes lobbying activity, as defined above, in exchange for payment. We would agree with the definition of a ‘professional lobbyist’ used in the National Assembly for Wales’ guidance on lobbying and access to AMs<sup>6</sup>. We believe it is imperative that any new regulation on lobbying in Wales apply to all those who lobby and not just consultant lobbyists, as is the case with the statutory register introduced in Westminster.

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<sup>5</sup><http://www.unlockdemocracy.org/blog/2016/10/13/5-lobbying-firms-with-more-influence-over-the-brex-it-process-than-you>

<sup>6</sup> “a “professional lobbyist” would include “all those who undertake lobbying activity, i.e. activity aimed at seeking to influence Members, on a professional basis and in a paid role”. This includes in-house lobbyists, charities, trades associations and other organisations that employ staff to undertake lobbying activity, individual lobbyists, as well as consultancies and agencies that either lobby directly on behalf of clients or advise their clients on undertaking lobbying activity.”

## How is lobbying regulated at the moment?

12. Lobbying of the Welsh Assembly is largely self regulated. Public officials are advised to consult professional bodies in order to gather information prior to meetings. Most professional bodies require members to sign up to a code of conduct. However, there is no requirement for lobbying firms to join any professional bodies. AMs are prohibited from lobbying for 'reward of consideration'<sup>7</sup>. This includes consultancy and advisory work on influencing the Welsh Assembly or the affairs of the Welsh Assembly<sup>8</sup>. Unlock Democracy and Spinwatch commend this effective regulation.

13. The Welsh government's ministerial code requires ministers to record their meetings with outside interests. Guidance on lobbying for AMs advise that they make a note of any meetings with lobbyists. There are many problems with these regulations which will be detailed later.

**Do you consider yourself a lobbyist? How is lobbying regulated within your sector at the moment? E.g. if you are a private business, third sector, professional organisation.**

14. Unlock Democracy and Spinwatch consider ourselves to be lobbyists. We are not for profit organisations operating in the third sector. In regards to Wales there is little to no regulation of this sector.

## Have you encountered any problems with the current arrangements?

15. Unlock Democracy has not lobbied the Welsh Assembly in recent years and therefore we are unable to comment.

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<sup>7</sup> Standing order 2.8

[http://www.assembly.wales/NAfW%20Documents/Assembly%20Business%20section%20documents/Standing\\_Orders/Clean\\_SOs.eng.pdf](http://www.assembly.wales/NAfW%20Documents/Assembly%20Business%20section%20documents/Standing_Orders/Clean_SOs.eng.pdf)

<sup>8</sup>

<http://www.assembly.wales/NAfW%20Documents/Guidance%20on%20Lobbying%20and%20Access%20to%20Assembly%20Members/Guidance%20on%20Lobbying%20and%20Access%20to%20AMs%20-%2026%20June%202013.pdf#search=lobbying%20guidelines>

**Are there any areas you consider to be unregulated in this area which pose a risk to the accountability and reputation of governance in Wales?**

16. Current regulation of lobbying in Wales relies on professional bodies for information about lobbying firms, their clients, and their lobbyists. Current guidance advises AMs to consult information held by these bodies when deciding whether to meet with lobbyists<sup>9</sup>. However, due to the voluntary nature of these bodies the information they hold is not comprehensive and there may be lobbyists on which no information can be found. The APPC register contained just 66 lobbying firms in the whole of the UK in the quarter September–November 2016<sup>10</sup>. This is even fewer registrants than on the UK consultant lobbying register, which has been widely criticised for its small number of entries. Furthermore, it is UK wide and not specific to Wales, giving members little information about lobbying activity in Wales. The other recommended body is the Public Affairs Cymru register. Whilst this has a larger number of members it includes no information about members’ activities or lobbyists<sup>11</sup>. It sheds little light on how lobbyists may be trying to influence policy and therefore makes it difficult to hold public officials to account.

17. The Standards Committee’s 2013 report recognised the increased risk of impropriety posed by lobbyists meeting ministers<sup>12</sup>. The ministerial code states that ‘the basic facts of formal meetings between ministers and outside interest groups should be recorded’<sup>13</sup>. However, this data is difficult to find. This information is not centrally held in a single place to make it easily accessible, nor is this information kept in a uniform format

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<sup>9</sup>

<http://www.assembly.wales/NAfW%20Documents/Guidance%20on%20Lobbying%20and%20Access%20to%20Assembly%20Members/Guidance%20on%20Lobbying%20and%20Access%20to%20AMs%20-%2026%20June%202013.pdf#search=lobbying%20guidelines>

<sup>10</sup> <http://www.appc.org.uk/register/current-register/>

<sup>11</sup> <http://www.publicaffairscymru.org/member-list/>

<sup>12</sup> <http://www.senedd.assembly.wales/documents/s16949/Report%2003-13%20to%20the%20Assembly%20on%20Lobbying%20and%20Cross-Party%20Groups-%20April%202013.pdf>

<sup>13</sup> <http://gov.wales/docs/dfm/publications/160602-ministerial-code-en.pdf>

so that it could be easily analysed. Its inaccessibility means that it becomes useless as a tool for public scrutiny. The same is true for AMs. Although the guidance on lobbying recommends AMs record the subjects of their meetings with lobbyists, or ask the lobbyists to do so for them, there is no guidance as to where this should, or even can be published. This is also only advisory and therefore there is no consistent reporting of AMs meeting with lobbyists. Ultimately, the public have no idea when public officials are meeting with lobbyists and what they are talking about. This creates an accountability deficit.

18. There is little regulation of post-public employment for AMs. The ministerial code requires ministers to apply to the Advisory Committee on Business Appointments for advice and obliges them to follow that advice. It also imposes a two year restriction on lobbying<sup>14</sup>. However, there is no mechanism to monitor compliance, although the media may uncover scandals where former ministers are lobbying their former colleagues. Furthermore, there is no regulation for AMs who lobby the government immediately after leaving office. One lobbying firm, Deryn, has a former Special Advisor who worked on Carwyn Jones's leadership campaign, a former AM, and the former Chief Executive of Plaid Cymru among its staff<sup>15</sup>. This creates the public perception that former public officials are using their contacts and influence to benefit private clients. Once again this is damaging to the Welsh Assembly's reputation and can cause the public to question in whose interests the Welsh Government is really working.

19. A comprehensive lobbying register would require lobbyists to disclose any public office held in the past 10 years. This would provide transparency of post-public appointments and prevent former AMs and public officials from ignoring restrictions on lobbying.

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<sup>14</sup> <http://gov.wales/docs/dfm/publications/160602-ministerial-code-en.pdf>

<sup>15</sup> <http://www.deryn.co.uk/about/>



## What would you consider to be the impact of introducing a new regime to deal with lobbying?

20. Introducing a new regime to deal with lobbying such as a comprehensive lobbying register would ensure AMs, public officials and those seeking to influence them are accountable for their actions, which would increase public trust in the Welsh Assembly. Global studies have found a correlation between public trust in politicians and transparency in government and policy making<sup>16</sup>. Allowing the activities of lobbyists and their contact with Welsh Government officials to be scrutinised would reassure the public that the Welsh Government has nothing to hide. It would also act as a deterrent against possible inappropriate influence from lobbyists, preventing scandals from occurring in future. Introducing this regime pre-emptively would therefore limit future reputational damage and prevent the perception that the Welsh Government was acting in private interests rather than the public interest.

21. Having in place a comprehensive lobbying register would reduce the burden on AMs who currently bear primary responsibility for monitoring lobbying activity. The Standards of Conduct Committee raised this as a particular concern about introducing transparency legislation in 2013 report<sup>17</sup>. However, the resulting guidance placed greater burdens on AMs than a statutory register would. It advises AMs to individually carry out due diligence using the voluntary registers, such as checking codes of conducts and client lists, which is a time consuming and onerous task for individual AMs to undertake. It also advises that AMs make a note of meetings, ask lobbyists to record meetings, and make it available to them, or ask their staff to take minutes.<sup>18</sup> Again, this places the burden

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<sup>16</sup> World Economic Forum (2013) 'Global Competitiveness Report 2013-14', *World Economic Forum*

<sup>17</sup> <http://www.senedd.assembly.wales/documents/s16949/Report%2003-13%20to%20the%20Assembly%20on%20Lobbying%20and%20Cross-Party%20Groups-%20April%202013.pdf>

<sup>18</sup>

<http://www.assembly.wales/NAfW%20Documents/Guidance%20on%20Lobbying%20and%20Access%20to%20Assembly%20Members/Guidance%20on%20Lobbying%20and%20Access%20to%20AMs%20-%2026%20June%202013.pdf#search=lobbying%20guidelines>

of data collection and storage on individual AMs. A statutory register would require lobbyists to declare any communication with public official and therefore place the responsibility on lobbyists, for whom this is a primary activity.

22. Concerns about the financial and administrative burdens that lobbying may place on small organisations and charities are often raised. Indeed, this issue was raised in the committee's 2013 report<sup>19</sup>. However, there are measures that can be taken to prevent this. Thresholds for registration can be introduced to exempt organisations with budgets under a certain amount from registering. Unlock Democracy and Spinwatch believe a lobbying register should be publicly funded, to ensure there are no financial barriers to transparency. This would address concerns about financial pressure on small organisations.

23. The Welsh Assembly now has the opportunity to be the most transparent in the UK and even beyond. Although the Welsh lobbying industry may be smaller than that in Westminster there is evidence that public officials are meeting with lobbyists. The Welsh Government must act pre-emptively before reputational damage occurs, not reactively. By this point it will be too late.

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<sup>19</sup> <http://www.senedd.assembly.wales/documents/s16949/Report%2003-13%20to%20the%20Assembly%20on%20Lobbying%20and%20Cross-Party%20Groups-%20April%202013.pdf>

Cynulliad Cenedlaethol Cymru / National Assembly for Wales  
Y Pwyllgor Safonau Ymddygiad / Standards of Conduct Committee  
Ymchwiliad i Lobïo / Inquiry into Lobbying  
Ymateb gan Ffederasiwn Busnesau Bach Cymru / Evidence from Federation of  
Small Businesses Wales

Dear Jayne

RE: Inquiry into lobbying

FSB Wales welcomes the opportunity to contribute to the Standards of Conduct Committee's inquiry into lobbying in Wales. As an organisation representing around 10,000 smaller businesses the length and breadth of Wales, we take our role as the leading advocate of small businesses very seriously.

