Sledgehammers, nuts and rotten apples: Reassessing the case for lobbying self-regulation in the United Kingdom

William Dinan[a,*] and David Miller[b]
[a]School of Social Sciences, University of the West of Scotland, Almada Bulding, Room 818a, Almada Street, Hamilton ML3 0JB, UK.
[b]Department of Social & Policy Sciences, 3 East, University of Bath, Bath, BA2 7AY, UK.

*Corresponding author.

Executive Summary In the light of broad trends to hold lobbyists accountable by voluntary or mandatory means this practice piece reviews the United Kingdom experience of lobbying self-regulation. It suggests that there are key problems with the hitherto default self-regulatory model, and that the status quo is likely to change. Over the last few years, and spanning different political administrations, a steady drip feed of controversy and scandal involving lobbying has harmed the reputation of the political system, already undermined in other ways. This damaging publicity was one of the spurs for the recent inquiry on lobbying at Westminster, and this also had an impact on manifesto commitments on lobbying in the run up to the 2010 UK general election. Lobbying reform featured in the subsequent coalition agreement. Although pressure for some form of independent oversight of lobbying has been gaining pace in the last few years, and demands for reform have intensified in the wake of recent scandals, the precise shape of lobbying regulation at Westminster is still unclear. Debate on how to regulate and make transparent relations between government, elected representatives, officials and outside interests repeatedly throws up a number of issues that will need to be addressed in whatever regime is developed. These include: agreeing a workable definition of lobbying activity, which captures both direct and indirect lobbying; setting thresholds for registration; agreeing standards and protocols for reporting lobbying activity, including information on the resources devoted to lobbying, and where these are targeted. Whatever system is developed will have to strike a balance between securing transparency (via reporting, disclosure and possibly regulation) and ensuring that barriers to participation are not created (especially for resource poor groups and ordinary citizens). It is likely that many of those engaged in lobbying that does not involve direct advocacy will seek to be excluded from full disclosure obligations. How these issues are handled will condition the scrutiny

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and accountability of lobbying in the United Kingdom, and ultimately play a key role in determining whether such transparency measures can contribute to rebuilding trust and confidence in the political system.

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There has been something of revival of interest in lobbying regulation across the globe, though there are significant divergences in practice between political cultures (Chari *et al*, 2010). Although it is true that most countries do not have any formal rules regulating lobbying, it is also the case that interest in registering and regulating lobbying is on the rise, with the introduction of statutory registers in some countries, as well as various experiments with voluntary registration systems. As the companion contribution on Austria demonstrates, a number of states are currently deliberating on the implementation of some form of lobbying disclosure system.

In response to this trend, the OECD recently published 10 core principles that might inform lobbying registration arrangements. Although the OECD have adopted a neutral position on the key issue of mandatory versus voluntary lobbying registration (see also OECD, 2009a, b), there is nonetheless a recognition of the necessity of democratic scrutiny of lobbying activity (OECD, 2010). How such scrutiny can be realised of course remains the key terrain of debate between the mandatory registration and self-regulation camps.

The desirability of lobbying disclosure is usually premised on notions that increased transparency aids democratic deliberation, making actors engaged in policymaking more responsive to public concerns and public interests. An argument for mandatory lobbying registers is that accountability is premised on transparency and openness. Elected representatives and public servants cannot be accountable if their activities are not widely known and understood. Without relevant and reliable information in the public domain voters may struggle to understand policymaking and decision-making processes. Having an official record of relations between government, elected representatives, public servants and outside interests may also go some way towards mitigating widespread cynicism about the probity of public life and sometimes sensationalist media reporting of 'scandal' and 'sleaze'. In part, this is because transparency reforms are actually, admittedly small, steps to expand popular involvement in politics. A significant assumption often made is that lobbying disclosure almost automatically produces greater levels of public trust and confidence in the political system. However, actually increasing confidence and trust will crucially depend on how disclosure impacts on the behaviour of lobbied and lobbyists, that is,

whether lobbying transparency is conceived as part of a wider culture change in decision making. If it is the case that 'business as usual' continues after the introduction of a lobbying register then the anticipated boost to trust in the political class is unlikely to materialise.

