

Lobbying

January 2018



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About the 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.
-

Committee Chair:



Jayne Bryant AM
Welsh Labour
Newport West

Current Committee membership:



Gareth Bennett AM
UKIP Wales
South Wales Central



Paul Davies AM
Welsh Conservative
Preseli Pembrokeshire



Llyr Gruffydd AM
Plaid Cymru
North Wales

The following Member was also a member of the Committee during this inquiry:



David Rowlands AM
UKIP Wales
South Wales East

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Chair's foreword

The Committee agreed to look at lobbying in Wales as our first piece of substantial work in the fifth Assembly. There have been a number of developments since the last time the Assembly looked at lobbying; Westminster began operating a register of professional lobbyists in 2015 and Scotland passed legislation establishing a lobbying register in 2016.

We wanted to hear from the wide range of voices involved in the transparency debate to ensure we made informed conclusions. The Committee held an open call for evidence and heard from a broad range of witnesses.

We have concluded from this inquiry that lobbying needs to be part of an ongoing dialogue in an engaged and open democracy. It is apparent from the evidence gathered that there is no easy answer to the questions of how to define or share information about lobbying. There is no doubt that there are groups seeking to influence politicians, and that it is in the public interest to establish the impact of this influence. However, the Committee has concluded that there is insufficient evidence at present regarding how best to share this information once it has been obtained.

The findings of this report are an interim position. The Committee feel it is crucial to learn from experience and gather further evidence of best practice. The Scottish legislation is in its infancy and we will therefore closely monitor what happens there and the review of its legislation in 2020. Careful attention must also be paid to developments in Westminster and we will periodically review the situation.

The Committee is keen to take steps in this interim period to increase transparency. We are therefore proposing that a select trial of publishing Assembly Members' diaries, specifically relating to lobbying, is undertaken. Members of this Committee have volunteered to take part. We have also recommended an increase in the amount of information published about events held on the Commission estate. Furthermore, consideration should be given to commissioning research into how influence is sought and gained over politicians. More information regarding the impact this has would enhance our understanding of lobbyists' influence.

Alongside these interim steps, the Committee encourages the lobbying industry to take the lead over the next two years. The industry can themselves demonstrate how a voluntary register would operate and how it could provide the necessary information about influence over elected Members.

It is our intention that a review of this work in 2020 would enable us to make clear and informed conclusions, and to set out a proposal for the sixth Assembly.

I would like to thank all of those who contributed to this inquiry for taking the time to provide us with valuable evidence. I very much hope this positive engagement will be maintained as we continue the journey to greater transparency.

Jayne Bryant AM
Chair, Standards of Conduct Committee

Recommendations

Recommendation 1. The Committee recommends that the Assembly Commission works with a group of Assembly Members to develop a pilot scheme of voluntarily disclosing AMs meetings with lobbyist and interest groups with an evaluation to be undertaken in 2020..... Page 32

Recommendation 2. We recommend that the Assembly Commission ensure all National Assembly staff security passes on their last day of employment. This would ensure that no lobbyist possess a National Assembly pass making it easier to maintain the reputation of the Assembly as an institution which allows fair and equal access to all..... Page 32

Recommendation 3. We recommend that information about all Assembly Member sponsored events held on the Assembly Estate and not just those events in public spaces is included within the calendar. We feel this will ensure that the National Assembly is displaying its commitment to the utmost transparency, and enable the public to see what events are being held on the Estate..... Page 32

Recommendation 4. We recommend that research is commissioned by the Assembly Commission, mapping out routes of influence to build an informed evidence base and consider alternative, and potentially more effective ways to increase transparency other than a Statutory register..... Page 32

Recommendation 5. We recommend that the relevant sections of the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014 which apply to Wales are considered by a Committee of the National Assembly for Wales once the Wales Act 2017 is enacted..... Page 32

1. Introduction

1. The Standards of Conduct Committee (the Committee) agreed to undertake an inquiry at the start of the Fifth Assembly in 2016 to consider whether the arrangements for transparency around lobbying are fit for purpose and appropriate within the National Assembly for Wales (the Assembly).
2. The Committee was conscious that a lobbying register had been established in Westminster and legislation to establish a register had been passed in Scotland. The Committee observed that with the Wales Act 2017 and Brexit, there was a changing dynamic within the Welsh devolution settlement. Furthermore, sometime had passed since lobbying had last been considered by the Assembly and, the previous Standards of Conduct Committee had recommended the issue of lobbying was subject to regular review in its 2013 report.¹
3. Given these developments, the Committee agreed to undertake a full inquiry into lobbying to make sure lobbying arrangements remain appropriate for Wales. The Committee held a public consultation and took evidence from a number of witnesses. There were 21 responses to the consultation from a variety of sources (Assembly Members (AMs), Lobbying Firms, third sector organisations, and Registrars), a full list of these can be found at Annex A. The Committee also held 6 evidence sessions.
4. This report sets out the Committee's findings and recommendations. We have drawn some wider conclusions in the final chapter due to the interlinking nature of the issues.