At the heart of our work as a federation is the desire to improve policy-making in Wales by facilitating engagement between politicians of all parties, the civil service and civil society with Wales' small businesses. Our members are citizens of Wales in their own right and we see this role as vital in making devolution work effectively.

As a business representative body, our members join for three principal reasons; to benefit from the services we offer, as an opportunity to increase their network and to ensure their voice and influence is brought to bear on the decision making process at all levels.

Our membership is as diverse and varied as the people of Wales as a whole. With around 10,000 members we are a pluralist organisation not guided by any particular vested interest or sector. We recognise that there is no such thing as "the voice of business" and that there are a number of competing views on many issues from the business community.

As a point of principle, FSB Wales believes that there is a need for improvement in the proximity and engagement between decision making and citizens in Wales. We would include SMEs as a key social group within this definition. A key element of this must be to improve the understanding among the business community of how the institution of the National Assembly for Wales works and how businesses can better inform decision making in the interest of Wales as a whole. In particular, this should focus on engagement with individual AMs in their representative role.

FSB Wales' principal framework for engagement with the Welsh Government is through the statutory Business Scheme detailed within the Government of Wales Act 2006. This licences the Council for Economic Development (previously Council for Economic Renewal) as the main forum for engagement between business representative bodies and other social partners and the Welsh Government.

Beyond this, we are regularly consulted by government departments and committees of the National Assembly for Wales on our views of policy proposals as part of the formal consultation process. We also meet regularly with politicians of all political parties to help inform their policy development by presenting our policy and research findings.

We would however draw a distinction between the activity of our staff who are often employed in public affairs and policy-facing roles and the activity of our 10,000 members. Any proposals to regulate lobbying in Wales must recognise the challenges a broad membership organisation such as ourselves faces in facilitating dialogue between our 10,000 members and decision makers. In this respect, we would envisage many other organisations such as trade unions, charities and campaign groups or other trade bodies would raise similar issues.

The recent announcement by the First Minister that all cabinet secretaries and ministers would be publishing their diaries is a welcome step forward and in our view seems to address what is required in terms of transparency. This is the simplest way to increase that transparency in a proportionate way without unduly burdening organisations such as ourselves.

We welcome the committee's consideration of this important issue and would be happy to provide any further information required in formulating recommendations.

Yours faithfully

Cynulliad Cenedlaethol Cymru / National Assembly for Wales  
Y Pwyllgor Safonau Ymddygiad / Standards of Conduct Committee  
Ymchwiliad i Lobïo / Inquiry into Lobbying  
Ymateb gan BMA Cymru / Evidence from BMA Cymru

1. The British Medical Association (BMA) is an independent professional association and trade union representing doctors and medical students from all branches of medicine all over the UK and supporting them to deliver the highest standards of patient care. We have a membership of over 160,000, which continues to grow every year. BMA Cymru Wales represents almost 8,000 members in Wales from every branch of the medical profession.
2. BMA Cymru Wales welcomes the opportunity to contribute to the Committee's inquiry into lobbying activity in Wales. Some of the questions asked by the committee are not relevant to the work of the BMA. Where it is appropriate for us to share our views we have ensured that the responses given are within the scope of this inquiry.
3. BMA Cymru Wales recognises that lobbying is an essential and legitimate activity which forms part of the democratic process and is a fundamental part of the political process in developing and implementing well considered public policy and robust legislation.
4. BMA Cymru Wales is supportive of ensuring transparency in lobbying activities although we are not aware of a particular lack of transparency in Wales. As a trade union, the BMA already operates in a highly transparent sector. The Trade Union and Labour Relations (Consolidation) Act 1992 as amended by the Employment Relations Act 1999 requires the BMA to adhere to a number of regulations and standards. Additionally, as a national, high profile and well-respected organisation, there are certain standards that the BMA expects of its public affairs staff, as representatives. In Wales, our Media and Public Affairs team are all members of the CIPR and as such adhere to the CIPR's code of conduct. Additionally, membership of Public Affairs Cymru (PAC) is encouraged and the two members of staff who undertake lobbying activities are members of PAC adhere to its code of conduct.

5. BMA Cymru Wales undertakes lobbying activities to inform Assembly Members, Government Ministers, Special Advisors and Civil Servants of the medical profession's views on certain policy areas including medical workforce issues, public health matters and wider NHS policies. We also provide a practical perspective on how certain policy proposals will impact on NHS services and patient care. BMA Cymru Wales does not have any commercial interest, nor does it seek to gain a financial advantage as a result of its lobbying activities.

Is there a need for change?

6. We acknowledge that there is a different political climate now compared to when the last inquiry was held into lobbying in 2013. In particular, regulation of lobbying activity in Scotland and the UK Parliament's Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014. However, BMA Cymru Wales is unconvinced of the need for change in Wales, particularly in terms of any register of lobbyists.
7. Since devolution, there has been an open and transparent approach to engagement of the public and professions in the development of policy by all administrations, past and present. The consultation process is set out very publicly and many organisations, including BMA Cymru Wales allow responses to be published. The legislative process too is very open, particularly with the publication of evidence received by external organisations and the public forum in which Assembly Committees meet, including their broadcast. However, we would note that the short notice given by some committees when written or oral evidence is called for does sometimes limit organisations' ability to respond in the fullest and most effective manner.

What do you understand by the term lobbying?

8. BMA Cymru Wales undertakes a range of activities to help shape and influence policy but would not necessarily consider all of this activity to be lobbying. Additionally, the BMA as a trade union, often meets with Ministers and government officials for the purposes of negotiating contractual issues. These meetings are attended by elected members and secretariat staff. BMA Cymru Wales is firmly of

the opinion that negotiating activities with government officials and Ministers should not be defined as lobbying as they are completely separate and different activities, subject to existing legislation and which are part of the routine work of a trade union.

9. BMA Cymru Wales is often invited to nominate representatives from the medical profession to attend government-led meetings to develop policy e.g. workforce planning etc. Our presence at these meetings is to influence the shaping of policy to ensure it is practical and implementable from the professional perspective. We do not believe this activity should be captured under any definition of lobbying. However, for the sake of transparency we would contend that all organisations' attendance at such government-level meetings should be available publicly from the government or under a freedom of information request.

What would you consider to be the impact of introducing a new regime to deal with lobbying?

10. BMA Cymru Wales would advocate that any proposed changes to how lobbyists are defined and regulated must be proportionate to the risks identified by this inquiry. Whilst it is impossible to predict the inquiry's findings, we advocate a cautious approach to changing how lobbying is regulated without a clear and compelling evidence base to support the need for change.

1. WCVA is the national membership organisation for the third sector in Wales. Our vision is for a future where the third sector and volunteering thrive across Wales, improving wellbeing for all. Our mission is to be a catalyst for positive change by connecting, enabling and influencing.
2. WCVA works with a range of national specialist agencies, county voluntary councils and other development agencies, to provide a support structure for the third sector in Wales. We have over 3,000 members, and are in touch with many more organisations through a wide range of national and local networks.

WCVA is pleased to have the opportunity to respond to the Standards of Conduct Committee's inquiry into lobbying. This is a key issue for many third sector organisations that are working to influence and achieve positive change in Welsh society; it is therefore crucial that WCVA's members and wider third sector networks have an opportunity contribute to policy development.

3. WCVA has consulted with our members and third sector networks to help build this response.
4. First we offer our recommendations, followed by answers to each question asked by the Committee.

### **Recommendations**

5. The UK Government should be asked to respond to the Harries Commission report on the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act (also known as the Lobbying Act).



6. A standard definition of ‘lobbying’ would be useful to aid clarity among the public as to what lobbying is and does.
7. Welsh Government should consider publishing meetings that Cabinet Secretaries and Ministers have with those who seek to influence them.
8. The idea of a register of lobbyists needs to be explored further in order to assess its suitability.

### Is there a need for change?

9. We are pleased that the previous Welsh Government committed to [a different direction](#) on lobbying to the UK Government, and hope that this continues through the fifth Assembly.
10. Lobbying rules applicable to the UK Government remain a concern despite the recent introduction of [Grants Standard 6](#), which seems to remove the anti-lobbying clause of February 2016 that prohibited those in receipt of grant funding from UK departments from seeking to influence UK Government or Parliament.
11. Concerns about the UK Government’s Transparency of Lobbying, Non Party Campaigning and Trade Union Administration Act remain. In our [2013 response](#) to the Political and Constitutional Select Reform Committee consultation on the Act, we said that we understood the UK Government’s decision to promote transparency in this area; however we also said:
  - The Act’s definition of ‘activities for election purposes’ is so broad it could capture a range of day-to-day activities charities carry out as part of their campaigning and policy/advocacy work
  - Day-to-activities of charities could be considered ‘for election purposes’ and caught by the rules.

- A charity's ability to react to important policy developments could be undermined.

These concerns persist both in Wales and in Scotland, as [this work](#) from our sister organisation SCVO demonstrates.

12. The UK Government has yet to respond to Lord Hodgson's 2015 [review](#) of the Lobbying Act. It would be useful if the Assembly could take on board issues identified within this review and approach UK Government, requesting them to make their thoughts clear.

### What do you understand by the term 'lobbying'?

13. In our guidance, [How to lobby the National Assembly](#), WCVA uses the term 'lobbying' to mean 'any contact with those in power that is designed to influence their actions in some way'. This includes the submission of petitions, briefing papers, letters and consultation responses, plus campaigning, meeting with AMs and giving oral evidence to committees. Being able to influence legislation, policy and practice has meant the third sector in Wales has made positive contributions to wellbeing.
14. However, lobbying is sometimes seen as a dubious activity due to the poor reputation of professional lobbyists – people who are paid, usually by businesses, to influence policy or legislation on the behalf of the group or individual who has hired them.
15. There can be a grey area between organisations who have hired their own staff as lobbyists and third sector employees who may, among other duties, seek to influence politicians.
16. A standard definition of lobbying that the public can understand, along the lines of that in point 12 would help shift the negative perception of what lobbying is and does.

