

Y Pwyllgor Safonau Ymddygiad/ Standards of Conduct Committee

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	Public Affairs Cymru's response to the Standards of Conduct Committee inquiry into lobbying.
Contact	Daran Hill, Policy Lead, Public Affairs Cymru. daran@positifgroup.co.uk Nesta Lloyd – Jones, Chair of Public Affairs Cymru. chair@publicaffairscymru.org
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What is PAC and what do we believe

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

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- Encouraging best practice amongst public affairs professionals; and
- Promoting, wherever possible, the work of public affairs professionals operating in Wales.

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

4. PAC, its members and representatives of the public affairs profession in Wales, are clear that lobbying and public affairs activity is a vital part of Welsh democracy. Without the contributions made by public affairs professionals Welsh Government policy and the legislation passed by the National Assembly would not be as effective as they have been. PAC members provide a key role in ensuring that underrepresented groups in society are given a voice through their public affairs, campaigning, research, policy and communication work in Wales. Public affairs enhances the democratic process in Wales. Many of the organisations that engage with the Welsh political system are small bodies, such as charities. They have made a significant contribution to Welsh democracy and have provided an important voice to the groups that they represent, including for the most vulnerable people in society. The significant support and contributions made by our members to develop policy and legislation in Wales has been recognised by Ministers, National Assembly Committees and also individual Assembly Members.
5. Our members support openness and transparency and PAC has worked hard to gain and maintain the confidence and support of Assembly Members from across political parties and also Welsh Government and National Assembly staff. Transparency and openness is key to ensuring that the public affairs sector is trusted and respected in Wales and we have proactively put forward ideas regarding how we can all be more open and transparent in our work. PAC have previously highlighted that increased transparency could be achieved through, for example, the publication of meetings by the Welsh Government, AMs and officials rather than a statutory register so that engagement by all those who seek to influence elected members and senior civil servants, not just agency lobbyists, is clear, open and visible.
6. While we do not regulate our members, many of the commercial public affairs companies, including Grayling, Freshwater UK, PPS Group, Deryn, Positif and The Remarkable Group Ltd, are registered with the Association of Professional Political Consultants (APPC). These and other commercial lobbying companies also need to observe the UK Register of Lobbying Consultants under the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act

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2014 where consultants need to register their clients where they are communicating with UK Ministers and senior civil servants on their behalf.

Developing this response

7. In developing this response PAC has surveyed our membership and staged a discussion event on 19 January 2017, which was attended by over fifty people including the Chair of the Standards Committee, Jayne Bryant AM; Jonathan Thomas from the Standards Commissioner's office; and also the Clerk of the Standards Committee. This response has been agreed by the both the Executive of PAC and a working group of interested members which included: Kate Cubbage, British Medical Association Cymru Wales; Owain ap Gareth, Electoral Reform Society; Daran Hill, PAC Executive/Positif Politics; Mark Hinge, Bay Communications; Nesta Lloyd Jones, PAC Executive/Welsh NHS Confederation; and Rev Gethin Rhys, Cytun.
8. At the same event in January we heard from Alastair Ross from ASPA (Association of Scottish Public Affairs), who explained the basis for recent legislation on lobbying in Scotland. He explained that, in response to pressure from a backbencher, the Scottish Government promised a Bill in the Programmes for Government in 2013 and 2014 but did not publish one. Instead they consulted on the issue and they looked at UK lobbying regulation but used that as example of what not to do, rather than try to co-ordinate with and complement it. Everyone – Ministers, MSPs, the Standards Committee, and even transparency campaigners – said that lobbying was a good thing, but that it needed some form of regulation in order to maintain public confidence in the Parliament and its Government.
9. The Scottish Government finally published a Bill in October 2015. It proposed:
 - A register of lobbyists, and a register of 'face-to-face' lobbying activity to be disclosed on a six month basis.
 - Sanctions of a £3,000 fine or 12 weeks in jail for non-compliance.
 - The Bill was amended to include Special Advisers.
 - It also included exemptions where MSPs initiated a meeting with a lobbyist, or where the meeting was a constituency matter.
 - The Bill included a review clause for it to be reconsidered two years after implementation.

