

Y Pwyllgor Safonau Ymddygiad/ Standards of Conduct Committee SoC(5)-05-17 P1

NATIONAL ASSEMBLY OF WALES INQUIRY INTO LOBBYING JOINT SUBMISSION BY UNLOCK DEMOCRACY AND SPINWATCH

Introduction to submitting organisations

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

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

Submission

Is there a need for change?

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

3. All paid lobbyists should be required to register and submit quarterly returns detailing any communication with Assembly Members (AMs), their Special Advisers (SpAds), or other public officials.
4. The information contained on this register should include:
 - a. The name and business details of the lobbying organisation
 - b. The name(s) of individual lobbyists
 - i. Any public office held in the past 10 years
 - c. The name(s) of any clients (if consultant lobbyist)
 - d. The subject matter of the lobbying activity
 - e. Any relevant legislative proposal, Bill, resolution, regulation, policy, program, grant, contribution, financial benefit or contract which is or is planned to be the subject of lobbying activity
 - f. The public official at whom the lobbying activity is being directed
 - g. Any communication techniques the registrant expects to use in relation to lobbying efforts
 - h. The amount spent on lobbying activity
5. Statutory lobbying registers are already in place in Scotland and Ireland, as well as many other countries around the world. A more limited register covering only consultant lobbyists is in place in Westminster, which the Welsh Government has opted out of. The Welsh Government is currently far behind its counterparts when it comes to transparency. It was rated third out of the four UK governments for ministerial transparency and integrity regulations by Transparency International¹. Statutory regulation is required to bring Wales into line with the rest of the UK, but there is also an opportunity to lead the way with more comprehensive transparency regulation.
6. The First Minister of Wales, Carwyn Jones, has argued that legislation on lobbying is unnecessary, claiming that lobbyists do not have access to ministers². However, a number

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

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

of examples have been raised of cases where ministers or AMs have met with lobbyists³, and there have even been accusations of lobbyists successfully influencing funding grant decisions⁴.

7. Although there have been no *major* scandals regarding lobbying in Wales as of yet, countless scandals in Westminster have demonstrated that self regulation of the sector does not work. It is foreseeable that members of the Welsh Assembly may be embroiled in a lobbying scandal in the future, particularly as more powers are devolved to the Welsh Assembly the risk becomes greater. Introducing a comprehensive lobbying register now would prevent such a scandal and help the Welsh Assembly achieve the highest standards of transparency, which should be a goal in its own right.
8. The trajectory towards greater devolution of powers to the Welsh Assembly is likely to result in the rapid growth of the Welsh lobbying industry. A helpful comparison is the lobbying industry in Scotland, which grew as more powers were devolved, with many Westminster agencies setting up a dedicated Scotland office as they saw lobbying opportunities increase. We also know that the lobbying industry views Brexit as presenting a multitude of opportunities for expanding their influence. Professional lobbying agencies see Brexit as a marketable and profitable opportunity, where they can help clients “enter the debate”⁵.
9. There is a need for change as existing transparency mechanisms are insufficient to permit scrutiny and promote accountability in the Welsh Assembly. There is evidence that ministers and AMs are meeting with lobbyists. There is the potential for scandals which could do irrevocable damage to the reputation of the Welsh Assembly and its members. A comprehensive lobbying register should be introduced pre-emptively not reactively.

What do you understand by the term lobbying?

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

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

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

10. Unlock Democracy and Spinwatch understand lobbying to be any form of communication with a public official with the intention of:
- influencing a particular policy or position
 - seeking the award of a government contract or financial benefit
 - convincing an official to carry out parliamentary activity on your behalf
11. We understand a lobbyist to be someone that undertakes lobbying activity, as defined above, in exchange for payment. We would agree with the definition of a ‘professional lobbyist’ used in the National Assembly for Wales’ guidance on lobbying and access to AMs⁶. We believe it is imperative that any new regulation on lobbying in Wales apply to all those who lobby and not just consultant lobbyists, as is the case with the statutory register introduced in Westminster.

How is lobbying regulated at the moment?

12. Lobbying of the Welsh Assembly is largely self regulated. Public officials are advised to consult professional bodies in order to gather information prior to meetings. Most professional bodies require members to sign up to a code of conduct. However, there is no requirement for lobbying firms to join any professional bodies. AMs are prohibited from lobbying for ‘reward of consideration’⁷. This includes consultancy and advisory work on influencing the Welsh Assembly or the affairs of the Welsh Assembly⁸. Unlock Democracy and Spinwatch commend this effective regulation.

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

⁷ Standing order 2.8

http://www.assembly.wales/NAFW%20Documents/Assembly%20Business%20section%20documents/Standing_Orders/Clean_SOs.eng.pdf

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

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

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

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

Have you encountered any problems with the current arrangements?