The usual objections to lobbying disclosure mounted by those inside the political system hinge on concerns about openness and scrutiny undermining the efficiency of democratic decision making, as well as hampering small and less institutionalised interests. This line of argument suggests variously that disclosure is likely to disadvantage the average citizen by creating barriers (or the perception of barriers, which may be exploited by accredited lobbyists to market themselves and their services) to petitioning their elected representatives; it also raises the spectre of politicians and their advisers starved of information. Having exhausted such allegedly principled arguments against disclosure, there is a second order of practical complaints that dwell on the problems of defining lobbying activities and lobbyists; this conjures the prospect of unwieldy regulation that is costly to enforce and fails to command respect. The costs of compliance are usually said to be disproportionate to the gains secured, and, in any event, the problems associated with lobbying are said to be overstated and sensationalised. Defenders of the status quo argue that yes, there may be a few rotten apples, but regulation for the control of rotten apples is akin to using a sledgehammer to crack a nut. In essence, this is a position endorsed by the Chartered Institute of Public Relations (CIPR) in their evidence to the Public Administration Select Committee (PASC) enquiry on lobbying in 2008 (Zetter, 2009).

There is a surface plausibility to some objections to disclosure, but these need to be seen in the context of the interests of some of those upholding the status quo, and judged on the basis of evidence from practical experience of lobbying disclosure. It is no coincidence that many of the bodies representing lobbyists formed as a response to policy interest in lobbying disclosure (Schlesinger *et al*, 2001; Dinan, 2006).

A Washington Consensus?

Perhaps a useful place to begin any reassessment of arguments around lobbying disclosure is to look at mature systems where registration is well established. In essence debates about lobbying regulation and disclosure centre on balancing the public interest in scrutiny with the information needs of legislators and the private interests of lobbyists. One of the core assumptions for those campaigning for lobbying transparency is that disclosure facilitates scrutiny and hence accountability. The experience of the United States is instructive here as the information made available under the Lobbying Disclosure Act (LDA) is generally used to assess the merits of the decision-making process, rather than launching

particularised 'witch-hunts'. Of course, it is not being suggested that the United States provides an easily transposable template. It is clearly the case that lobbying regulation needs to reflect the context of specific (national) political cultures. Nevertheless, there are some general lessons. In 2010, filings indicate that US$3.51 billion was spent to lobby US decision makers.[1] Data submitted by lobbyists under the LDA allows informed analysis of spending by different interest groups, and helps to discern trends and patterns of lobbying. This information is easily accessible on the Internet. It is equally apparent that this kind of disclosure has not put a brake on lobbying. Although the numbers of registered lobbyists has declined from a high in 2007 of 14 861 to 12 941 in 2010, analysis produced by OpenSecrets/Centre for Responsive Politics point to a steady growth in lobbying expenditures (see also Alexander *et al*, 2009; Chen *et al*, 2010; *Economist*, 2011; Hill *et al*, 2011).

A further lesson that can be drawn from the United States is that lobbying registration does not guarantee all lobbyists (or indeed legislators) will behave ethically. Arguably, regulation makes such behaviour less likely, and, may provide sufficient sanctions to deter rule breaking. Equally, lobbying registration does not offer comfort to those who believe that business wields too much political power. Although it may make the structural lobbying advantages enjoyed by business more visible, this does not mean that a rebalancing of access or influence follows. It may well be the case that one of the key tangible benefits of registration is that the organisation of outside interests becomes more visible to legislators and their advisers, as was reportedly the case in Canada (Rush, 1998). It is therefore quite possible that the benefits of disclosure may be enjoyed by those involved in lobbying, with the lobbied getting a better sense of the field and players on any particular issue (which may inform their thinking on balancing access and influence), and lobbyists getting a clearer picture of the activities of competitors and potential allies.

Stories of Scandal and Sleaze: The Stop–Start Debate on Lobbying Regulation in the United Kingdom

As Jordan (1998) noted a proper understanding of contemporary British politics is impossible without examining lobbying. All observers agree that lobbying has hugely expanded in the United Kingdom in recent decades (Parvin, 2007). This has been as a direct result of the business-friendly policies pursued by successive governments, but there is a general valuing of consent that has seen consultation more generally increased as a formal policymaking requirement. It is the enhanced role of business in government, which has made the issues of transparency and conflict of interest more prevalent and pressing. The British lobbying industry is estimated to have doubled in size

since the early 1990s and a decade ago there were said to be 3000 full-time lobbyists (consultants and in-house) in the United Kingdom (Thomson and John, 2002). Even this is likely an underestimate. A survey published by the CIPR (CEBR, 2005) indicated some 47 800 people employed in public relations in the United Kingdom. Just over 80 per cent of these were identified as working 'in-house' (that is, working directly for corporations, charities and public bodies) with an even split between those employed in the public and private sectors. If we accept there is something of a blurring between lobbying and public relations, and if we include lobbyists working in-house, rather than just in consultancies, then the number of professional communicators engaged in lobbying and related activities is quite significant. That there is no reliable register of what these people are doing seems itself a matter of public concern.