¹ Standards of Conduct Committee, **Report 03-13 to the Assembly on Lobbying and Cross-Party Groups** (May 2013)

2. Definition of Lobbying

5. A clear understanding of what is meant by lobbying, is important in order to develop an appropriate and effective regime for lobbying.
6. Throughout the Committee's inquiry, there was much discussion about the definition of lobbying. There was wide agreement that the focus of a definition should be around the activity of lobbying as opposed to a lobbyist, which was a conclusion also drawn by our predecessor Committee.
7. However, there was a lack of a clear and agreed definition amongst those responding to the Committee's consultation.² Although, there were not substantial differences in the definitions received, such a large number of definitions did not help bring clarity to the question of what is meant by lobbying.
8. The term lobbying in general is often misconceived and there are often negative connotations associated with the term lobbying. When referred to as a lobbyist, Anne Meikle,³ WCVA, said her immediate reaction was:

"'But I'm not a lobbyist.' It's sometimes quite a big bit of my job, but, most of the time, it's a very small part of my job, and I thought, 'Well, no, probably by most definitions, I am'. But it's back to what are you trying to capture, and, for me, I was really quite concerned that I don't want to be tarred with that brush. I don't think I behave in the way that the problem is perceived publicly, and I was a bit nervous, and I said to WCVA, 'It's almost like if you called it something else, I wouldn't mind so much'."⁴

9. Nesta Lloyd-Jones, Public Affairs Cymru, also emphasised that if you asked Public Affairs Cymru (PAC) members if they were lobbyists, they would state:

"...the likelihood is that a number of them would say 'No', but if you say, 'Do you campaign? Do you develop policy? Do you work actively with the Assembly in a public affairs capacity?' the likelihood is that they would say, 'Yes' to that. So, we do need to be clear with regard to what lobbying is and, again, the public affairs community needs to support that definition as well and be happy using that kind of language, because I think there

² Standards of Conduct Committee, **Consultation responses** (February 2017)

³ Head of WWF Cymru but attending Committee as a representative of the Wales Council for Voluntary Action (WCVA)

⁴ Record of proceedings (RoP), 13 June 2017, Paragraph 60

have been negative connotations around the word ‘lobbying’. As Daran [Hill] said, a number of us do lobby, but we may not use that language.”⁵

10. There was agreement that lobbying in the broad sense should be welcomed as a vital part of the democratic process.

11. Anna Nicholl, Welsh Council for Voluntary Action (WCVA), also highlighted that while a broad definition is acceptable when discussing general terms, a tighter definition would be required for any proposed legislation:

“We’d want a lot of discussion, I suppose, on what that definition—how you define it so we don’t start to include, especially if there’s going to be lots of bureaucracy around it, groups who are not professionally lobbying in the way that I think the public are concerned about. I suppose it’s trying to make sure that we’re addressing the concern where this has arisen from, I suppose.”⁶

12. The evidence suggests that the definition of lobbying needs to be simple and easily understandable, but that this is very difficult to achieve. A clear definition will help improve wider awareness of the important role lobbying has in society and help increase transparency of lobbying activities.

13. For the purpose of this report, we have focused on the activity of lobbying i.e. activity aimed at seeking to influence Assembly Members as in our predecessor Committee’s report. We have done so in the broadest sense in order to consider all potential impacts of lobbying.

14. The Committee recognises the need for a tighter definition if a statutory route is decided upon. We will use the period from the publication of this Report (January 2018) until 2020 (when the Scottish legislation into lobbying is reviewed) to give full and proper consideration to what activities within the broad definition above should be captured.

⁵ RoP, 9 May 2017, Paragraph 68

⁶ RoP, 13 June 2017, Paragraph 49

3. The necessity of a register – Is there a need for change?

15. An important question the Committee considered throughout this inquiry was whether there is a need for change.

16. Responses to the Committee's written consultation were not conclusive as to whether this need existed, with many respondents referencing the current open nature of the Assembly. In their written response, CYTUN set out:

“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.”⁷

17. However, there was a general consensus that the changing political landscape of Wales, for example fiscal powers; the Wales Act 2017; and Brexit meant that there was increased scope for lobbying to become a greater issue in Wales. CLA Cymru said:

“As the Welsh political system becomes more distinct and devolution delivers more responsibilities to Wales, we need to ensure proportionate safeguards are established.”⁸

18. The Committee agrees on the need for vigilance regarding an increase in lobbying activity due to the evolving political dynamic in Wales. It will be necessary to be pro-active to ensure that increased lobbying activity does not become an issue. It is unacceptable to be complacent on the basis that no issues have arisen previously. The past record in relation to lobbying does not mean that there is no possibility of it becoming a problem in the future.

19. Anne Meikle, Welsh Council for Voluntary Action said that she felt that there could be more transparency as:

“... often I want to understand who influenced that decision, or why that decision was made, and I do think there’s definitely a lack of clarity and a lack of transparency around even who has been involved in those

⁷ **Written Evidence**, 14 February 2017

⁸ **Written Evidence**, 14 February 2017

conversations, who has actually had some of their voice heard in that system.”⁹

20. Professor David Miller from Spinwatch argued that increased transparency was necessary because:

“... what we face is the possibility is public disengagement from politics in a way that is bad for democracy. The idea about lobbying transparency is about trying to protect or stem that; to stem the idea that politics—representative, democratic politics—is not something you should get involved in and you should do it by other means. I think that’s an important, big issue that stands behind this, which is there, whatever are the small issues—the specific issues—that we might talk about.”¹⁰