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

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10. Having consulted with our membership, we feel strongly that the system by which the public affairs industry in Wales is regulated should be decided solely on a Wales level. We believe that the unique nature of the public affairs industry in Wales means that a 'Made in Wales' solution is essential. We do not believe that a good model for statutory regulation of lobbyists exists anywhere in the UK.
11. Our approach during the drafting of this evidence has instead been based on the following principles:
- A realistic, balanced and critical assessment of the current situation;
 - A desire to reflect the diverse interests of different types of organisations within PAC;
 - The promotion of openness and transparency;
 - Modernising PAC (including our Code of Conduct);
 - Emphasising PAC's position as a lead organisation on standards;
 - Capturing members' opinions and concerns in a meaningful and accurate way which recognises and reports any disagreement as well as points of unity; and
 - Offering solutions and recommendations where we can.
12. In drafting this response we have considered the following questions:
- a. Is there a need for change?
 - b. What do you understand by the term lobbying?
 - c. How is lobbying regulated at the moment?
 - d. Do you consider yourself a lobbyist? How is lobbying regulated within your sector at the moment? E.g. if you are a private business, third sector, professional organisation.
 - e. Have you encountered any problems with the current arrangements?
 - f. Are there any areas you consider to be unregulated in this area which pose a risk to the accountability and reputation of governance in Wales?
 - g. What would you consider to be the impact of introducing a new regime to deal with lobbying?

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

Definition of Lobbying and Lobbyist

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

The PAC Code of Conduct

16. While PAC does not have any regulatory function we have been at the forefront across the UK in promoting accountability and integrity within our industry; these form our core principles. We have set a clear example by proactively developing and implementing a Code of Conduct, which is being reviewed as part of our work in response to this lobbying inquiry.

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17. The Code of Conduct was unanimously approved at our AGM in October 2010. The Code of Conduct was developed in the best interest of our members and to ensure best practice amongst PAC members were promoted. All members of PAC are expected to behave in accordance with this Code and to ensure that they meet all its provisions in their activity. The most important benefit attached to compliance with the terms of the Code of Professional Conduct is that the lobbying/government relations/public affairs profession in Wales will both be professional and ethical, and seen by others as being professional and ethical. That is of inestimable value to all practitioners, in whose interest it is that policy makers and the public alike perceive their profession as reputable, legitimate and of a high standard.
18. The full Code of Conduct can be found on our website but important aspects of the Code as it currently stands includes:
 - a. Members of PAC are expected to take care to ensure that none of their professional activities or behaviour causes, or has the potential to cause, damage to the reputation of PAC itself or to their profession more generally.
 - b. Members are expected to deal with clients, employers, organisations and all the institutions of government honestly, transparently and with integrity.
 - c. Members are expected to advise their client, employer or organisation if they believe that the objectives or activities of their client, employer or organisation may be unethical, illegal or contrary to good professional practice and not to take action to further such objectives or activities.
 - d. Members are expected to ensure that any financial relationships involved in their professional dealings could not reasonably be construed as being potentially illegal or dishonest.
 - e. Members are expected to provide information on the cost and value of hospitality provided to public office-holders if the public office-holders concerned request such information.
19. In direct response to this inquiry, from April 2017 PAC will create a new membership system whereby every member of PAC must sign the Code on an annual basis as part of the joining process with individuals signing a copy of the Code when they sign up with PAC. This will make sure the Code and the standards therein is at the absolute forefront of the minds of every PAC member. We would suggest the publication of the list of members every six months. We believe that this would form the basis of a clear register of lobbyists in Wales.