### How is lobbying regulated at the moment?

17. Lobbying is regulated by the Charity Commission for England and Wales and the Transparency on Lobbying, Non-Party Campaigning and Trade Union Administration Act of 2014. The expected value for civil servants are set out in the Civil Servants Code and for Ministers in the Ministerial Code. Within the Assembly, there is the non-statutory Guidance on Lobbying and access to Assembly Members, and the Standards of Conduct Committee carries out the functions of Standing Order 22, governing the relationships Assembly Members have with outside organisations.

### **Do you consider yourself a lobbyist?**

18. Whether we would consider ourselves to be lobbyists depends on the definition of lobbying. If it is any form of activity that is aimed at influencing decision-making, as per WCVA's definition, influencing is a core part of what we do. During our strategic review process last year, one of the biggest messages we received from our members is that they wanted WCVA influencing positive change to be a fundamental function of what we do as an organisation.
19. One of WCVA's functions under the National Assembly for Wales' Third Sector Scheme is to facilitate the sector to have its voice heard by the Welsh Assembly. This can be by seeking sector opinion to incorporate into a consultation response such as this; or by facilitating a meeting between the sector and a Cabinet Secretary, Minister or official. In this context, we are not directly a lobbying organisation, but help others to lobby.
20. Many WCVA members have staff whose role includes trying to influence policy and legislation. We doubt that many of them would consider themselves lobbyists, as such work tends to be just a small part of a wide range of other considerations; however influencing positive change to support their vision and mission is an important element of activity for many of them.

### **Have you encountered any problems with the current arrangements?**

21. We are not aware that the sector has any issues with current arrangements for lobbying the Assembly.
22. However, The Harries Commission issued [a report](#) detailing negative impacts of the UK Government's Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act on non-governmental organisations. They state that sector organisations were confused about the 'ambiguity of the definition of regulated activity' which may have led to awareness-raising activity not taking place for fear of contravening the regulations.
23. We refer the Committee back to points 11 and 12 of this response for more comment on our ongoing concerns around the Lobbying Act.

**Are there any areas you consider to be unregulated in this area which pose a risk to the accountability and reputation of governance in Wales?**

24. We note that the First Minister has previously said members of the Assembly do not meet with commercial lobbyists. However, it would help accountability and transparency if meetings that Cabinet Secretaries and Ministers have with people who may seek to influence them were to be published online regularly.
25. Welsh Government does not always publish an analysis of consultation responses and feedback on how suggestions have been responded to. When it then takes a particular course of action, this lack of analysis can lead to a gap in understanding as to why that action has been chosen.

**What would you consider the impact of introducing a new regime to deal with lobbying?**

26. A register of lobbyists, coupled with the publication of meetings outlined in point 16 and a standard definition of lobbying as discussed in point 10, could help make the lobbying process more

transparent and demonstrate the impact it has. Work would need to be done to fully assess the suitability of this idea.

27. However, if a register were introduced it should not mean making controls on lobbying more restrictive and reducing the access that people have to Assembly Members.

## **Discussion**

28. We will be pleased to discuss these or any other points relating to this consultation response with the Standards Committee, Cabinet Secretaries or Ministers if requested.

Current lobbying arrangements have been in place in Wales since 2013. The Committee's inquiry intends to establish whether it is clear what the citizen wants to know with regards to lobbying and if so, whether the arrangements in Wales at present provide enough information, accessibility and transparency?

This response sets out our views on whether the Assembly's current arrangements relating to lobbying are sufficiently robust and fit-for-purpose for the Fifth Assembly.

#### 1. Is there a need for change?

Invicta Public Affairs is supportive of this inquiry. As a company, we do not consider there to be a problem with the lobbying industry in Wales. The profession has not experienced the same issues at the Welsh Assembly as it has in Westminster. However, we are in favour of normalising and formalising the lobbying profession in Wales through the introduction of a register. Increased transparency within the industry will help to improve the standard of engagement, as well as the quality of service provided to our clients.

Invicta Public Affairs is already included within the UK Register of Lobbyists and, as such, our activities in engaging UK Ministers have been made transparent and are available for the public to view with regard. This transparency is welcome as it helps us to improve our operating practices more effectively.

However, we believe that any register introduced in Wales should be brought into line with the UK Register of Lobbyists, and restricted to consultant lobbyists only. We do not see the case for extending the register to others who are engaged in lobbying activity, such as charitable organisations,

equalities groups, trade unions and trade bodies. It is unclear to what extent these organisations engage in lobbying, as it will be part of a range of services offered and will not necessarily be undertaken on a formal and continuous basis. However, we would welcome it being limited to organisations and not extended to individual employees.

## **2. What do you understand by the term lobbying?**

Lobbying is the act of attempting to influence the actions, policies, or decisions of government, most often legislators or members of regulatory agencies. Lobbying is done by many types of people, associations and organised groups, including individuals in the private sector, corporations, fellow legislators or government officials, or interest groups. Although it often has negative connotations lobbying can help to strengthen a Government or National Assembly by bringing expertise and knowledge to a particular area of policy or legislation. This is particularly so in Wales where we have a small Assembly of just 60 Members and a small Government.

## **3. How is lobbying regulated at the moment?**

There is a UK Register of Lobbyists of which we are included. We also have our own code of ethics as a company whereby we ensure that we operate in a clear and transparent way.

## **4. Do you consider yourself a lobbyist? How is lobbying regulated within your sector at the moment? E.g. if you are a private business, third sector, professional organisation.**

As a public affairs company we are referred to as consultant lobbyists representing our client's interests. Many of these clients are private sector businesses who want to understand the role of the National Assembly for Wales and the Welsh Government or who are interested in investing and developing their business in Wales.

## **5. Have you encountered any problems with the current arrangements?**

We do not consider there to be any problems with the lobbying industry in Wales and haven't encountered any problem with the current arrangements.

**6. Are there any areas you consider to be unregulated in this area which pose a risk to the accountability and reputation of governance in Wales?**

We believe that if a code of conduct is introduced it should be restricted to consultant lobbyists. It is not possible to compare the practices of a company like Invicta Public Affairs, whose purpose it is to engage in lobbying activity, and those organisations / employees who do so as part of a much larger remit. As such, it would be difficult to apply the same code of conduct across the broad membership currently proposed in the Bill.

However, voluntary registration should be offered for those individuals, organisations and groups who partake in lobbying activity but are not paid a specific fee for this particular service. This will allow for transparency while recognising the difference between those who are paid to lobby and those who do so on their own behalf or as part of a larger remit / job role.

**7. What would you consider to be the impact of introducing a new regime to deal with lobbying?**

We are supportive of a move to establish a statutory register of consultant lobbyists in Wales. However we are of the view that it would not be good business practice to publish individual client lists. In our opinion this would lead to a race to the bottom on cost and duty of care for each client. We are very happy instead to publish engagement on a client by client basis as is the case with Scottish and UK registers.



### **What is PAC and what do we believe**

1. Public Affairs Cymru (PAC) welcomes the inquiry by the Standards of Conduct Committee into lobbying in Wales. We believe the inquiry is timely and recognises that the climate is different from the last time a review was held in 2013. With direct criticism of lobbyists by the First Minister and other, occasional criticism, of individual lobbying campaigns, more powers at an Assembly level leading to, more commercial interests and significant changes to lobbying governance legislation in different parts of the UK. PAC wishes to work with the Committee to develop a system for lobbying in Wales which is not legislatively cumbersome, open to all public affairs practitioners (full or part time, paid or unpaid) and is of a high standard which would command confidence and respect.
2. Public Affairs Cymru (PAC) is the membership body for public affairs professionals in Wales. We have led the way in promoting transparency and fairness in the way public affairs professionals in Wales engage with decision-makers. Established in October 2006, PAC is a membership organisation for public affairs professionals in Wales. It has over 200 members, representing a significant proportion of public affairs professionals in Wales. Members come from a wide variety of backgrounds – commercial public affairs agencies, PR companies, trade associations, advocacy groups, professional bodies and the majority from the third/ voluntary sector. PAC raises awareness of the public affairs industry and promote good practice.
3. PAC has been at the forefront across the UK in promoting accountability and integrity within our industry. Our core principles are:
  - Safeguarding the reputation of the public affairs profession;
  - Encouraging best practice amongst public affairs professionals; and

- Promoting, wherever possible, the work of public affairs professionals operating in Wales.

Our members all share a common desire to ensure that public affairs and lobbying activities in Wales are undertaken professionally and responsibly across the sector. PAC does not regulate our members' activity but we do have a Code of Conduct which all members are committed to comply with. Further information around regulation and the Code of Conduct can be found below in relation to some suggestions PAC wishes to make to strengthen this element of its offering.

4. PAC, its members and representatives of the public affairs profession in Wales, are clear that lobbying and public affairs activity is a vital part of Welsh democracy. Without the contributions made by public affairs professionals Welsh Government policy and the legislation passed by the National Assembly would not be as effective as they have been. PAC members provide a key role in ensuring that underrepresented groups in society are given a voice through their public affairs, campaigning, research, policy and communication work in Wales. Public affairs enhances the democratic process in Wales. Many of the organisations that engage with the Welsh political system are small bodies, such as charities. They have made a significant contribution to Welsh democracy and have provided an important voice to the groups that they represent, including for the most vulnerable people in society. The significant support and contributions made by our members to develop policy and legislation in Wales has been recognised by Ministers, National Assembly Committees and also individual Assembly Members.
5. Our members support openness and transparency and PAC has worked hard to gain and maintain the confidence and support of Assembly Members from across political parties and also Welsh Government and National Assembly staff. Transparency and openness is key to ensuring that the public affairs sector is trusted and respected in Wales and we have proactively put forward ideas regarding how we can all be more open and transparent in our work. PAC have previously highlighted that

increased transparency could be achieved through, for example, the publication of meetings by the Welsh Government, AMs and officials rather than a statutory register so that engagement by all those who seek to influence elected members and senior civil servants, not just agency lobbyists, is clear, open and visible.