21. Alexandra Runswick, Unlock Democracy, suggested that increased transparency was about:

“safeguarding the Assembly’s reputation and taking pre-emptive action before there are major scandals. If you wait until there are major scandals, until there is extensive evidence, then the public trust will have been lost. Yes, you can take action from that point onwards, but the damage has been done.”¹¹

22. While the evidence demonstrated broad agreement that the aim for Wales should be for as much transparency as possible, many witnesses emphasised the need for this to be proportionate. Anna Nicholl, Welsh Council for Voluntary Action said:

“...with the purpose of doing this, I think that trust and transparency are really important. Equally important—...—is encouraging people, civil society, to actively engage with the Assembly and Government. So, I suppose it’s just being proportionate that the way this is done does achieve your first goal and doesn’t impact negatively on groups proactively getting involved and engaging.”¹²

23. The Committee fully agrees that the need for trust and transparency within politics is a key factor in maintaining democratic engagement. It is important that everybody can understand how and why decisions have been made. We want to see

⁹ RoP, 13 June 2017, Paragraph 11

¹⁰ RoP, 23 May 2017, Paragraph 10

¹¹ RoP, 23 May 2017, Paragraph 89

¹² RoP, 23 June, Paragraph 25

as much transparency as possible and believe more information should be made available regarding those potentially influencing politicians.

4. Type of Register

24. The Committee heard evidence around two types of register – voluntary and statutory. The key difference between these two registers is that the statutory register has a legal basis to ensure practitioners comply with its requirements.

Voluntary Register

25. There was little support for the National Assembly to introduce a new voluntary register either in the written or oral evidence, other than that from Public Affairs Cymru.

26. Public Affairs Cymru suggested that their code of conduct and publication of clients could act as a precursor for a voluntary register. Daran Hill stated:

“It’s still very much a work in progress, because we have a membership database at the moment that isn’t necessarily public—isn’t actually public—and we also have a code of conduct. So, what we’re aiming to do...is ensuring that every public affairs practitioner who signs up as a member of PAC signs that code on an annual basis at the same time as they sign up for membership, and that, on the back of that, there will be a list of people with names, organisations, e-mail addresses, that we’ll then publicly publish on our website. Over and above that, for people at the parasitical end of lobbying like myself, there’d be a requirement that we also disclose all of our clients and that they’re publicly published as well. So, that would be the type of register that we envisage and we hope that, by doing it in a transparent and not burdensome way, but rigorous way, without being burdensome, we would attract more people to sign up to membership of Public Affairs Cymru as a sort of kitemark of lobbying in public affairs in Wales as well. So, I accept that perhaps we’ve been less open than perhaps we should’ve been in the past, but we’re at a point now where we think we can present some really valuable public transparent information moving forward.”¹³

27. When the Committee explored with Public Affairs Cymru about how breaches of their Code would be managed, Daran Hill suggested they did not have sufficient resources to police these themselves:

“... if there was a breach around the code, the likelihood is it’s to do with something that’s happened either in the Assembly or linking with an AM. We are volunteers and we wouldn’t have the capacity to look at and

¹³ RoP, 9 May 2017, Paragraphs 13-14

investigate breaches, but what we could do in the future, working with the commissioner, is look at how we as an organisation could refer complaints, support the commissioner in the future if there are any breaches to the code, and also raise awareness of the code both within our membership but also with Assembly Members, so that people are fully aware of the standards that we expect from public affairs professionals –because we are a profession.”¹⁴

28. The suggestion that the Commissioner for Standards be involved in policing the conduct of outside individuals and organisations raises a number of issues. This is certainly beyond the current remit of the Commissioner, would require a change to primary legislation and could potentially place the Commissioner in a position of conflict.

29. Professor David Miller, Spinwatch, said that the lobbying industry frequently suggests that it can undertake some form of self-regulation:

“This has been the constant refrain. I’ve given evidence in the Scottish Parliament, in Westminster, in the European Parliament and the European Council and it’s always been the refrain of the lobbying industry that we can have a form of self-regulation. The real problem with that is that it doesn’t work. There’s no proper mechanisms to enforce it. They always complain that they’re being forced into something that would be illegal by disclosing their clients. There’s a question of how they would enforce their code on, for example, lawyers or management consultants or accountancy consultancies et cetera, because they say that it would be illegal to disclose their clients. These are proposals that are there to enable there not to be transparency. That’s the purpose of them creating the notion of self-regulation. That’s been demonstrated all the way through from Scotland to the European Parliament to Westminster, I think.”¹⁵

30. He added that the content of voluntary registers led by the sector tended to constitute a list of clients without information about the issues they were lobbying on. This would mean that there would be no data to establish what vested interests the lobbyists might be trying to influence politics.