The House of Commons has wrestled with the issue of lobbying and its regulation over the past 40 years. The Select Committee on Members' Interests (SCMI) considered the matter on a number of occasions. In the early 1990s, it recommended a mandatory register, including details of their businesses and clients. Critics of that pointed to the limited scope and ambition, with the SCMI apparently lacking investigatory zeal and prepared to 'think the best of fellow MPs' (Doig, 1998, p. 39).[2]

Prime Minister John Major set up the (*ad hoc*) Committee on Standards in Public Life (CSPL) in October 1994, in direct response to the cash-for-questions affair. 'Sleaze' entered the British political lexicon to denote the taint of money in parliamentary business. Under Lord Nolan, the committee reported within 6 months, deciding against the regulation of lobbyists and arguing that the creation of a register would become a marketing tool to increase business (Nolan, 1995a, p. 36). Thus, the emphasis of the Nolan report was to fall upon regulation of legislators not the industry. The House accepted Nolan's recommendations that the Register of Members' Interests should be more informative, rules governing conflicts of interest should be more detailed, and an MP code of conduct should be created along with an independent Parliamentary Commissioner for Standards (Doig, 1998, p. 44).

The response of the lobbying industry to 'sleaze' was, in the first instance, to call for mandatory government regulation. The Association of Public Affairs Consultants (APPC), which represents lobbying firms, called for statutory controls, arguing that 'official regulation would command far greater respect' (Nolan, 1995b, p. 93). Some viewed this as a strategic calculation by the APPC that there was neither the political appetite nor the legislative space to easily implement such legislation (Schlesinger *et al*, 2001). The Public Relations Consultants Association (PRCA), and the Institute of Public Relations (now the CIPR) were not keen on statutory regulation.

The sixth report of the CSPL published in 2000 concluded that a 'fresh enquiry' was necessary in relation to the status and regulation of special

advisers, the sponsorship of government activities, and lobbying (Neill, 2000, p. 9). The committee's view regarding the regulation of the lobbying industry reaffirmed that 'There should be no statutory or compulsory system for the regulation of lobbyists. The current strengthening of self-regulation by lobbyists is to be welcomed' (ibid., p. 4). The committee placed a considerable degree of faith in *self-regulation* by lobbyists, but proposed no solution to concerns regarding those lobbyists who choose not to join self-regulatory schemes.

In 1999, the Scottish Parliament at Holyrood faced its first lobbying scandal within weeks of assuming powers (Schlesinger *et al*, 2001). A newspaper sting revealed lobbyists claiming privileged access to the highest reaches of the newly installed Labour administration in Edinburgh. The Scottish Parliament's Standards Committee was less than impressed with the promise and practice of lobbyists' self-regulation when it emerged that one lobbying body had deliberately not investigated the conduct of its members. The Standards Committee recommended a register of lobbyists be introduced at Holyrood, though this proposal has yet to be enacted (Dinan, 2006).

In 2007, the PASC launched an inquiry on lobbying, reporting in January 2009. This delivered a devastating critique of self-regulation. In all likelihood this sounded the death-knell for the status quo. The committee, in a measured but critical appraisal, observed that 'what lobbying organisations refer to as "self-regulation" appears to involve very little regulation of any substance' (PASC, 2009, p. 62), noting that the standard lobbyists' arguments against regulation (barriers, bureaucracy and stifling inputs from outside interests) were over-stated and even self-serving (ibid., p. 63).

PASC recommended that the lobbying industry unite and produce a credible self-regulatory framework, or expect the imposition of a mandatory registration system. To date, there has been very little progress by industry, and government, on securing lobbying transparency. The APPC, CIPR and PRCA quickly launched the UK Public Affairs Council (UKPAC), an umbrella lobbying body, in direct response to PASC's report. Their efforts to produce a register have been desultory, with one PASC committee member describing the initiative as 'woefully unimpressive' (Flynn, 2011). UKPAC was further, and probably fatally, undermined when the PRCA withdrew in late 2011.

The official response from the Cabinet Office to the PASC report was delayed so long that political events had somewhat overtaken it. The 2010 general election manifestos of both Labour and the Lib Dems included pledges to regulate lobbyists. The coalition partnership agreement between the Lib Dems and the Tories also included a commitment to regulate lobbying. However, despite David Cameron claiming (while in opposition) that lobbying was getting out of control and was a scandal in waiting, his government has been slow to implement lobbying regulation.

Conclusions: What is to be Done?