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20. An aligned alternative suggestion which we would be interested in exploring with the Committee would be that PAC members register as an organisation (as opposed to individual) with X number of staff involved in lobbying, all of whom would then fall under the same Code of Conduct set by PAC. This could mean that individual staff members involved in lobbying would not have their name published on record as being a lobbyist, but would be implicitly on the register and subject to the Code of Conduct. Those supporting such an approach feel the benefit of this could be twofold. Firstly, those individuals who do not consider themselves lobbyists per se but, on occasion, undertake action that can be considered lobbying would be held to the same standard, without having their name published on record. Secondly, by having the organisation or business named on the record with the number of individuals engaged with lobbying activities, those individuals are compelled to uphold standards as they are acting under the name of their employer, rather than themselves as individuals. This would also put a shared responsibility between employer and employee to uphold the Code of Conduct.
21. However, regardless of which registration system is introduced, it is important to note, there is no compulsion on public affairs professionals or organisations to join PAC and abide by the Code. We invite the Committee to consider this issue and whether there ought to be some compulsion for professionals who fall under an agreed definition of lobbyist to register, otherwise it may be easier for people to opt out of joining to avoid being captured by the code of conduct.
22. PAC is also reviewing the content of the Code and are minded to include a number of significant changes which would enhance its standing. These have all been tested with the membership and have been found to be acceptable. As part of the review of the Code the following has been agreed:
- In future, the wording of the Code will be tightened so that no member of PAC will be allowed to hold a pass to the Assembly in any capacity.
 - We are working on a form of words to ensure that no PAC member in the future holds an office or role in a political party which determines manifestos. One form of wording we are considering is: "In relation to the process of drafting manifestos, members will not exploit their roles within a political party, nor indeed their membership of a political party, to seek advantage for those for whom they lobby or represent professionally." It is important to get the balance right on this issue so that lobbying advantage is disallowed but democratic association and participation can continue, and we are grateful to several former political party staff members who are now PAC members and are helping us shape this clause. The views of the Standards Committee would also be helpful.

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- c. We will introduce a new clause into the Code which requires any PAC member which routinely sells public affairs commercial services to lodge a list of clients with PAC. This is a clause that would be framed specifically for those selling public affairs services, and not trade or representative bodies. This is already done on a quarterly by PAC members who are also APPC members but this transparency needs to be extended and enforced. We would be interested in the view of the Standards Committee both on the regularity of this disclosure exercise and whether the Committee or the Standards Commissioner would also like to hold a copy.
 - d. We will also introduce a new clause into the Code which requires any PAC member which routinely sells public affairs commercial services to respect the National Assembly as an institution and undertake not to use the Assembly estate as a marketing initiative either by direct company marketing or attending events speculatively with the purpose of attracting new clients.
- 23. Further, PAC undertakes to review the Code on an annual basis at our Annual General Meeting. If the Committee wishes to suggest other areas where the Code might be strengthened, we would also welcome that input.
- 24. There are, nevertheless, three other considerations which arise out of PAC membership and the Code of Conduct. The most obvious is that people, including commercial lobbyists, cannot be compelled to join PAC or adhere to the standards in the Code of Conduct. This consideration also means that using the PAC membership list as Register of Lobbyists would only ever be a partial register.
- 25. Building on this point, for the Code to be effective as a watermark for high quality public affairs it needs to be recognised and promoted as such both by members of PAC but also by Assembly Members, staff, Assembly officials and Welsh Government officials, and the media too. That includes being familiar with the contents of the Code and the ethics of lobbying. PAC would very much value an ongoing dialogue with the Standards Committee and the Standards Commissioner on how this can be done but one suggestion would be that AMs are active in checking with lobbyists whether or not they are PAC members and what ethical framework they work within.
- 26. Finally, with regard to the Code, there is a question of enforcement of standards. The APPC membership fee is significantly higher than the £35 per person charged to join PAC on an annual basis. Keeping the cost low enables us to attract members and to ensure that cost is not a barrier to entry, especially during this period when we are looking to expand our membership to

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encompass as many lobbyists as possible. To operate a rigorous system of enforcement of the Code would either require a substantial joining fee increase or partnership with the Standards Commissioner. We favour the latter approach since breaches of the Code would, virtually always, involve an AM, their staff or the Assembly estate and would therefore come under the remit of the Commissioner. In making this suggestion we invite the Committee and the Commissioner to work with us to develop a transparent process for challenging/sanctioning PAC members who are thought to have not met their commitment to abide by the Code. We would particularly welcome dialogue on how would instances be reported/discovered; who could report a PAC member; who would decide whether the Code had or had not been followed; and what would the sanctions be.