31. The House of Commons Public Administration Committee report of 2009, *Lobbying: Access and Influence in Whitehall* concluded that trust from the public could not be achieved with a voluntary approach:

¹⁴ RoP, 9 May 2017, Paragraph 19

¹⁵ RoP, 23 May 2017, Paragraph 13

“In the current climate of public mistrust, voluntary self-regulation of lobbying activity risks being little better than the Emperor’s new clothes. Solutions need to be adapted to different constitutional arrangements and political cultures. In the case of the United Kingdom, where there is a culture of discretion and where deals are traditionally done behind closed doors, an element of external compulsion will be needed to provide for meaningful transparency.”¹⁶

Statutory Register

32. We received six written consultation responses supporting the introduction of a statutory register. A majority favoured the Scottish model as opposed to the model used in Westminster. For example, the Public Relation and Communication Association (PRCA) stated that in principle it was:

“...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.”¹⁷

33. Professor Miller set out that any decision to move to a statutory framework should be considered a process:

¹⁶ **House of Commons Public Administration Committee Report: Lobbying: Access and Influence in Whitehall (2009)**

¹⁷ **Written Evidence**, 14 February 2017

“... and what you find when you have the introduction of lobbying transparency regulations is that they are then monitored to see how effective they’ve been. Sometimes that means that they have to be altered, because sometimes the lobbyists try and get around the rules that are put in place and other times it becomes apparent that there are ways in which the initial legislation or rules were not adequate. So, there’s a process to that. I think I would say that there are examples of lobbying registers that are quite reasonable in securing some information for the public.”¹⁸

34. However, a number of representations suggested that the introduction of a statutory register would be a bit like a “sledgehammer to crack a nut” and disproportionate. Alastair Ross, Association of Scottish Public Affairs, described the Scottish register as “a solution looking for a problem”.¹⁹

35. The Committee welcomes any work that Public Affairs Cymru undertakes to increase the transparency of those who register with them, and anything which ensures that those operating within the field of lobbying do so with the upmost integrity. The Committee are mindful of the limitations of any work undertaken by Public Affairs Cymru as it would be a voluntary register based on membership of PAC and there are undoubtedly a number of organisations outside of PAC, which would not be captured by a membership based system.

36. We are uncertain that the information disclosed through a voluntary Register would answer all of the questions that exist around how policies are developed and influenced. We are currently minded that a statutory route might be necessary to achieve the desired transparency required. However, we are keen to see whether the voluntary approach suggested by PAC does increase transparency sufficiently to negate the need for a statutory register. We will therefore closely follow developments at PAC over the next two years.²⁰

37. Despite wanting to see what form the PAC voluntary register takes, the Committee would have concerns around extending the role of the Commissioner for Standards to include the resolution of these types of complaints. While the Commissioner has responsibility for the conduct of Assembly Members, the role does not include responsibility for the conduct of external organisations. Introducing this, would involve amending primary legislation, and is consequentially undesirable

¹⁸ RoP, 23 May 2017, Paragraph 18

¹⁹ RoP, 21 March 2017, Paragraph 39

²⁰ The reasoning for this date is based on the Scottish review of their lobbying register which is explained in subsequent chapters

in the view of the Committee. We think this could expose the Commissioner to numerous conflicts of interest.

5. Existing Lobbying Registers

38. There are a number of different examples of lobbying registers and, the Committee looked at these as part of this inquiry.

Westminster

39. The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014²¹ established an independent statutory office to record and publish the register of consultant lobbyists.

40. The Committee heard from Alison White, the Registrar of Consultant Lobbyists about the establishment and operation of the register in Westminster. She set out that the register has been operating for just over two years and in April 2016, when we took evidence, it had 124 registrants (the highest number registered at this point had been 134). She is formally accountable to Parliament, and independent of both Ministers and the lobbying industry. This register applies to VAT-registered organisations/individuals who discuss Government business directly with Ministers and/or permanent secretaries, on behalf of a client in return for payment. The register costs £0.25 million to operate, and registrants are charged a fee of £1000.

41. Ms White highlighted that the process of developing the register was ongoing, and that the guidance was under review. In response to questions around how regularly the website is searched and used as an effective tool, Alison White said:

“... one of the things that we have an intention to do this year is to be able to use the mechanisms that make measurements of those hits on the website, using the technical terminology, that are taking place. One of the things, though, that we’ve recently done, and this is based on user feedback, is to try to make our website a bit fresher, a bit more user-friendly. Previously, it was a bit too stiff, if I can describe it thus. So, I have to say that we’re not quite where I would like us to be in terms of the use of the sorts of measurement mechanisms that, nowadays, organisations use to be able to discover the usage. I hope that, during the course of the year ahead, that’s something that I’ll be able to focus a little bit more on.”²²

42. There was very little support for the system implemented in Westminster from the respondents to the Committee’s consultation. It was considered to be limited in terms of the information it holds and the level of data captured. Alastair Ross,

²¹ **The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014**

²² RoP, 4 April 2017, Paragraph 69

Association of Scottish Public Affairs, suggested that whilst developing the Scottish model the Westminster model was only considered in terms of what not to do. Daran Hill, Public Affairs Cymru, said he thought it was strange that a professional lobbying company such as his (Positif) would not be captured on the Register.

43. However, the Westminster model has helped highlight some less traditional forms of lobbying. Daran Hill stated:

“Where the UK legislation has been helpful, I think—and Mrs White alluded to this when she came before you—was ensuring that certain people who were carrying out lobbying activity, but weren’t necessarily lobbying companies—I think she was pointing, particularly, to some legal firms who actually did conduct lobbying activities—were now properly registered. So, it’s that sort of blurred edge, along the side of what people might ordinarily understand as lobbying. I think it’s added some value there.”²³

Scotland

44. The Lobbying (Scotland) Act 2016²⁴ was a piece of Scottish Government legislation, which was introduced after a Private Members bill on lobbying. The responsibility lies with the Scottish Parliament to establish and run the Register.

