

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

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 accessibly. 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.¹ 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.

¹ 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.² 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.³ It is worth noting that the current Education Cabinet

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

³ 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