6. While we do not regulate our members, many of the commercial public affairs companies, including Grayling, Freshwater UK, PPS Group, Deryn, Positif and The Remarkable Group Ltd, are registered with the Association of Professional Political Consultants (APPC). These and other commercial lobbying companies also need to observe the UK Register of Lobbying Consultants under the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014 where consultants need to register their clients where they are communicating with UK Ministers and senior civil servants on their behalf.

#### **Developing this response**

7. In developing this response PAC has surveyed our membership and staged a discussion event on 19 January 2017, which was attended by over fifty people including the Chair of the Standards Committee, Jayne Bryant AM; Jonathan Thomas from the Standards Commissioner's office; and also the Clerk of the Standards Committee. This response has been agreed by the both the Executive of PAC and a working group of interested members which included: Kate Cubbage, British Medical Association Cymru Wales; Owain ap Gareth, Electoral Reform Society; Daran Hill, PAC Executive/Positif Politics; Mark Hinge, Bay Communications; Nesta Lloyd Jones, PAC Executive/Welsh NHS Confederation; and Rev Gethin Rhys, Cytun.
8. At the same event in January we heard from Alastair Ross from ASPA (Association of Scottish Public Affairs), who explained the basis for recent legislation on lobbying in Scotland. He explained that, in response

to pressure from a backbencher, the Scottish Government promised a Bill in the Programmes for Government in 2013 and 2014 but did not publish one. Instead they consulted on the issue and they looked at UK lobbying regulation but used that as example of what not to do, rather than try to co-ordinate with and complement it. Everyone – Ministers, MSPs, the Standards Committee, and even transparency campaigners – said that lobbying was a good thing, but that it needed some form of regulation in order to maintain public confidence in the Parliament and its Government.

9. The Scottish Government finally published a Bill in October 2015. It proposed:
  - A register of lobbyists, and a register of ‘face-to-face’ lobbying activity to be disclosed on a six month basis.
  - Sanctions of a £3,000 fine or 12 weeks in jail for non-compliance.
  - The Bill was amended to include Special Advisers.
  - It also included exemptions where MSPs initiated a meeting with a lobbyist, or where the meeting was a constituency matter.
  - The Bill included a review clause for it to be reconsidered two years after implementation.

The Bill has now been passed. PAC members are united with ASPA in believing the balance in the legislation is wrong and that it should not be replicated in Wales.

10. Having consulted with our membership, we feel strongly that the system by which the public affairs industry in Wales is regulated should be decided solely on a Wales level. We believe that the unique nature of the public affairs industry in Wales means that a ‘Made in Wales’ solution is essential. We do not believe that a good model for statutory regulation of lobbyists exists anywhere in the UK.
11. Our approach during the drafting of this evidence has instead been based on the following principles:

- A realistic, balanced and critical assessment of the current situation;
- A desire to reflect the diverse interests of different types of organisations within PAC;
- The promotion of openness and transparency;
- Modernising PAC (including our Code of Conduct);
- Emphasising PAC's position as a lead organisation on standards;
- Capturing members' opinions and concerns in a meaningful and accurate way which recognises and reports any disagreement as well as points of unity; and
- Offering solutions and recommendations where we can.

12. In drafting this response we have considered the following questions:

- a. Is there a need for change?
- b. What do you understand by the term lobbying?
- c. How is lobbying regulated at the moment?
- d. Do you consider yourself a lobbyist? How is lobbying regulated within your sector at the moment? E.g. if you are a private business, third sector, professional organisation.
- e. Have you encountered any problems with the current arrangements?
- f. Are there any areas you consider to be unregulated in this area which pose a risk to the accountability and reputation of governance in Wales?
- g. What would you consider to be the impact of introducing a new regime to deal with lobbying?

In structuring our response, we will deal first with question b and then deal collectively with all the other points, though our response will be divided into two parts – what PAC can do to improve our Code of Conduct through reviewing, enhancing and promoting it; and other issues which are outside PAC's power to change but which the Committee should reflect upon during deliberations.

## Definition of Lobbying and Lobbyist

13. As the Committee found during the last inquiry, defining lobbying activity is not easy. Of course there are grey areas – such as when does a campaigner become a lobbyist – and many of our members, particularly in the voluntary sector, have serious concerns about their campaigners, especially volunteers/ service users, being defined as lobbyists and regulated.
14. PAC defines lobbying as: “All activity associated with representing the interests of a client, employer or organisation as regards any matter of public policy. This includes the provision of information and advice, as well as the actual advocacy of a point of view.”
15. In seeking to define a lobbyist, we would encourage the development of five aligned principles when developing a definition:
  - a. Self identification is the method by which PAC allows people to join, and we have never turned an individual away, regardless of how much or how little of their role is concerned with public affairs.
  - b. Definitions should not be used to badge anyone or any organisation negatively, since lobbying is a valid activity which enhances democracy. There has never been a lobbying scandal in Wales since the advent of devolution.
  - c. No distinction should be made between types of lobbyist (commercial, agency, trade union, voluntary organisation etc).
  - d. The Committee should look at definitions used in other parts of the UK, some of which are now legally enforceable. In Scotland, for example, the definition of a lobbyist is someone who is paid a salary and in the course of their job has a face-to-face meeting with a Minister or an MSP about policy. Framed this way it potentially covers everyone from CEOs to junior staff meeting a Minister during a visit to their office.
  - e. The public affairs community and the political community are integrated on multiple levels. Just because someone is lobbyist

some of the time that does not define their whole professional, personal or political identity.

### The PAC Code of Conduct

16. While PAC does not have any regulatory function we have been at the forefront across the UK in promoting accountability and integrity within our industry; these form our core principles. We have set a clear example by proactively developing and implementing a Code of Conduct, which is being reviewed as part of our work in response to this lobbying inquiry.
  
17. The Code of Conduct was unanimously approved at our AGM in October 2010. The Code of Conduct was developed in the best interest of our members and to ensure best practice amongst PAC members were promoted. All members of PAC are expected to behave in accordance with this Code and to ensure that they meet all its provisions in their activity. The most important benefit attached to compliance with the terms of the Code of Professional Conduct is that the lobbying/government relations/public affairs profession in Wales will both be professional and ethical, and seen by others as being professional and ethical. That is of inestimable value to all practitioners, in whose interest it is that policy makers and the public alike perceive their profession as reputable, legitimate and of a high standard.
  
18. The full Code of Conduct can be found on our website but important aspects of the Code as it currently stands includes:
  - a. Members of PAC are expected to take care to ensure that none of their professional activities or behaviour causes, or has the potential to cause, damage to the reputation of PAC itself or to their profession more generally.
  - b. Members are expected to deal with clients, employers, organisations and all the institutions of government honestly, transparently and with integrity.

- c. Members are expected to advise their client, employer or organisation if they believe that the objectives or activities of their client, employer or organisation may be unethical, illegal or contrary to good professional practice and not to take action to further such objectives or activities.
- d. Members are expected to ensure that any financial relationships involved in their professional dealings could not reasonably be construed as being potentially illegal or dishonest.
- e. Members are expected to provide information on the cost and value of hospitality provided to public office-holders if the public office-holders concerned request such information.

19. In direct response to this inquiry, from April 2017 PAC will create a new membership system whereby every member of PAC must sign the Code on an annual basis as part of the joining process with individuals signing a copy of the Code when they sign up with PAC. This will make sure the Code and the standards therein is at the absolute forefront of the minds of every PAC member. We would suggest the publication of the list of members every six months. We believe that this would form the basis of a clear register of lobbyists in Wales.

20. An aligned alternative suggestion which we would be interested in exploring with the Committee would be that PAC members register as an organisation (as opposed to individual) with X number of staff involved in lobbying, all of whom would then fall under the same Code of Conduct set by PAC. This could mean that individual staff members involved in lobbying would not have their name published on record as being a lobbyist, but would be implicitly on the register and subject to the Code of Conduct. Those supporting such an approach feel the benefit of this could be twofold. Firstly, those individuals who do not consider themselves lobbyists per se but, on occasion, undertake action that can be considered lobbying would be held to the same standard, without having their name published on record. Secondly, by having the organisation or business named on the record with the number of



individuals engaged with lobbying activities, those individuals are compelled to uphold standards as they are acting under the name of their employer, rather than themselves as individuals. This would also put a shared responsibility between employer and employee to uphold the Code of Conduct.

21. However, regardless of which registration system is introduced, it is important to note, there is no compulsion on public affairs professionals or organisations to join PAC and abide by the Code. We invite the Committee to consider this issue and whether there ought to be some compulsion for professionals who fall under an agreed definition of lobbyist to register, otherwise it may be easier for people to opt out of joining to avoid being captured by the code of conduct.
  
22. PAC is also reviewing the content of the Code and are minded to include a number of significant changes which would enhance its standing. These have all been tested with the membership and have been found to be acceptable. As part of the review of the Code the following has been agreed:
  - a. In future, the wording of the Code will be tightened so that no member of PAC will be allowed to hold a pass to the Assembly in any capacity.
  - b. We are working on a form of words to ensure that no PAC member in the future holds an office or role in a political party which determines manifestos. One form of wording we are considering is: "In relation to the process of drafting manifestos, members will not exploit their roles within a political party, nor indeed their membership of a political party, to seek advantage for those for whom they lobby or represent professionally." It is important to get the balance right on this issue so that lobbying advantage is disallowed but democratic association and participation can continue, and we are grateful to several former political party staff members who are now PAC members and are helping us shape this

clause. The views of the Standards Committee would also be helpful.