45. The Scottish Register will record face to face lobbying of Scottish Ministers, Members of the Scottish Parliament (MSPs), the Permanent Secretary of Scottish Government and Special Advisors by consultant lobbyists, in house lobbyists and all those acting on behalf of an organisation/cause.

46. Billy McLaren, the Scottish Lobbying Registrar advised the Committee on the progress to date [4 April 2017] for establishing the Scottish register. He highlighted that the system was still “...embryonic and not yet in operation”²⁵ and the stated aim is for it to go live in early 2018. Mr McLaren set out that a working group was being established that includes a standing representative from a team in the Standards in Public Office Commission in Ireland, who have been operating a lobbying register since 2015.

²³ RoP, 9 May 2017, Paragraph 63

²⁴ **Lobbying (Scotland) Act 2016**

²⁵ RoP, 4 April 2017, Paragraph 12

47. He outlined some of the difficulties to date about interpreting the legislation, and to this end he felt that the guidance would be key to helping achieve the legislations aim of “seeing who lobbied who, when, where and on what”.²⁶

48. The Scottish legislation stipulates that a review must be considered two years after commencement, and this will therefore be undertaken in 2020.

49. Due to the Register not being operational during the course of this inquiry, there was no evidence about its effectiveness to date. However, there were some areas of concern about the Act raised with the Committee, particularly around the requirement to register only face to face lobbying. It was suggested from a lobbying perspective that compliance with the Act in some instances may be difficult. A requirement to register meetings at conferences with lots of politicians, is one such example. There also appeared to be confusion about who was captured and whether this Register would include meetings like those with politicians in local charity shops etc.

50. There was also concern expressed that the Scottish definition meant MSPs initiated meetings were not recorded. It was suggested that this may be used as a loop hole, with MSPs being influenced to extend invitations to lobbyists in, rather than lobbyists directly initiating meetings. Anne Meikle, WCVA set out that this was a concern because

“... for example, that, if you are asked to give something to a politician, that doesn't count. Well, that puts me in a very passive place; I don't think that's engagement. If I can only engage if you invite me, I don't think that's the spirit of what the two Acts are trying to do, which is trying to encourage people to engage with the democratic process. And it's a bit like, 'So, I don't have to record it if you ask me, but, if I think you need to know something because you've made a statement or something and I think, "Oh, that doesn't sound quite right", that is lobbying'. Well, that just seems bizarre to me, and I find that definition quite difficult.”²⁷

EU Joint Transparency Register

51. The EU Joint Transparency Register²⁸ is a voluntary Register with an associated Code of Conduct for those seeking to influence the European Commission and the European Parliament. Following its initial establishment, a full review of the Register was undertaken in December 2013. This review made 30 recommendations for

²⁶ RoP, 4 April 2017, Paragraph 58

²⁷ RoP, 13 June 2017, Paragraph 55

²⁸ [EU Joint Transparency Register](#)

change, including “strong incentives to encourage organisations to register” and the sanctioning of organisations who failed to register when they should have. Sanctioning constituted the prevention of access to politicians. Despite these changes, in December 2016, the European Commission, the Council of the European Union and the European Parliament issued a consultation, which recognised the need to make the register mandatory.

52. Professor David Miller, Spinwatch, suggested that the European decision was due to under-declaration citing examples such as the:

“Philip Morris documents—tobacco industry documents—in Brussels, which showed that they had systematically understated their lobbying activities.”

and

“— For example, there are lobby groups that are disclosed by some companies. So, Coca-Cola discloses that it’s a member of an organisation called EU Pledge, which focuses on children’s advertising and food. There are three other organisations that claim to be members of that on the register, but there are 15 others that don’t. So, there’s no real way in which that can be monitored and enforced in a voluntary register.”²⁹

Republic of Ireland Register

53. In March 2015 the Regulation of Lobbying Act 2015³⁰ was signed into law by the President of Ireland. The Act provided for:

- The establishment of a register of persons who carry out lobbying activities;
- A code of conduct to carry out lobbying activities; and
- Restrictions on involvement in lobbying by certain former designated public officials.

54. The Register of Lobbying³¹ is administered and maintained by the **Standards in Public Office Commission**,³² an independent body chaired by a former High Court judge.

55. Organisations are required to register if they are carrying out lobbying activities. This is determined by ascertaining whether the organisation is communicating

²⁹ RoP, 23 May 2017, Paragraphs 22-23

³⁰ Acts of the Oireachtas: **The Regulation of Lobbying Act 2015**

³¹ Republic of Ireland, **Register of Lobbying**

³² **Standards in Public Office Commission**

either directly or indirectly with a “Designated Public Official” about “a relevant matter”.³³ Registrants are required to make “returns” to record lobbying activity.

56. There are 3 returns periods per year with assigned deadlines. Each return must include information on who was lobbied; the subject matter of the lobbying and intended outcomes; type and extent of activity; the name of any person in the organisation who is or was a designated official and carried out lobbying activity; client information (if relevant).

Period	Returns due date
1 September – 31 December	21 January
1 January – 30 April	21 May
1 May – 31 August	21 September

57. The lobbying register is a web-based public registry of information. There is no charge for organisations/individuals to register. At the time publishing this Report (January 2018) 1620 organisations/individuals were registered.

