

Code of conduct consultation, Summer 2019 - responses received

Response received from CIPR

What makes a code of conduct 'relevant'?

Question 1

The consideration to amend the guidance so that a code of conduct must provide guidance or a framework that “is of particular and specific relevance to consultant lobbying activity” is not a change CIPR would welcome or support. The [CIPR code of conduct](#) is general, principles based and covers members engaged in all activities and disciplines within public relations, including, but not specifically, consultant lobbying. In our view this proposed change might remove the CIPR’s code of conduct as an option despite the fact large numbers of our members will engage in lobbying activity and find our code relevant.

Question 2

CIPR would encourage an appropriate test as to whether a code of conduct is relevant through the application of a broader interpretation that goes further than a “guidance or a framework that is of particular and specific relevance to consultant lobbying”.

In CIPR’s initial consultation response to the Political and Constitutional Reform Committee we warned of the possibility of a statutory code offering “a weaker standard of professional conduct than currently exists”. We went on to argue “the structure provided by the representative bodies required adherence to a level of professional conduct which we identify as being in the public interest in line with the requirements of our Royal Charter. Codes enforced by representative bodies are also flexible and the ease with which they can be changed allows them to keep up with professional practice, something that could not be achieved should a code be written in statute.”

What is an ‘undertaking’ to comply with a relevant code of conduct?

Question 3 / Question 4

The CIPR does not believe ‘undertaking’ requires a more formal commitment so long as the undertaking can be linked to an appropriate mechanism for accountability against the code. For example, whether someone can make a complaint and whether that complaint can result in action.

The CIPR complaints process can be brought forward by anyone who suspects a professional of wrongdoing or improper practice and efforts are made to ensure that the

disciplinary processes are in line with established best practice. The investment made by the industry and its expert knowledge could be lost.

The content of codes of conduct

Question 5

CIPR does not agree with the view that the only test which the Registrar can apply is relevance, as defined by the Act. The codes of conduct of organisations such as the CIPR are public documents and the Registrar, as a stakeholder in this organisation, should be able to comment.

Which codes of conduct may be declared?

Question 6

The CIPR does not agree with the view that the Act does not give the Registrar the right to restrict which codes of conduct may be declared.

Self written codes, unless they are independently administered, are not credible. The CIPR has a published mechanism for handling complaints and a process in place that separates it from the Institution's Governance structure. In line with our [Royal Charter](#), this process is established and managed for the public benefit. The same cannot be said for an agencies self written code.

How can a code of conduct for individuals be adopted by a registrant?

Question 7 / Question 8

CIPR does not agree with the guidance that states "a code of conduct for individuals can only be declared on behalf of an organisation if every member of that organisation subscribes to that code". As outlined in our responses above, as a representative body for the UK public affairs industry, our objective is to ensure that individual lobbyists are held to the highest standards of professional conduct, and that those who bring our profession into disrepute should be appropriately disciplined. CIPR's code of conduct, to which our members are accountable, set a high standard of professional conduct and we would propose that the Register should consider a more flexible approach on this point.

Response received from Kevin Foster MP, Minister for the Constitution

I would first like to address the consultation concerning codes of conduct, including the basis on which a code of conduct may be deemed 'relevant' for the purpose of the statutory declaration.

I am pleased you are consulting on this to ensure current practice is clear and definitive for registrants and meets the needs of stakeholders within the confines of the Act.

It is the Government's view that the 2014 Lobbying Act is sufficient in increasing transparency around the work of consultant lobbyists. The Act does not give the right to restrict which codes of conduct may be declared, the Registrar can only determine whether the code is relevant.

The guidance on the requirement to join the Register of Consultant Lobbyists, in accordance with the Act, is a matter for the Registrar. It is for the Registrar to determine whether to amend the guidance as to what would be considered a 'relevant code of conduct', whether 'undertaking' requires a formal commitment for the person to comply with a relevant code of conduct, and whether every member of an organisation has to subscribe to the declared code, and if so, how this can be demonstrated. The Government therefore welcomes this consultation and the proposed changes to the guidance that will provide clarity for Registrants.

Response received from Thorncliffe Communications

What makes a code of conduct 'relevant'? Question 1

We consider this change would be helpful.

The wording of the act implies, even if it does not state directly, that a relevant code of conduct ought to be one which is specifically relevant to the business of consultant lobbying. That requires more guidance than generic remarks about good ethical behaviour.