- c. We will introduce a new clause into the Code which requires any PAC member which routinely sells public affairs commercial services to lodge a list of clients with PAC. This is a clause that would be framed specifically for those selling public affairs services, and not trade or representative bodies. This is already done on a quarterly by PAC members who are also APPC members but this transparency needs to be extended and enforced. We would be interested in the view of the Standards Committee both on the regularity of this disclosure exercise and whether the Committee or the Standards Commissioner would also like to hold a copy.
- d. We will also introduce a new clause into the Code which requires any PAC member which routinely sells public affairs commercial services to respect the National Assembly as an institution and undertake not to use the Assembly estate as a marketing initiative either by direct company marketing or attending events speculatively with the purpose of attracting new clients.

23. Further, PAC undertakes to review the Code on an annual basis at our Annual General Meeting. If the Committee wishes to suggest other areas where the Code might be strengthened, we would also welcome that input.

24. There are, nevertheless, three other considerations which arise out of PAC membership and the Code of Conduct. The most obvious is that people, including commercial lobbyists, cannot be compelled to join PAC or adhere to the standards in the Code of Conduct. This consideration also means that using the PAC membership list as Register of Lobbyists would only ever be a partial register.

25. Building on this point, for the Code to be effective as a watermark for high quality public affairs it needs to be recognised and promoted as

such both by members of PAC but also by Assembly Members, staff, Assembly officials and Welsh Government officials, and the media too. That includes being familiar with the contents of the Code and the ethics of lobbying. PAC would very much value an ongoing dialogue with the Standards Committee and the Standards Commissioner on how this can be done but one suggestion would be that AMs are active in checking with lobbyists whether or not they are PAC members and what ethical framework they work within.

26. Finally, with regard to the Code, there is a question of enforcement of standards. The APPC membership fee is significantly higher than the £35 per person charged to join PAC on an annual basis. Keeping the cost low enables us to attract members and to ensure that cost is not a barrier to entry, especially during this period when we are looking to expand our membership to encompass as many lobbyists as possible. To operate a rigorous system of enforcement of the Code would either require a substantial joining fee increase or partnership with the Standards Commissioner. We favour the latter approach since breaches of the Code would, virtually always, involve an AM, their staff or the Assembly estate and would therefore come under the remit of the Commissioner. In making this suggestion we invite the Committee and the Commissioner to work with us to develop a transparent process for challenging/sanctioning PAC members who are thought to have not met their commitment to abide by the Code. We would particularly welcome dialogue on how would instances be reported/discovered; who could report a PAC member; who would decide whether the Code had or had not been followed; and what would the sanctions be.

### **Other Considerations outside the remit of PAC**

27. The issuing of passes to the Assembly building is a matter for the Assembly Commission. We would suggest that as well as PAC members undertaking not to hold passes, it is the responsibility of Assembly when

issuing passes to make sure they are not issuing to lobbyists, and also to collect them properly when people leave the employment of the Assembly.

28. PAC believes that the Assembly Commission should publish details of all events held on the Assembly estate. This would include the name in which a booking was made, the organisation, whether events are public ones or based on invitation only, and the name of the sponsoring AM. The current system is partial since it only covers certain event space like the Oriel, Neuadd and Pierhead building, but not the Media Briefing Room or any part of Ty Hywel. In the interests of transparency and consistency this issue needs to be looked at.

29. It is a matter for the Assembly Commission to whether it looks at the rules governing the use of the Assembly estate for commercial purposes. The current rules mean book launches can be held but no books sold; dinners can be held in the Pierhead but no tickets sold (though PAC did exactly that with our first dinner back in 2007); and also even charity sales cannot be held. Recently the Assembly confirmed in public that the Fair Trade Christmas Fayre would not be permitted on the estate again. PAC members are divided on whether or not this rule should be changed.

30. Further, the guidance on the process and regulation of Cross-Party Groups in the National Assembly should be reviewed and promoted by the Standards Committee so that all CPGs operate to the highest standards in relation to any commercial or other interest group associated with them.

31. PAC welcomes the decision of the First Minister that ministerial diaries should be published. We await details on how this will be done and which meetings it will cover. We believe it should be framed as broadly as possible and not be confined to commercial lobbyists. PAC have long argued the Welsh Government Ministerial Code is amended so that Ministers, Special Advisers and Senior Civil Servants are required to

publish the names of outside interest groups and individuals with whom they have formal meetings. The Scottish Ministerial Code requires that a “monthly list of engagements carried out by all Ministers is published three months in arrears”, and the UK Cabinet Office Ministerial Code says that “Departments will publish, at least quarterly, details of Ministers’ external meetings.”

32. Further, PAC would suggest that the Standards Committee considers seriously whether Assembly Member diaries are published using the same criteria. We made the case for this to happen during the 2012 lobbying inquiry and were disappointed that Standards Committee report at that time suggested that PAC members and not AMs publish such diaries. We do not believe that is a fair or democratic suggestion, and would like to stress to the Committee that if diaries are ever published they should be done by the people that are publicly accountable – the politicians.
33. Lobbying does not only occur from one direction and sometimes lobbyists are lobbied too, be it by officials, special advisers or politicians. While accepting this is a natural and normal part of the political discourse, PAC has concerns that in recent years examples have occurred where lobbyists and campaigners have been asked to reconsider standpoints or not to say certain things with which the Welsh Government is not in agreement. Over half of the PAC members who responded to our online survey indicated this had happened to them.
34. PAC has no view on whether the political party or funding relationship with Welsh Government should be disclosed by those providing evidence to Government or Assembly consultations.
35. The Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014 contains a section which regulates campaigning behaviour during election periods. As currently constituted, this legislation also covers National Assembly election campaigns. Several

PAC members have concerns about aspects of the existing legislation and hope that when the Wales Bill is enacted and the National Assembly has powers over elections to the National Assembly that the Standards Committee conducts an inquiry into the very specific issue of whether this law might be improved for Wales.

### Final points

36. Although we had hoped to confine our evidence to five pages, it has been impossible to do so because of the complexity and range of things which we wish to say to the Committee. We hope that this response is not discounted for that reason.

37. We are familiar with the rules on disclosure of information and have considered these details carefully before submitting this response to the Committee.

We are happy to present oral as well as written evidence to the Committee if that is deemed helpful or to co-operate in any way with the Committee or the Standards Commissioner in improving the reputation and regime for lobbying in Wales.

## Executive summary

- The status quo for lobbying regulation in Wales is industry regulation. Lobbying has changed significantly in the past decade: it has become more interdisciplinary and multidisciplinary than before.
- With 80% of lobbyists working in-house, there has been an increase in lobbying activities from charities, think tanks, law firms, management consultancies, accountancies, trade unions, and those involved in the public sector.
- The PRCA – working with a parliamentary draftsman and other parties – defined lobbying in 2013 effectively as influencing government or advising others how to influence government. This is subject to the standard reasonable man test and a series of obvious exemptions.
- When exploring how lobbying is regulated at the moment, interested parties must keep in mind that many lobbyists are not only on the PRCA Public Affairs and Lobbying Register and the statutory Register of Consultant Lobbyists, but are also compelled to appear on Brussel’s own register or the Republic of Ireland’s newer register. In the very near future, a great many will feature on the Lobbying Register in Scotland.
- Whilst it is encouraging to see that the Standards Commissioner has had no complaint against lobbying in Wales, in 2013 the Fourth Assembly Standards of Conduct Committee advised that stricter guidance on lobbying was necessary. There are a number of ways in which lobbying is covered by current arrangements.

## Introduction

- The PRCA is the UK professional body representing PR, communications, public affairs, and lobbying practitioners. 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 380 consultancies and 280 in-house teams. We are the largest association of our type in Europe.

- Of the 20,000 individuals who are members of the PRCA, around 1,500 are lobbyists.
- There are currently 103 members on the PRCA Public Affairs and Lobbying Register. This includes the largest consultancies such as MHP Communications, Weber Shandwick, H+K Strategies, and Edelman, alongside specialist and smaller organisations. We also represent in-house teams for organisations as diverse as the NSPCC, John Lewis, AXA, Visa, and Local Government Association.

#### 1. Is there a need for change?

- The status quo is self-regulation. The PRCA currently regulates more relevant public affairs and lobbying practitioners than any other association: every single member has to abide by the specific PRCA Public Affairs and Lobbying Code of Conduct and these members must also declare their offices, employees, and clients on the PRCA Public Affairs and Lobbying Register (submitted quarterly and retrospectively). Across consultancies, in-house teams, and individual practitioners, there are currently 104 entries on the last completed register.
- Over the past decade, lobbying has become much more interdisciplinary and multidisciplinary. The act of lobbying itself is now more integrated with other services carried out. With 80% of lobbyists working in-house, there has been an increase in lobbying activities from charities, think tanks, law firms, management consultancies, accountancies, trade unions, and those involved in the public sector. Any discussion of lobbying in Wales (and the UK more broadly) must recognise that the Westminster “lobbying scandals” which have received significant media coverage in the past few years have not involved a single lobbyist.
- The PRCA is – in principle – in favour of the introduction of a statutory register of lobbyists and our members are committed to transparency. We believe that lobbying should be open and transparent. A proper statutory register would allow anyone to properly view the offices



that offer lobbying, the employees conducting lobbying, and the clients on whose behalf this lobbying takes place. Lobbying is not merely to influence: lobbyists seek to inform as well as influence policy so that policymakers can make decisions with the best possible understanding of the effect and implications legislation or regulation will have. A transparent lobbying register will help to dispel the myths and stigma that is unhelpfully attached to any debate on lobbying.

- The PRCA believes that well-developed legislation is necessary and appropriate for achieving transparency. The primary reason for legislation is that it provides a statutory mechanism that requires all lobbyists to register. Legislation should not exist to pre-empt any supposed “problem” or remedy what campaigners against democratic engagement see as “corporatism” or as “undermining” to public policy. Rather, it should exist to recognise the need for transparency and the vast range of organisations and practitioners that the Assembly relies upon to carry out its work.
- Importantly, any lobbying register must be universal in order to capture all those who perform the act of lobbying in a professional capacity. A truly inclusive register must create a level playing field. If it excluded pro-bono lobbying, for example, it goes some way to suggest that there exists a class of paid lobbyists and a class of voluntary lobbyists whose work is so radically different that the former is required to register and the latter is not. Similarly, if in-house lobbyists were not included a majority of lobbying would be completely absent from the register. This risks creating the impression that lobbying is only carried out by specialist third-party practitioners and confined to those clients who outsource some or all of their lobbying activities.