58. The consequences for non-compliance with this Act include fixed payment notices (for late returns), investigation of possible contraventions, prosecution, and fines and/or imprisonment.

³³ Republic of Ireland, **Register of Lobbying**: Other than a specifically exempted matter

6. Improvements to transparency

59. The Committee received a great deal of evidence suggesting that a lobbying register would help increase transparency. The democratic process would be clarified by the provision of further information on how decisions are being made and how people can get involved, thereby preventing reputational damage for the National Assembly;

60. Professor David Miller, Spinwatch, suggested that it would be important to ensure engagement in the process of securing transparency:

“... if you want people to engage in this, you need to try and help that process along and that means outreach and promotion; it means an engagement by the Assembly in popularising and showing organisations how it can be useful and showing people how it can be useful, rather than it being something that is a dry web page that no-one ever looks at and that is difficult to download. You can find ways to allow the data to be accessible digitally, to make them easily searchable—there are all sorts of things that you can do to make it an inviting and easy thing for people to engage with, and that will help.”³⁴

61. Alexandra Runswick, Unlock Democracy emphasised the need for transparent data:

“If I could just add on the data point, with transparency of data, making sure that they are in a variety of accessible formats and are machine-readable is one of the most important things that you can do in terms of making sure that the public have meaningful access to them, because there are lots of voluntary sector initiatives that will readily take data and turn them into something exciting for the public to engage with, if the data are in a format that they can use.”³⁵

62. Anna Nicholl, Wales Council for Voluntary Action, highlighted the need for anything which was introduced to be proportionate. She said:

“It’s again just concern about being proportionate and not putting organisations who we want to be positively influencing Government or politicians—we don’t want this to be putting people off from engaging. So, if there is going to be a fee, it needs to be really careful that that’s

³⁴ RoP, 23 May 2017, Paragraph 29

³⁵ RoP, 23 May 2017, Paragraph 30

proportionate and not putting people off engaging in the democratic process.”³⁶

63. The Committee also heard about a number of different options for increasing transparency in addition to or alongside, a register of lobbyist meetings. We believe these options will help increase available information and therefore strengthen openness across the National Assembly.

Publishing Diaries

64. Following the start of this inquiry, the Welsh Government confirmed that Minister’s diaries would be published on a quarterly basis, from March 2017.³⁷ This has been very much welcomed by all those contributing to the inquiry.

65. The Committee has no formal power over the Ministerial code. Given the announcement of the intention to publish Ministerial diaries, the Committee agreed not to consider further the Ministerial Code as part of this inquiry. We believe this will allow time for the publication of Ministerial Diaries to be assessed in terms of meaningfulness and value to improving transparency. Despite this, we firmly believe that Assembly Members should be treated equally with Government Members. The Committee therefore recommends that any future changes made to guidance for Assembly Members should also apply to the Government and the Ministerial Code, and this will be considered as part of the Committee’s work in the future.

66. Some witnesses suggested that it may be beneficial to have the publication of Assembly Member’s diaries alongside Ministerial diaries. Cathy Owens, Association of Professional Political Consultants, suggested that this might help establish the size and scale of lobbying in Wales. This may in turn help to build an evidence base around whether lobbying is an issue. Anne Meikle, WCVA, thought the publication of Assembly Members’ diaries would capture more widely those who lobbyists speak to.³⁸

67. Anna Nicholl, Wales Council for Voluntary Action, suggested that this would also:

“... test out to what extent there is a problem in trust and accountability, before you need to put additional burdens on sometimes fairly poorly resourced third sector organisations or charities who, quite rightly, want to get engaged and be influencing positive policy practice in Wales? So, you may be unsurprised that the WCVA’s quick reaction to that would be, ‘Yes,

³⁶ RoP, 13 June 2017, Paragraph 70

³⁷ **Written Evidence**, 14 February 2017

³⁸ RoP, 13 June 2017, Paragraph 14

let's see how opening up Government and the Assembly more works, before we put additional burdens on charities'."39

68. However, there were some concerns about this approach being taken in isolation. Alexandra Runswick, Unlock Democracy, said:

“For me, the balance is actually having a lobbying register. It’s unusual for people to defend politicians, but, on this one, I will, in the sense that, generally speaking, in most cases there are rules in place around transparency of meetings, registers of interests—. I’m not saying that they couldn’t be improved; obviously, ministerial meetings being published is very new in Wales, and it doesn’t include policy details. So, there are things that could be done better on the political side, but that is only one side of it. You need to have the whole picture. And, as David said repeatedly, ministerial meetings, or even registers of interests, are an aspect of lobbying, but they don’t get anywhere near telling the whole story. So, unless you are also having transparency of lobbyists, you’re not going to be able to get anywhere near the picture of who’s trying to influence elected... representatives.”40

69. There were some concerns raised that the publishing of Ministerial or Members diaries should not be a substitute for a lobbying register. When undertaking their work on the need for a lobbying register, the Scottish Standards, Public Appointments and Procedures Committee concluded:

“Suggesting MSP diaries would be an alternative approach to a register can give the impression that one is a substitute for another. MSP contact reports and entries in a lobbying register would record very different types of information. Infrequent meetings with small organisations and charities on single issues would feature in MSP diaries, whereas the thresholds in the register mean it would focus in on significant levels of lobbying activity, in the main by commercial lobbyists and in-house lobbyists for big organisations.”41