What would be appropriate tests as to whether a code of conduct is relevant in that it 'governs the carrying on of the business of consultant lobbying'? Question 2

We think any relevant code needs to

1. Mention the Office of the Registrar of Consultant Lobbyists and / or the Act;
2. Set out what is Consultant Lobbying / a registrable activity, or where they this can be found.
3. What the company is doing to meet the regulations, and what sanctions will be applied to the individual if they fail to meet those standards.

What is an 'undertaking' to comply with a relevant code of conduct? Questions 3 and 4

It seems to us that a simple confirmation to the Registrar, identifying the code to which a registered company has subscribed, may not be sufficient.

A more formal commitment, which could be retained for reference, would help. The Act refers to an 'undertaking' which is generally used in law to refer to a formal commitment intended to be binding, and certainly to something firmer than a simple indication.

At Thorncliffe, we require all employees

1. to sign the Code on an annual basis;
2. to state, on a weekly basis, that they have not undertaken Consultant Lobbying during the course of that period. These signed records are kept on file for scrutiny at a later date, for a set number of years.
3. to accept that the Code is part of their Contract of Employment, and that failure to abide by the Code is an act of Gross Misconduct.

We accept that other companies and bodies may have a different way of ensuring that their companies and colleagues undertake to comply with their relevant code.

We think that the undertaking ought not to be a complicated process.

We do not see any need to involve a third party (other than the Registrar, if they wish) to verify an undertaking to comply with a relevant code of conduct.

The content of codes of conduct: Question 5

While the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 confers no explicit power on the Registrar other than to decide whether a code of conduct identified by a registrant company is 'relevant' for the purposes of the Act, the Registrar does have a general duty under section 8 to monitor compliance with the legal obligations imposed by the Act, and should not feel excessively constrained.

We see no problem should the Registrar see his duties under section 8 as including making comments on, or suggesting changes to, the content of individual codes of conduct.

Which codes of conduct may be declared? Question 6

The Registrar's power to decide whether a code is 'relevant' does give him, by implication, a right to restrict which codes of conduct may be declared. However, in the event a code is relevant, the Registrar does not have any further ability to interfere in the registration of a Company.

We are aware of some pressure on the Registrar to intervene in a decisive way and declare that certain types of code of conduct are preferable and others are less valuable. In particular some parts of the industry believe only codes of conduct regulated by a third party ought to be accepted as valid. This is not an approach grounded in the words of the Act.

Thorncliffe has a self-written code, but one which has been carefully considered and reviewed over many years, and taking other codes into account. Given the majority of our

work is in local government – and therefore Consultant Lobbying is not a major part of our business, our code is highly bespoke to our company.

We think it also goes beyond the requirements and best practice of any industry code – for instance, lobbyists have to be truthful to everyone, not just MPs; we have our own internal compliance register to monitor communications with national politicians and the UK Government; and it unilaterally prevents retiring councillors working immediately in their local Area.

In a previous consultation by the Registrar, she did not remove the Other category for good reasons. In her response to the consultation about Codes of Conduct (30 March 2017), Alison Write wrote that membership organisations might see the removal of “other” as a marketing opportunity; and it might place a financial penalty on organisations which could not afford the membership fees.

How can a code of conduct for individuals be adopted by a registrant? Questions 7 and 8

We think defined sections of companies, or specific individuals should be able to register as part of a company.

We have previously indicated that there are other companies that might carry out Consultant Lobbying that are not registered – for instance, planners, architects, lawyers, events and conference companies and other professional service companies. Many of these companies may wish to register parts of their company, or specific individuals that potentially carry out Consultant Lobbying – and it is entirely appropriate for sections of companies to have separate codes applying to them.

Response received from PRCA

Questions 1 & 2

The PRCA is strongly of the view that in order to be relevant, a Code must make specific reference to lobbying regulation. The statement of general principles in itself is inadequate. We therefore support this proposed change.

Appropriate tests would be the specific applicability of rules and sanctions to the lobbying industry as compared to business in general. It also seems to us vital that there is a third-party involvement here, with independent sanctions available. This in itself excludes companies referring to their own Codes.

Questions 3 & 4

We have two significant concerns here.

The first is accuracy and the second is enforceability.