## 2. What do you understand by the term lobbying?

- The PRCA – working with a parliamentary draftsman, industry expert, legal professionals, and other associations – defined lobbying in 2013. This was created to ensure that any government intent on creating a statutory register of lobbying had at their disposal a proper, workable definition: specifically, it was made necessary by the UK Government’s Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014.

- “Lobbying” or “lobbying services” means activities which are carried out in the course of a business for the purpose of influencing government, or advising others how to influence government. Activities are to be taken as having the purpose specified here if a reasonable person would assume, having regard to all the circumstances, that the activities were intended to have the effect described.
- Government here includes (within the United Kingdom): central government, devolved government, and local government; members and staff of either House of Parliament or of a devolved legislature; Ministers and officials; and public authorities (within the meaning of Section 6 of the Human Rights Act 1998).
- There are a number of obvious exemptions to this working definition of lobbying. This definition does not apply to: anything done in response to or compliance with a court order; anything done for the purpose of complying with a requirement under an enactment; a public response to an invitation to submit information or evidence; a public response to a government consultation exercise; a formal response to a public invitation to tender; anything done by a person acting in an official capacity on behalf of a government organisation; or an individual making representations solely on his or her own behalf. These exemptions contribute significantly to the definition’s overall workability: they ensure an employee presenting a policy proposal to their governmental employer or the constituent raising their own issue with their local representative are not considered lobbyists for our purposes here.
- “Influencing”, as deployed here, includes information but the act of making information or opinions public (for example, through advertising or attributed articles in a newspaper) is not the provision of lobbying services.
- “Business” needs clarifying here. As far as lobbying is concerned, this can include charitable and not-for-profit undertakings. Services provided by or on behalf of an undertaking are provided “in the course of business” even if the persons providing the services are acting on a pro-bono, voluntary, or not-for-profit basis.

### 3. How is lobbying regulated at the moment?

- Every single member has to abide by the specific PRCA Public Affairs and Lobbying Code of Conduct and these members must also declare their offices, employees, and clients on the PRCA Public Affairs and Lobbying Register (submitted quarterly and retrospectively). With this in mind, there is a great deal of information already available to the end-user (the public or politicians) about the lobbying which takes place. This sits alongside other transparency aspects, such as diaries, public meetings, and Freedom of Information requests, which offer a structured approach to obtaining information.
- Whilst details of industry regulation are covered elsewhere in this response, what should frame any consideration here is the fact that many organisations feature on multiple statutory registers (one or more on the Westminster, Holyrood, Brussels, or Irish registers) and industry registers (often the PRCA Public Affairs and Lobbying alongside one of the smaller associations' registers). Any attempt to bring about a statutory register for those lobbying the National Assembly for Wales – whilst noting that our members who do this already feature on our register – should work with existing registers and avoid adding significantly to the burden of compliance which already exists.

### 4. Do you consider yourself a lobbyist? How is lobbying regulated within your sector at the moment? E.g. if you are a private business, third sector, professional organisation.

- The work done by the Public Affairs, Policy, and Research practitioners within the Communications department at the PRCA constituted lobbying in every meaningful sense of the world: we appear on the PRCA Public Affairs and Lobbying Register and we will appear on the Lobbying Register in Scotland when it becomes operational. We do not appear on the statutory Register of Consultant Lobbyists because the definition is so narrow (it concerns itself with UK Ministers and Permanent Secretaries) and its remit so small (it excludes in-house lobbyists like ourselves who make up 80% of the industry).

- More broadly – and to provide an example true of many other organisations – lobbying is not confined to these two practitioners: it involves multiple parties. Internally, the Director of Communications, Director General, and Communications Assistant might all contribute towards the work. Externally (to emphasise the importance of including pro-bono public affairs and lobbying on any register) there are a number of PRCA members who either plan or participate in our public affairs and lobbying activities. For example, the Chairman of the Public Affairs and Lobbying Group join us for any meetings with politicians or civil servants about the Lobbying Act 2014 and the Chairman of our Health Group would be involved in work aimed at the defending the reputation of that industry. For our meetings with the Minister for Parliamentary Business in the last session of the Scottish Parliament, we were joined by the Vice-Chairman of our Scotland Group who lobbied in a pro-bono capacity.
- Our situation is not unique in this respect: members of associations are frequently involved in the actual work carried out on their behalf.

5. Have you encountered any problems with the current arrangements?

- The current arrangements relating to lobbying regulation are limited to guidance on lobbying for Assembly Members, publication of meeting between cross party groups and lobbyists, and publication of meetings between Ministers and those lobbying them.
- We appreciate that Section 2.5 of the Code of Conduct for Assembly Members provides guidance on lobbying and access to Assembly Members. In addition, the Ministerial Code also stipulates that Ministers should record their meetings with outside groups. The PRCA has always argued that the onus to be transparent should fall equally on lobbyists and public officials. There is a tendency for lobbying regulation to focus solely on the ethical behaviour of the lobbyists; this, in practice, often places an unfair burden on the industry. Furthermore, we appreciate that all Assembly Members must comply with the Code of Conduct (with non-compliance resulting in an investigation): the PRCA has consistently argued that any lobbying regime must enforce sanctions in order to uphold public officials and lobbyists to the highest standards.

- Finally, the guidance on Cross-Party Groups ensures the recording of meetings with lobbyists and voluntary or charitable organisations in an annual report. This inclusion of in-house lobbyists is vital given they make up 80% of lobbyists. There is a tendency for lobbying regimes such as the statutory Register of Consultant Lobbyists to solely focus on consultant lobbyists. Failing to include in-house lobbyists hinders transparency as it effectively excludes most of the lobbying which actually takes place.
- The guidance on Cross-Party Groups should be expanded to include all in-house lobbyists not and just “charitable” or “voluntary” organisations. It is important to recognize that professional bodies like the PRCA, trade associations, and a variety of organisations lobby the Assembly as well. Therefore, expanding the definition would ensure that everyone lobbying would be covered by the guidance on Cross-Party Groups.
- It is encouraging to see that the Standards Commissioner has had no complaints about lobbying in Wales: in 2013 the Fourth Assembly Standards of Conduct Committee advised stricter guidance on lobbying but stopped short of calling for a statutory register.
- As it stands, the information on meetings with lobbyist is not housed on one page. The current system is not user-friendly nor is it easily accessible. It would be in the interest of transparency and the public if this information was housed under one register.
- The 2013 review mentioned the lack of a formal industry regulation. However, there is an existing self-regulatory structure managed by the PRCA (and, for example, the APPC). Our registers include a list of members who lobby in Wales. Similarly, the Public Affairs Cymru code of conduct compels members to behave in an ethical manner. A statutory register would work alongside this self-regulatory regime and could deliver the utmost openness and transparency.
- It is also worth mentioning the problems with the current arrangements for the statutory Register of Consultant Lobbyists in Westminster. In considering a statutory register in Wales, the Standards of Conduct Committee should avoid replicating the

mistakes in the statutory Register of Consultant Lobbyist. The Westminster model is unfit for purpose as it only covers consultant lobbyists, effectively excluding 80% of the industry. In addition to this, the Act's narrow definition hinders transparency as it only captures written or oral communications with Ministers and Permanent Secretaries. The current statutory Register of Consultant Lobbyists does not paint an accurate picture of all the lobbying activities directed towards Westminster, Whitehall, and the UK Government. In contrast, the PRCA Public Affairs and Lobbying Register – based on a broader, workable definition of lobbying – lists more clients than the statutory register and also includes in-house lobbyists.

6. Are there any areas you consider to be unregulated in this area which pose a risk to the accountability and reputation of governance in Wales?
- Without a formal statutory register, it is hard to assess where regulation is lacking. For example, it is clear to see that the statutory Register of Consultant Lobbyists inadequately regulates in-house lobbyists. It also inadequately regulates meetings between lobbyists and special advisers given that it only covers communications with Ministers and Permanent Secretaries.
  - It is also important to question what is meant by “unregulated” here. The notion that the lobbying industry in Wales is unregulated is a misconception. There is an existing structure of self-regulation through industry registers administered by professional bodies such as the PRCA. The industry is already committed to transparency and in many ways the industry registers offer more transparency than the statutory Register of Consultant Lobbyists. Declaring these activities is a condition of membership, therefore all PRCA members have a duty to declare their public affairs and lobbying activities on the PRCA Public Affairs and Lobbying Register. All of our members also follow the PRCA Public Affairs and Lobbying Code of Conduct which regulates and informs their actions as a condition of membership. Furthermore, the PRCA and its members have supported the implementation of a statutory register in Westminster and Scotland and – despite some unfit and unworkable aspects in both pieces of legislation – we are broadly supportive of statutory registers.

- It is important to note that a statutory register works alongside Ministerial Diaries, Code of Conduct for Assembly Members, and the Freedom of Information Act. Assembly Members must also make meaningful efforts to achieve the highest levels of transparency; this means that their diaries, as well Cross-Party Groups' annual reports, must be thorough and timely.
7. What would you consider to be the impact of introducing a new regime to deal with lobbying?
- The impact of introducing a new lobbying regime would very much depend on the type of lobbying regime. As mentioned, the right statutory register could deliver the utmost transparency and openness if it covered in-house lobbyists and adopted a broad definition lobbying. A watered-down version, which excludes in-house lobbyists will undermine democracy and the public's trust in the institutions of Wales. In addition to this a narrow register could place a burden on the public purse while only capturing a handful of lobbyists.
  - In 2013 the Cabinet Office conducted an impact assessment of the statutory Register of Consultant Lobbyists, which estimated that at least 720 lobbying firms would register on the statutory register, with the lowest estimate being 550. It also estimated that the average fee per lobbying firm at the 720 threshold would be between £322 and £644. In reality, due to the narrow definition of lobbying and the exclusion of in-house lobbyists there are currently only 145 consultancies, this number also includes several firms who have ceased to conduct lobbying activities as per the Act's definition of lobbying. Furthermore, the cost of registering increased from £750+VAT to £1,000+VAT in its second year of operation. Finally, the Registrar's annual statement in the first year of operation revealed that a very small amount was raised from registration fees, while the register's cost was £264,340.
  - Similarly, in 2015 the Scottish Parliament estimated that the set-up cost of a Lobbying Register in Scotland under the Lobbying (Scotland) Act 2016 would range from £230,000 – £400,000 during the initial set-up period. The ongoing costs thereafter would range from £130,450 – £209,000. Given that there is no cost to join the register,

none of these costs will be recovered. It is hard to assess the validity of these costs given that the register is not currently in place but, given that the register will cover in-house and consultant lobbyists, it will almost certainly have far more registrants than the register in Westminster.