70. There are examples of elected representatives choosing to publish information on their meetings with lobbyists and interest groups. For example, the Green/EFA group in the European Parliament automatically publish information about

³⁹ RoP, 13 June 2017, Paragraph 35

⁴⁰ RoP, 23 May 2017, Paragraph 52

⁴¹ Scottish Parliament: Standards, Public Appointments and Procedures Committee Report: **Proposal for a register of lobbying activity** (2015)

meetings held with lobbyists and interest representatives such as civil society organisations. This is done via an open-source tool, which according to their website:

“takes information from our MEPs' calendars, and publishes the information on their websites the day after the lobby meeting takes place. This allows all citizens to see who we are meeting, when we are meeting them, and what we talk about with outside stakeholders.”⁴²

71. The Committee are minded that the publication of Assembly Members' diaries may help to increase transparency, whilst also providing a greater insight into what an elected Member does. We are proposing that the Commission considers undertaking a trial of publishing AMs diaries with a small sample of Assembly Members.

Other options for transparency

72. There were a number of further suggestions within the Public Affairs Cymru evidence which seek to increase transparency.

73. These included ensuring that all National Assembly passes are deactivated on the day staff leave employment to guarantee that no lobbyist has a National Assembly pass. There should not be any opportunities for lobbyists (and those leaving the employment of the Assembly who subsequently work for lobbyists) to have unrestricted access to AMs through visiting their offices. We would welcome an assurance from the Assembly Commission that there are procedures in place to ensure staff passes are deactivated and not obtained by lobbyists.

74. In addition, Public Affairs Cymru (PAC) suggested that information should be published about all events held on the Assembly Estate. Information is currently available on all events held in the public areas of the Assembly Estate (Oriol and Neuadd in the Senedd and the Pierhead), but PAC suggests 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 one or invitation only, and the name of the sponsoring AM.”

75. The Committee are keen to ensure there is as much transparency as possible, and therefore we think that the suggestion to publish information on all Assembly Member sponsored events on the Assembly estate would help increase the openness of the National Assembly. The necessary caveats would need to be

⁴² Green/EFA Group – **Transparency Lobby Calendar**

introduced regarding those taking place in restricted areas where attendance is by invitation only.

76. Furthermore, the Committee believes there is value in reviewing the existing guidance for AMs on lobbying to make sure it is easily understandable. We suggest consideration of the inclusion of basic guidance identifying the types of activity which constitute lobbying. Furthermore, the induction programme for new AMs and their support staff should include a specific item on lobbying.

Academic research – Building an evidence base

77. Members explored with some witnesses the lack of information available on the scale of lobbying in Wales. Unlock Democracy provided the Committee with an outline scope of lobbying activity in Wales, which provided an interesting insight into the level of registered/unregistered lobbying. Cathy Owens, Association of Professional Political Consultants, suggested that the monitoring of AMs’ diaries for a period of time would build a picture of the scale of the issue.⁴³

78. Having undertaken some initial research into any studies of the level of lobbying and its influence in Wales, the Committee believes there is potential for further academic research. Routes of influence could be mapped out to build an informed evidence base and alternative ways to increase transparency other than a register might be proposed. The Committee therefore recommends that the Assembly Commission commence further research at the earliest opportunity.

The Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014

79. Aside from the statutory register which was created as a result of the transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014,⁴⁴ the Committee received a number of responses about how this legislation has operated since its introduction. Respondents told us that it has been restricted charities campaigning during election periods. The Electoral Reform Society said:

“At the UK level the Transparency, Lobbying and Trade Unions Act has 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

⁴³ RoP, 13 June 2017, Paragraph 122

⁴⁴ [Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014](#)

times of public debate, which we see as detrimental to the democratic process.”⁴⁵

80. Cytun reflected that they were “concerned that the regulation introduced by the 2015 Act impacted severely on public discussion around the 2015 and 2016 elections and the 2016 referendum”.⁴⁶ While the WCVA said:

“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.”⁴⁷

81. The Committee recommends that the relevant sections of this legislation which apply to Wales are considered by a Committee of the National Assembly for Wales once the Wales Act 2017 is enacted.