The most recent version of the Register includes declarations from 137 organisations. Of that number, registrants detail the following Codes:

PRCA Public Affairs Code: 65 organisations

No Code: 37 organisations

Own Code: 13 organisations

CIPR Code: 10 organisations

Solicitors Code: 6 organisations

ICAEW Code: 2 organisations

APPC Code: 4 organisations

There are multiple errors within this:

The APPC no longer exists following the merger with the PRCA, and has not existed for any period covered by this declaration of Codes. Of the four agencies declaring adherence to the non-existent APPC Code, three are PRCA members and adhere to our Code. One adheres to no Code that exists.

Of the 65 declaring the PRCA Code, only 64 are members. One agency declaring the PRCA has not been a member for any period covered by this declaration. One member declaring its adherence to no Code actually adheres to ours.

We will address the CIPR Code issue under questions 7 and 8.

It is clear to us simply from the PRCA and APPC examples that there are obvious inaccuracies in the register. We are not in a place to say whether or not those claiming to adhere to other professional bodies' Codes do so, as we are unaware of the membership of those organisations. Therefore, there may be more inaccuracies than we have identified.

Secondly, given for example -those claiming to adhere to our Code but not being a member; the second most referenced Code being 'no' Code; the third most referenced Code being an organisation's own; and the fourth most referenced Code being the CIPR Code which governs only individuals and not organisations- the enforceability of the referenced Codes is questionable and variable. For a Code to be relevant it must surely be enforceable. Marking one's own homework through having one's own Code surely is irrelevant. And claiming to adhere to the Code of Conduct of an organisation you do not belong to again surely makes that irrelevant.

A key part of the PRCA Code is that sanctions are enforceable -including expulsion for the most serious breaches. If a company adheres to our Code but is not a PRCA member, then how does it enforce transgression? It cannot, after all, expel itself.

We would therefore urge two changes. First, that if a business references a Code, it must be an enforceable one. So, it cannot be its own Code. Instead of referencing their own internal Codes, companies should declare that they adhere to 'no' relevant Code.

Secondly, if a registrant declares the Code of a professional body, the organisation must be able to prove that it is a member of that body. This need not be at all onerous and we, as the professional body to which more registrants refer than any other, would be happy to engage constructively, for example by verifying quarterly to ORCL that a registrant was indeed a member.

There are quite frankly too many registrants giving the illusion of adhering to an enforceable, relevant Code when they are not. Put simply, the public is being misled.

Question 5

We would be happy to take the Registrar's view on the content of our Code and would expect other organisations to share that positive attitude.

We would repeat our strong belief that to be relevant, Codes must be judged independently and have sanctions. That cannot be the case where organisations declare that they subscribe to internal Codes - Codes which in two cases on the current register are available only 'on request', or where no link is provided.

Question 6

We would reiterate our previous comments that self-written, self-policed Codes are Codes in name only. It is our strong belief that they cannot possibly be described as 'relevant'. Organisations referencing them should therefore be compelled to declare 'No Relevant Code'.

Questions 7 & 8

The Registrar's Guidance here is being ignored.

We chose a business declaring the CIPR Code at random. We then compared the names of Directors listed on the ORCL declaration with the CIPR member directory, available freely to the public. Of the five names listed by the registrant, only one is a CIPR member. Therefore, it is incorrect of this company to reference the CIPR Code.

If the Guidance is to remain as constituted currently, registrants must be able to prove that all of their staff subscribe to the relevant Code.

We would suggest however that it would be in the interest of regulation and transparency if only business-wide Codes rather than individual ones were deemed relevant.

Final comments

For a number of years prior to its creation, we advocated the introduction of ORCL, and we commend it for the good work it is doing. We believe that its scope should be widened to include all who lobby rather than just third-party advocates, but that issue sits outside of the scope of this consultation.

We believe that ORCL's impact could be even greater with small changes, all of them cost neutral to the taxpayer, and all of them increasing transparency and public confidence in the lobbying industry – an industry which we know to be overwhelmingly ethical, professional, and in the public interest.

We strongly believe that a Code is not relevant if it is policed internally.

We strongly believe that a Code is not relevant if the business referencing it is not a member of the professional body which administers that Code.

We strongly believe that if a business references an individual-centric Code, then every employee must be covered.

In the latter two areas, registrants are either deliberately or inadvertently submitting false information. We would encourage ORCL to take action in the public interest here.

We would more fundamentally encourage ORCL to press ahead with the changes it is recommending. We stand ready to cooperate in whatever way necessary to make those changes as effectively, rapidly, and easily as possible, in the interests of the industry and of the public good.