- The cost of running such a register should not discourage the Welsh assembly from implementing a statutory register. We appreciate that there have been no complaints about the lobbying industry and yet the 2013 review into the Assembly noted that the Committee believed in the importance of a system that gives as much transparency as possible about who professional lobbyists are meeting with.
- If the Committee truly believes in the importance of transparency, then it must proceed with a statutory register of lobbyists. The Assembly could avoid burdening the public purse by introducing a register which would cover consultant and in-house lobbyists with a low and flat fee. The PRCA campaigned for this throughout the Transparency of Lobbying Bill, Non-party Campaigning and Trade Union Administration Bill 2014.



## Who we are

1. Positif is one of the leading public affairs companies in Wales. Positif is a Welsh based company established in 2006 which specialises in public affairs, communications and consulting and have provided communications and public affairs services for more than 250 private, voluntary and public sector organisations. We are committed to working with public affairs and public relations professionals from other agencies and organisations, and with political and media stakeholders to raise awareness about the importance, validity and vitality of the public affairs and public relations professions in Wales.

**How is lobbying regulated at the moment? Do you consider yourself a lobbyist? How is lobbying regulated within your sector at the moment? E.g. if you are a private business, third sector, professional organisation.**

2. Positif conduct is regulated or shaped in 4 ways:

- All Positif staff are members of [Public Affairs Cymru](#) (PAC), the professional body for public affairs professionals in Wales, which was founded in 2006. We welcome strengthening the Code of Conduct for PAC members, developing a system of regulation and the suggestion by PAC of partnership with the Standards Commissioner to enforce the Code.
- We have also been full members of the [Association of Professional Political Consultants \(APPC\)](#) since March 2007. The APPC is the representative and regulatory body for UK public affairs professionals in the consultancy sector, and our membership reflects our determination to abide by the highest standards of openness, transparency and ethical best practice. We abide by the APPC Code, including publishing quarterly returns listing staff and clients, signing the Code annually and ensuring that all staff attend training on the Code.

- UK law in relation to bribery and corruption.
- The provisions of the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014, though we are not registered with the Office of the Registrar of Consultant Lobbyists because we do not fall within the registration requirements, our activity being targeted in Wales rather than at a UK Government level.  
[\(http://registrarofconsultantlobbyists.org.uk/guidance/foreword/requirements-to-register/\)](http://registrarofconsultantlobbyists.org.uk/guidance/foreword/requirements-to-register/)

### **Have you encountered any problems with the current arrangements?**

3. As a member of PAC, we align ourselves entirely with the evidence submitted by PAC to this inquiry but wish to take the opportunity to emphasise key points raised in their evidence as well as additional points which we strongly feel need to be taken into consideration by the Committee. We are also aware of the APPC response to the inquiry and would not disagree with the content of the submission as far as it goes, though it does appear to Positif to be implicitly accepting there are not current issues with lobbying in Wales.

4. The current system does need to be revisited both in terms of making the PAC Code of Conduct enforceable and more rigorous. We remain concerned that PAC membership is just a partial register of lobbyists because people working in public affairs do not have to join PAC or sign up to its Code of Conduct.

5. We support the publication of list of clients through PAC as we do so on APPC website already. There is a very uneven playing field when it comes to ethics and transparency in public affairs at the moment. We have always published our client list through the APPC but there are others offering public affairs services in Wales who do not do this. Indeed, in the past our transparency has been abused by competitors to target our clients when they do not disclose their own client lists.

6. We welcome the strengthening of the PAC Code to prevent members selling commercial public affairs services from speculatively attending events on the Assembly estate. We are aware of others selling public affairs services which have used the transparency of events listings to target events and therefore seek to use the National Assembly estate as a marketplace.

7. Wales is a small place. Lobbyists often play multiple roles in the public arena, including media appearances. Positif staff are always careful not to discuss client related matters as if we were impartial or independent commentators. The Committee may wish to consider the extent to which lobbyists accurately disclose their potential client conflicts in a range of scenarios and also how they choose to describe themselves when acting as commentators. For example, "Former special adviser" may be technically accurate when applied to some lobbyists when offering political commentary but the use of that description deliberately conveys a closeness to government which actually fuels distrust of lobbying and implies an improper relationship.

8. The perception of lobbying by politicians is also important. We are a profession which is open to abuse from within and from without. There is nothing intrinsically wrong with lobbying and it is important that both the lobbyist and the lobbied understand what lobbying actually is and who constitutes a lobbyist. There is a responsibility on both the lobbyist and the politician to be clear and fair in how issues of access and lobbying actually operate.

## January 2017

1. RSPCA Cymru is the main enforcer of animal welfare legislation, taking the vast majority of cruelty cases to prosecution. We also deliver primary animal rehoming services across all species, conduct rescues, including specialist rescue, working alongside the emergency services such as in flooding scenarios and collect and rehabilitate wildlife. We receive approximately 50,000 calls a year in Wales via our National Control Centre regarding direct animal welfare. Through our network of branch volunteers, animal centres and Inspectorate we collected and rescued 7,589 animals and rehomed 1,750 animals in 2015. We also work with schools and youth offending teams to educate young people on animal welfare.
2. In early 1999, the RSPCA was amongst the first charities to set up a dedicated office in Wales following the creation of the National Assembly for Wales, covering press, new media, events, campaigns and public affairs. We are a registered charity in England and Wales, charity number 219099.

Is there a need for change?

3. The External Relations team ensure that the RSPCA complies with the existing regulations around lobbying the Welsh Government, Assembly Members, Members of Parliament, Members of the European Parliament and Councillors, as well as making sure the charity complies with the Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014, particularly around election times. Due to these regulations and our consistent apolitical approach, RSPCA Cymru did not conduct any public activities involving elected representatives during January to May 2015 for the UK General Election and January to May 2016 for the elections to the National Assembly for Wales.
4. RSPCA Cymru recognises that an ethical approach is essential to protect the confidence of the political system in Wales and have ensured consistent transparency, integrity and political balance in our work with the National Assembly for Wales since it's inception and will continue to do so. We are confident that we would meet any appropriate standards introduced.

What do you understand by the term lobbying?

5. RSPCA Cymru were founding members and are still current members of Public Affairs Cymru (PAC), who define lobbying as "All activity associated with representing the interests of a client, employer or organisation as regards any matter of public policy. This includes the

provision of information and advice, as well as the actual advocacy of a point of view". The RSPCA also complies with the PAC Code of Conduct.

6. As members of PAC, RSPCA Cymru welcome the body's moves to update the Code of Conduct and have fed into the review, in particular the benefits of introducing a quality watermark for those organisations which sign up to and abide by the Code of Conduct. By having a voluntary system of regulation in place, the organisation can perhaps swiftly adapt to the changing nature of public affairs. However, there is currently an insufficiently robust process, such as effective sanctions, for when a member fails to adhere to the code which, arguably, are essential to ensure that all organisations operate on a level playing field.

How is lobbying regulated within your sector at the moment?

7. RSPCA Cymru is regulated by the Charity Commission and strictly adheres to the Commission's guidance on lobbying and campaigning. The Commission's guidance states that "campaigning can be a legitimate and valuable activities for charities to undertake" and goes on to say that this "must be undertaken by a charity only in the context of supporting the delivery of its charitable purposes. Unlike other forms of campaigning, it must not be the continuing and sole activity of the charity."<sup>1</sup> RSPCA Cymru believes that by campaigning for changes in the law, such as banning the use of wild animals in circuses and the keeping of primates as pet, will prevent these animals from suffering and end cruelty. The Society was set up nearly 200 years ago in 1824, for the purposes of changing the law, educating owners on animal welfare and prosecuting offenders.

Have you encountered any problems with the current arrangements?

8. Because the issues upon which the RSPCA has strong evidence-led policies and campaigns can sometimes be viewed as controversial, we adhere strictly not only to Charity Commission's guidelines and wider best practice, but our own, strict, interpretation of clear apolitical engagement processes with elected representatives. This may not be the case with all organisations in Wales, and as such Regulations could help ensure all organisations operate to the same high standards.

Are there any areas you consider to be unregulated in this area which pose a risk to the accountability and reputation of governance in Wales?

9. No organisation operating to even a basic standard within public affairs in Wales should be concerned about an increase in transparency

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<sup>1</sup> <https://www.gov.uk/government/publications/speaking-out-guidance-on-campaigning-and-political-activity-by-charities-cc9/sp>

and the proper scrutiny that regulation would bring. However, whilst there will undoubtedly be areas that it may not be appropriate for regulations to cover, such the private lives of elected representatives, any such regulation should seek to be clear on the parameters for any exceptions and the justifications for reserving matters from scrutiny.

What would you consider to be the impact of introducing a new regime to deal with lobbying?