A recurring feature of debate about lobbying in British public life has been the role of the media in reporting, and in some cases creating, scandal. The Greer-Hamilton Cash-for-Questions scandal was pursued vigorously by the media, in particular *The Guardian*. The Draper Cash-for-Access story was the result of an *Observer* sting on Derek Draper and Roger Liddle, which revealed how former advisors and political insiders were seeking to sell their access to the New Labour administration. That same paper repeated the operation in Scotland, provoking Holyrood's 'Lobbygate' crisis in 1999. Other media that have recently broken lobbying stories and scandals include the *Sunday Times*, *The Times* and *The Independent*. The *Dispatches* programme 'MPs for Hire' on Channel 4 in March 2010, just before the general election campaign, is credited with provoking Labour to officially support lobbying regulation.

The media have continued to pursue lobbying-related stories involving the current government, and this has undoubtedly increased the pressure to act on lobbying regulation. The resignation of Defence Secretary Liam Fox in October 2011 amid scandal over his breech of the ministerial code in respect to his relationship with his unofficial adviser Adam Werritty has raised a number of still unanswered questions about the outside interests who used Werritty as a conduit. In December 2011, *The Independent* and the Bureau of Investigative Journalism published an exposé of Bell Pottinger lobbyists claiming access and influence at the highest reaches of government. Once again the government publicly committed to bring forward a consultation on lobbying reform, but there remains little sense of enthusiasm for such transparency at the higher reaches of government.

While media investigating and reporting of lobbying has helped keep the issue on the agenda (as has the emergence of a civil society campaign, the Alliance for Lobbying Transparency – with which the present authors are associated[3]) it is notable that scandals relate mainly to the conduct of ministers, MPs and officials (or in the case of Werritty, non-officials). Comparatively, little is reported about the activities and interests of lobbyists, which is a telling indicator of the lack of public transparency. As PASC (2009, pp. 12, 14) noted, 'Because secret lobbying by its very nature leaves no evidence trail, there could still be a significant problem even with little concrete evidence of one … . Some of the concerns that exist around improper influence are closely linked to the power of informal networks of friendships and relationships'.

A crucial task of any lobbying transparency system is to open such networks to scrutiny. The rules currently in place, and those proposed by the select committee, will go some way to shedding light on the conduct of lobbying in Britain. Extending the logic of the members code to include

lobbyists (very broadly understood) properly balances the rights and responsibilities of those parties engaged in promoting and deciding on legislation. A mandatory register of lobbyists would mean that all those parties involved in proposing, opposing, drafting and amending legislation, would be required to make their role in the policymaking process open to external scrutiny. Given public mistrust of the relations between vested interests of all kinds and elected representatives, it is surely consistent to extend the same principle of vigilance to the lobbying industry as a whole.

Currently, there is a dearth of information in the public domain regarding how lobbying interests seek to shape policy and legislation. In our view a mandatory lobbying register is the only viable means to secure compliance, transparency and potentially public trust. Given the secrecy that surrounds lobbying, it is likely that there will continue to be suspicion around attempts by outside interests to shape policy. This suspicion is damaging for the entire political class, and undermines confidence in public affairs and elected representatives. The gravity of this erosion of trust requires serious remedial action, of which a lobbying register is an important element.

It is evident that the self-regulatory systems in the United Kingdom operated by professional lobbyists are not fit-for-purpose and cannot deliver adequate transparency. That approach is discredited. A critical problem is that these organisations simply represent their members. The pressing question of what to do about those lobbyists ineligible or unwilling to join such organisations simply cannot be addressed by voluntary mechanisms. In addition, information about the fees, resources and tactics deployed to influence the policy process are not made public under these forms of self-regulation.

The creation of an independent statutory body to oversee a lobbying register is both timely and necessary. In our view an official, mandatory register of lobbyists would make a telling contribution to openness and transparency in British public life. Any independent body set up to monitor and enforce a lobbyist register (the model of the Information Commissioner clearly recommends itself in this context) should be pro-active in ensuring compliance, offering clear and consistent advice and guidance to those covered by such a register, and to those interested in learning more about the register.

The long-term damage to the political system of a drip-drip feed of lobbying scandals should not be underestimated. A mandatory register is not a sledge-hammer to crack a nut: rather it is an essential tool – if only a first step – to help to make decision making more transparent and accountable, or in other words, more democratic.

Notes

1 Opensecrets Lobbying database, Centre for Responsive Politics, www.opensecrets.org/lobbyists/index.asp.
2 For a detailed overview and chronology of the debate in the United Kingdom on lobbying regulation see Powerbase, 'Lobbying regulation – chronology', www.powerbase.info/index.php/Lobbying_regulation_-_chronology.
3 William Dinan is a member of the steering committee of ALTER EU, and David Miller is a member of the steering committee of ALT UK.

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