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

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

16. Current regulation of lobbying in Wales relies on professional bodies for information about lobbying firms, their clients, and their lobbyists. Current guidance advises AMs to consult information held by these bodies when deciding whether to meet with lobbyists⁹. However, due to the voluntary nature of these bodies the information they hold is not comprehensive and there may be lobbyists on which no information can be found. The APPC register contained just 66 lobbying firms in the whole of the UK in the quarter September-November 2016¹⁰. This is even fewer registrants than on the UK consultant lobbying register, which has been widely criticised for its small number of entries. Furthermore, it is UK wide and not specific to Wales, giving members little information about lobbying activity

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

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

in Wales. The other recommended body is the Public Affairs Cymru register. Whilst this has a larger number of members it includes no information about members' activities or lobbyists¹¹. It sheds little light on how lobbyists may be trying to influence policy and therefore makes it difficult to hold public officials to account.

17. The Standards Committee's 2013 report recognised the increased risk of impropriety posed by lobbyists meeting ministers¹². The ministerial code states that 'the basic facts of formal meetings between ministers and outside interest groups should be recorded'¹³. However, this data is difficult to find. This information is not centrally held in a single place to make it easily accessible, nor is this information kept in a uniform format so that it could be easily analysed. Its inaccessibility means that it becomes useless as a tool for public scrutiny. The same is true for AMs. Although the guidance on lobbying recommends AMs record the subjects of their meetings with lobbyists, or ask the lobbyists to do so for them, there is no guidance as to where this should, or even can be published. This is also only advisory and therefore there is no consistent reporting of AMs meeting with lobbyists. Ultimately, the public have no idea when public officials are meeting with lobbyists and what they are talking about. This creates an accountability deficit.

18. There is little regulation of post-public employment for AMs. The ministerial code requires ministers to apply to the Advisory Committee on Business Appointments for advice and obliges them to follow that advice. It also imposes a two year restriction on lobbying¹⁴. However, there is no mechanism to monitor compliance, although the media may uncover scandals where former ministers are lobbying their former colleagues. Furthermore, there is no regulation for AMs who lobby the government immediately after leaving office. One lobbying firm, Deryn, has a former Special Advisor who worked on Carwyn Jones's leadership campaign, a former AM, and the former Chief Executive of Plaid Cymru among its staff¹⁵. This creates the public perception that former public officials are using their contacts and influence to benefit private clients. Once again this is damaging to the Welsh

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

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

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

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

¹⁵ <http://www.deryn.co.uk/about/>

Assembly's reputation and can cause the public to question in whose interests the Welsh Government is really working.

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

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

20. Introducing a new regime to deal with lobbying such as a comprehensive lobbying register would ensure AMs, public officials and those seeking to influence them are accountable for their actions, which would increase public trust in the Welsh Assembly. Global studies have found a correlation between public trust in politicians and transparency in government and policy making¹⁶. Allowing the activities of lobbyists and their contact with Welsh Government officials to be scrutinised would reassure the public that the Welsh Government has nothing to hide. It would also act as a deterrent against possible inappropriate influence from lobbyists, preventing scandals from occurring in future. Introducing this regime pre-emptively would therefore limit future reputational damage and prevent the perception that the Welsh Government was acting in private interests rather than the public interest.
21. Having in place a comprehensive lobbying register would reduce the burden on AMs who currently bear primary responsibility for monitoring lobbying activity. The Standards of Conduct Committee raised this as a particular concern about introducing transparency legislation in 2013 report¹⁷. However, the resulting guidance placed greater burdens on AMs than a statutory register would. It advises AMs to individually carry out due diligence using the voluntary registers, such as checking codes of conducts and client lists, which is a time consuming and onerous task for individual AMs to undertake. It also advises that AMs make a note of meetings, ask lobbyists to record meetings, and make it available to them,

¹⁶ World Economic Forum (2013) 'Global Competitiveness Report 2013-14', *World Economic Forum*

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

or ask their staff to take minutes.¹⁸ Again, this places the burden of data collection and storage on individual AMs. A statutory register would require lobbyists to declare any communication with public official and therefore place the responsibility on lobbyists, for whom this is a primary activity.

22. Concerns about the financial and administrative burdens that lobbying may place on small organisations and charities are often raised. Indeed, this issue was raised in the committee's 2013 report¹⁹. However, there are measures that can be taken to prevent this. Thresholds for registration can be introduced to exempt organisations with budgets under a certain amount from registering. Unlock Democracy and Spinwatch believe a lobbying register should be publicly funded, to ensure there are no financial barriers to transparency. This would address concerns about financial pressure on small organisations.
23. The Welsh Assembly now has the opportunity to be the most transparent in the UK and even beyond. Although the Welsh lobbying industry may be smaller than that in Westminster there is evidence that public officials are meeting with lobbyists. The Welsh Government must act pre-emptively before reputational damage occurs, not reactively. By this point it will be too late.

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

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