10. Lobbying plays a vital part in the political process and the creation of legislation. Many organisations, such as charities, are experts in their field for instance such as the RSPCA which is the main organisation in the criminal justice system enforcing animal cruelty offences. The RSPCA has science teams covering companion animals, farm animals, veterinary, scientific procedures and wildlife to ensure that the RSPCA's policies and campaigns are supported by the latest research and up-to-date thinking on animal welfare. These policies not only form the basis of our work in caring, rescuing and treating animals but in our evidence and meetings with the Welsh Government, Assembly Members and officials.
11. Any future regulation on lobbying in Wales must ensure that it does not curtail the development of positive legislation that is beneficial to the people, and animals. Through transparent open debate and discussion between politicians, government, the commercial and third sectors, which reassures the public that any influence is regulated and that there is a right of address allowing access to Ministers, Assembly Members and officials, organisations can ensure that a wide range of opinions and evidence is presented to maximise the potential for appropriate legislation.

Cynulliad Cenedlaethol Cymru / National Assembly for Wales  
Y Pwyllgor Safonau Ymddygiad / Standards of Conduct Committee  
Ymchwiliad i Lobïo / Inquiry into Lobbying  
Ymateb gan Y Gymdeithas Diwygio Etholiadol / Evidence from Electoral  
Reform Society Cymru

Who we are

Electoral Reform Society Cymru

1. Electoral Reform Society Cymru is an independent campaigning organisation working to champion the rights of voters and build a better democracy in Wales. ERS Cymru believes that politics is too important to be left to the politicians. We offer an independent voice, and work to shape the democratic debate at all levels. We put the interests of the citizens within our democracy first.
  
2. We believe:
  - Every vote and every voice has value and should be heard
  - Everyone should be able to shape the decisions that affect their lives
  - Our institutions should reflect the people they serve
  - People should be able to hold those in power to account
  - Politics should offer people real alternatives
  
3. For more information, please visit [www.electoral-reform.org.uk](http://www.electoral-reform.org.uk)
  
4. In reference to this particular topic, Dr Owain Llŷr ap Gareth, staffed in our ERS Cymru office, is a paying member of Public Affairs Cymru, and adheres to its [Code of Conduct](#).

Is there a need for change?

5. Yes.
  
6. The public need to know who is having access, on what basis, and that this is information that is openly available and can be scrutinised or questioned.
  
7. While we do not believe that there is a huge problem with lobbying the Welsh Government or the National Assembly for Wales, Wales should nevertheless adhere to best practice of transparency and openness, which has been its watchword since the onset of devolution.
  
8. Change should be based on core principles, such as:
  - Transparency
  - Good governance
  - Free and fair access to information
  - Equal access, and care to prevent a disproportionate impact or perverse outcomes

What do you understand by the term lobbying?

9. One way to define a lobbyist is by the activity rather than the job title. The Association of Professional Political Consultants define lobbying activity as

(a) Influencing government, or



(b) Advising others how to influence government.

And exclude:

- a) anything done in response to or compliance with a court order
- (b) Anything done for the purpose of complying with a requirement under an enactment
- (c) A public response to an invitation to submit information or evidence
- (d) A public response to a government consultation exercise
- (e) A formal response to a public invitation to tender
- (f) Anything done by a person acting in an official capacity on behalf of a government organisation
- (g) An individual who makes representations solely on his or her own behalf.

10. The Alliance for Lobbying Transparency (ALT) define a lobbyist as anyone paid to:

- Arrange or facilitate contact with officials.
- Communicate with officials to influence legislation, regulation, or government policy, and for government contracts and grants.
- Work in support of the above.

11. They exempt lobbying by a member of the public which is unpaid and lobbying of an MP by a constituent. They also call for businesses and smaller charities to be exempt.

12. Public Affairs Cymru (PAC), describe lobbying as: “All activity associated with representing the interests of a client, employer or organisation as regards any matter of public policy. This includes the provision of information and advice, as well as the actual advocacy of a point of view.”

13. There is a general consensus that a proper lobbying register should capture who, what and how much. It should start from the principle of what the public need to know and what information would provide appropriate transparency of activity.

How is lobbying regulated at the moment?

14. Lobbying is regulated differently at different levels of governance.

15. We are aware of the non-statutory guidance to Assembly Members on lobbying, <http://www.assembly.wales/en/memhome/code-conduct-mem/Pages/guidance-lobbying.aspx>. There is a question of whether such guidelines should be statutory (and if so, whether the definitions therein would be adequate)

16. The previous investigation in 2012–3 found a need to add to regulation of CPGs, but little else of real substance, finding little evidence of a need for change (in contrast to expenses scandal in Westminster, for example). However, given the continuing of the Assembly’s greater powers, and the possibility of strong interests in post-Brexit policy making, there are risks to this approach, and a danger of complacency.

Do you consider yourself a lobbyist? How is lobbying regulated within your sector at the moment? E.g. if you are a private business, third sector, professional organisation.

17. The ERS is a company limited by guarantee.

18. We do, however provide evidence based research, campaign and influence the policy making process according to our vision, mission and values, in particular on proportional representation, and democratic and constitutional matters.

19. ERS is not a professional lobbyist, in that we do not seek to profit in providing others access to decision-makers, or advice in lobbying government.

20. This we see as our responsibility and taking an active part in a healthy democracy.

21. The point of lobbying regulation is to allow transparency over whom is influencing government (or whom is advising on this), and transparency and clarity serves in itself as a check on undue influence in the political process.

Have you encountered any problems with the current arrangements?

22. Not with devolved legislation.

23. At the UK level the Transparency, Lobbying and Trade Unions Act has had the unfortunate effect of putting more burden on charities and Third Sector during regulated campaign periods, while being too lax regulating

professional lobbying and large companies in a way that is easy to circumnavigate. This has had the effect of inhibiting and limiting many third sector and charities' discourse on public policy during important times of public debate, which we see as detrimental to the democratic process.

Are there any areas you consider to be unregulated in this area which pose a risk to the accountability and reputation of governance in Wales?

24. The fact that there is a question of clarity on whom is being lobbied indicates a possible risk for the future. When taking into account the fact that the Welsh Government is to have greater powers in at least some areas (such as Energy), as well as plausibly in areas currently under EU control, the risk of powerful interests to have an influence, due to opaque procedures increase. Responding to these risks is not to expect such conduct but mitigate to minimise its likelihood of happening.
25. There is also new architecture of public appointees such as the different Commissioners (who should be answerable to the Assembly legislature, and not the Executive), again transparency around any such roles is important in order to test their robustness, their own scrutiny and policy role and that the governance architecture does what it set out to do.
26. The Assembly has always prided itself on openness and accessibility. The point of transparency on lobbying is precisely that it is possible to scrutinise equal accessibility, and to what extent different interests have an influence.
27. The fact that Wales is a small country with few AMs has helped make representatives more accessible. Nevertheless, there is always a risk that such close networks switch to group think and become entrenched. The normal way to address this is around questions to address 'revolving

door' issues. For example, a strong 'cooling off' period or a 'revolving door' policy is adopted in the USA (a 2 year cooling off period for all legislators) and Slovenia.

28. Transparency about whom is meeting whom, and on what basis also provides a check on 'cosiness' and dangers of individuals leveraging insider knowledge in a problematic way, and provides incentives on legislators to cast a wider net in policy making, as well as for 'rival' policy makers to monitor if others have access where they do not. All this helps in terms of more active policy making.
  
29. Another question to be asked maybe around party affiliation. There is danger that this may have the effect of causing people who come under the definition of lobbyist have a professional disincentive to join a political party, and we would not wish to encourage the idea that being in a party is detrimental to democracy. However, diversity in governance and policy making within civil society also requires a diversity of opinion, and this would allow this to be analysed. It is an issue worth exploring.
  
30. We would suggest also including a requirement for a "legislative footprint" as is the case in Latvia and Poland – tracking internal and external input either as it happens or as an annex to any documentation.<sup>1</sup> How this is best done could perhaps be a matter for consultation with influencing organisations – often, such data may be useful to them also to show to their stakeholders and members that they have had an impact on policy.

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<sup>1</sup> Transparency International, EU Legislative Footprint (March 2015), available at: <https://transparency.eu/wp-content/uploads/2016/09/Transparency-05-small-text-web-1.pdf>

What would you consider to be the impact of introducing a new regime to deal with lobbying?

31. Any change needs to look at risks of current system, but also look to ensure that risks of change of complexity, over-burdensome regulation, adequate policing, and perverse outcomes and incentives are addressed. Policy development in the modern era requires expertise and active networks approaches outside of government. Participatory models of governance require this also. Wales has always relied on a (relatively small in number, and often small staffed) civil society in policy-making and scrutiny. It is vital that regulations do not form a barrier to such decision making processes, or skew participation toward the more powerful, well-connected, or with specialist knowledge of the regulations (which could inadvertently promote the role of professional lobbyists).

32. Lobbying rules do not exist in a vacuum, and should not be approached merely as a checklist, but placed in the context of what Wales needs, and its model of policy making. There are countries where strong lobbying laws are in place (USA and Canada) precisely due to the strong influence of corporate power in those polities, and following scandals. However, Germany has fewer strong corporate regulations precisely because these powers have had less influence anyway.<sup>2</sup> Similarly, some countries have strong regulations on paper, but may not be enforced.

33. Administratively, and in terms of clear accessibility for scrutiny, meetings should be incorporated through Smart IT solutions and published centrally, using tools such as exporting Outlook calendars where information has already been placed in order to ease administrative burden, it should cite the meeting and keyword as to what the meeting was about.<sup>3</sup> It is worth noting that the current Education Cabinet

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<sup>2</sup> Hogan, J, Chari, R, & Murphy, G, *Regulating Lobbying: A Global Comparison* (Manchester University Press: 2012)

<sup>3</sup> Transparency International, *Money, Politics, Power: Corruption Risks in Europe* (2012), available at:

Secretary has published the first months of ministerial meeting on her website, indicating that administration need not be too onerous, with clear centralised systems in place

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[http://www.transparency.org/whatwedo/publication/money\\_politics\\_and\\_power\\_corruption\\_risks\\_in\\_europe](http://www.transparency.org/whatwedo/publication/money_politics_and_power_corruption_risks_in_europe)



**National Assembly for Wales**  
Standards of Conduct Committee

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The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales, agrees Welsh taxes and holds the Welsh Government to account.



**National Assembly for Wales**  
Standards of Conduct Committee

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