⁴⁵ Written Evidence, 14 February 2017

⁴⁶ Written Evidence, 14 February 2017

⁴⁷ Written Evidence, 14 February 2017

7. The Committee's Position

- 82.** As a Committee, we recognise the open nature of the National Assembly for Wales. We believe that as a relatively young and new institution, the Assembly has worked hard to build a culture based on trust and transparency.
- 83.** The Committee believes that there should be as much transparency as possible regarding how decisions are being influenced, and more could be done to this end. We believe there needs to be more information available about who is influencing politicians, and how this is done.
- 84.** Having considered the evidence currently available, we are minded that this may need to be done via a statutory route. The lessons from Europe show that there is a risk of reputational damage, and of members not engaging with non-compliant organisations on a voluntary register. It also shows that to be effective, a register requires sufficient incentives for compliance and sanctions for non-compliance. We believe a statutory footing will give future systems greater credibility and help strengthen public trust.
- 85.** However, we are also mindful of the need to demonstrate a proportional use of resources and value for money. There appears to be little evidence to show that statutory registers in their current form provide the correct information to enhance and improve transparency. To this end the Committee is keen to learn from best practice as it emerges from the statutory registers within the UK. Therefore, we do not believe that we can make a definitive decision on the best way forward until the review of the Lobbying (Scotland) Act has taken place (scheduled for 2020). Waiting until this point will hopefully mean that we will be able to put in place an effective, proportionate regime which will have maximum beneficial impact.
- 86.** We heard a number of representations that any new approach developed in Wales should be complementary to the existing regimes within the UK. Lobbyists already have to comply with different requirements in Westminster, Scotland, Republic of Ireland and Europe, and conversely those wishing to use and compare the information have to interpret a number of different. Waiting to consider the outcome of the Scottish review, will ensure any register introduced in Wales builds on the experiences and requirements of existing registers. This will help ensure that any system introduced in Wales does not act as a barrier to participation in the democratic process. It should not act as a deterrent, with people opting out of seeking to inform and it must work with those who are democratically accountable.
- 87.** As stated previously, the Committee welcomes any work that Public Affairs Cymru and others representing the lobbying industry do to improve and increase transparency.

88. The Committee received little evidence in support of a voluntary register, but believe the period up to the review of Scottish lobbying legislation, provides time for the lobbying industry to demonstrate how this could work.

89. However, the Committee firmly believes working with all relevant parties will create the best system for Wales. We see this as an opportunity to ensure that the final approach is workable and effective for all. We therefore very much welcome Public Affairs Cymru undertaking to work with the National Assembly on whatever future decision is made.

90. Any emerging system has to involve working with the Welsh Government in addition to co-operation between Assembly Members and lobbyists. The systems introduced to date across the UK have been Government led, and this is an important element in their functionality. Furthermore, the impact of any system change to enhance transparency would be lessened without the same requirements being placed on Government.

91. While waiting for the outcome of the Scottish review, we have identified a number of actions that can be implemented in the interim to enhance transparency.

92. The process of increasing transparency should not be asymmetrical with all the responsibility on the lobbyists. Therefore we are proposing that the Assembly Commission works with a group of Assembly Members to develop a pilot scheme of voluntarily disclosing AMs meetings with lobbyist and interest groups. As a Committee, we are all happy to participate in this trial. While this may not fully answer the questions around transparency, we do believe it will add value to any future developments.

93. There are a number of issues in terms of how to deliver this trial. These include how to best publish and display the information which will need to be considered. The Committee is conscious that any publication of diaries should be mindful of only disclosing relevant information and respectful of confidential information concerning constituents. There may be a need for contextual information highlighting other activities undertaken by Assembly Members alongside the meetings which would be disclosed. We therefore propose the pilot scheme, has an evaluation period built in for 2020.

94. The information within these diaries should help build a picture of what meetings are taking place, but it may not be sufficient on its own. It will not detail the content of the meeting, nor will it capture those meetings which are not formally arranged. It is those such meetings which the Scottish Register aims to capture.

Recommendation 1. The Committee recommends that the Assembly Commission works with a group of Assembly Members to develop a pilot scheme of voluntarily disclosing AMs meetings with lobbyist and interest groups with an evaluation to be undertaken in 2020.

Recommendation 2. We recommend that the Assembly Commission ensure all National Assembly staff security passes on their last day of employment. This would ensure that no lobbyist possess a National Assembly pass making it easier to maintain the reputation of the Assembly as an institution which allows fair and equal access to all.

Recommendation 3. We recommend that information about all Assembly Member sponsored events held on the Assembly Estate and not just those events in public spaces is included within the calendar. We feel this will ensure that the National Assembly is displaying its commitment to the utmost transparency, and enable the public to see what events are being held on the Estate.

Recommendation 4. We recommend that research is commissioned by the Assembly Commission, mapping out routes of influence to build an informed evidence base and consider alternative, and potentially more effective ways to increase transparency other than a Statutory register.

Recommendation 5. We recommend that the relevant sections of the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014 which apply to Wales are considered by a Committee of the National Assembly for Wales once the Wales Act 2017 is enacted.

Next Steps

95. The Committee intends to return to this topic in late 2020/ early 2021 depending on the timescale for the Scottish review. At this point, we will be able to consider the effectiveness of:

- the existing regimes (through the Scottish Review, and potential a better evidence base for the usage of the Westminster register website);
- the publication of Ministerial diaries; and
- the trial of publishing Assembly Members diaries.

Annex A – Witnesses

The following witnesses provided oral evidence to the Committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed in full at:

<http://senedd.assembly.wales/ieListMeetings.aspx?Committeeld=451>

Date	Name and Organisation
21 March 2017	Alastair Ross – Association of Scottish Public Affairs
4 April 2017	Alison J White – Registrar of Consultants Lobbyists Billy McLaren – Scottish Lobbying Registrar
9 May 2017	Nesta Lloyd-Jones – Public Affairs Cymru Daran Hill – Public Affairs Cymru Aaron Hill – Public Affairs Cymru
23 May 2017	Alexandra Runswick – Unlock Democracy Professor David Miller – Spinwatch
13 June 2017	Anna Nicholl – Wales Council for Voluntary Action David Cook – Wales Council for Voluntary Action Anne Meikle – WWF Cymru Mark Glover – Association of Professional Political Consultants Cathy Owens – Association of Professional Political Consultants