Other Considerations outside the remit of PAC

27. The issuing of passes to the Assembly building is a matter for the Assembly Commission. We would suggest that as well as PAC members undertaking not to hold passes, it is the responsibility of Assembly when issuing passes to make sure they are not issuing to lobbyists, and also to collect them properly when people leave the employment of the Assembly.
28. PAC believes that the Assembly Commission should publish details of all events held on the Assembly estate. This would include the name in which a booking was made, the organisation, whether events are public ones or based on invitation only, and the name of the sponsoring AM. The current system is partial since it only covers certain event space like the Oriel, Neuadd and Pierhead building, but not the Media Briefing Room or any part of Ty Hywel. In the interests of transparency and consistency this issue needs to be looked at.
29. It is a matter for the Assembly Commission to whether it looks at the rules governing the use of the Assembly estate for commercial purposes. The current rules mean book launches can be held but no books sold; dinners can be held in the Pierhead but no tickets sold (though PAC did exactly that with our first dinner back in 2007); and also even charity sales cannot be held. Recently the Assembly confirmed in public that the Fair Trade Christmas Fayre would not be permitted on the estate again. PAC members are divided on whether or not this rule should be changed.
30. Further, the guidance on the process and regulation of Cross-Party Groups in the National Assembly should be reviewed and promoted by the Standards Committee so that all CPGs operate to the highest standards in relation to any commercial or other interest group associated with them.

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31. PAC welcomes the decision of the First Minister that ministerial diaries should be published. We await details on how this will be done and which meetings it will cover. We believe it should be framed as broadly as possible and not be confined to commercial lobbyists. PAC have long argued the Welsh Government Ministerial Code is amended so that Ministers, Special Advisers and Senior Civil Servants are required to publish the names of outside interest groups and individuals with whom they have formal meetings. The Scottish Ministerial Code requires that a “monthly list of engagements carried out by all Ministers is published three months in arrears”, and the UK Cabinet Office Ministerial Code says that “Departments will publish, at least quarterly, details of Ministers’ external meetings.”
32. Further, PAC would suggest that the Standards Committee considers seriously whether Assembly Member diaries are published using the same criteria. We made the case for this to happen during the 2012 lobbying inquiry and were disappointed that Standards Committee report at that time suggested that PAC members and not AMs publish such diaries. We do not believe that is a fair or democratic suggestion, and would like to stress to the Committee that if diaries are ever published they should be done by the people that are publicly accountable – the politicians.
33. Lobbying does not only occur from one direction and sometimes lobbyists are lobbied too, be it by officials, special advisers or politicians. While accepting this is a natural and normal part of the political discourse, PAC has concerns that in recent years examples have occurred where lobbyists and campaigners have been asked to reconsider standpoints or not to say certain things with which the Welsh Government is not in agreement. Over half of the PAC members who responded to our online survey indicated this had happened to them.
34. PAC has no view on whether the political party or funding relationship with Welsh Government should be disclosed by those providing evidence to Government or Assembly consultations.
35. The Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014 contains a section which regulates campaigning behaviour during election periods. As currently constituted, this legislation also covers National Assembly election campaigns. Several PAC members have concerns about aspects of the existing legislation and hope that when the Wales Bill is enacted and the National Assembly has powers over elections to the National Assembly that the Standards Committee conducts an inquiry into the very specific issue of whether this law might be improved for Wales.

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Final points

36. Although we had hoped to confine our evidence to five pages, it has been impossible to do so because of the complexity and range of things which we wish to say to the Committee. We hope that this response is not discounted for that reason.
37. We are familiar with the rules on disclosure of information and have considered these details carefully before submitting this response to the Committee.
38. We are happy to present oral as well as written evidence to the Committee if that is deemed helpful or to co-operate in any way with the Committee or the Standards Commissioner in improving the reputation and regime for lobbying in Wales.