Office of the Registrar of Consultant Lobbyists

Registerable communications consultation, Summer 2019 - responses received

Response received from CIPR

The CIPR would not object to any of the proposed changes and clarifications to the Registrar's guidance regarding;

- letters from a client sent by a consultant lobbyist (question 1) and;
- meetings arranged by a consultant lobbyist (question 2 / question 3).

Furthermore the CIPR does not object to maintaining the distinction identified when letters are drafted by a consultant lobbyist but sent by a client (question 4).

Response received from Kevin Foster MP, Minister for the Constitution

The second consultation concerns what communications with a UK Government Minister or Permanent Secretary (or equivalent) should be considered registerable.

Any cases where communication is made personally to a Minister, Permanent Secretary, or equivalent, on behalf of a client in return for payment, is consultant lobbying and requires the consultant lobbyist to register under the Act. Therefore, we support the proposed change to the guidance that communications from a client sent by a consultant lobbyist to a Minister, Permanent Secretary, or equivalent, which does not comment on the subject matter in the covering note, is a registerable activity. We also support proposed changes to guidance so the action of arranging a meeting with a Minister, Permanent Secretary, or equivalent is a registrable activity.

The Act specifies that communication must be made by the consultant lobbyist to fall under the Act. The current guidance, which provides that a letter drafted by a consultant lobbyist and sent by a client is not a registerable activity, is within the terms of the Act. Therefore, we agree the guidance does not need to be amended in this regard.

Response received from Thorncliffe Communications

Letter from a client sent by a consultant lobbyist: Question 1

We think you should make this suggested change.

We consider that the distinction outlined in the consultation is clearly an arbitrary and unsustainable one, and that therefore the proposed change is appropriate.

When a consultant lobbyist sends a letter from their client, even without adding anything substantial to it, they are plainly communicating with the recipient. It seems to us that that activity would clearly be consultant lobbying, because the consultant lobbyist has been directly involved and has the intention of bringing their influence to bear on behalf of their client.

Meeting arranged by a consultant lobbyist: Questions 2 and 3

We can understand the desire to extend registerable activity to meetings where the lobbyist arranges (or preliminary arranges, with follow up from the private office) the meeting with the Minister, but does not participate; or where the lobbyist participates in the meeting in any way. However, we think you need to exercise extreme caution with any such extension.

The caution we would offer is around the word “meeting”. Current guidance does not use the term “meeting” except where giving an example of where registerable communications may be made. The term is therefore not defined in the guidance.

There are many different types of meetings, and it is questionable whether all should be caught in the registrable activity. None of the scenarios are far-fetched, but all could be caught under the new guidance if you make the proposed changes.

1. The lobbyist sets up a meeting in the Department, specifically for the client to talk about government policy and his business and attends.

2. The lobbyist sets up a meeting in the Department, specifically for the client to talk about government policy and his business, but does not attend.

3. The lobbyist is a local party chairman in his spare time and invites the client to an event, who is also a party activist in the same constituency. The event is a meeting with the MP, who is also a Minister, and many other activists. The lobbyist introduces a group which includes the client to the Minister, and the client asks the Minister about government business in front of the lobbyist.

4. The lobbyist is a local party chair in his spare time and invites the client to an event, who is also a party activist in the same constituency. The event is a meeting with the MP, who is also a Minister, and many other activists. The lobbyist introduces a group which includes the client to the Minister, and the client asks the Minister about government business once the lobbyist has left.

5. The lobbyist has a roundtable breakfast meeting for 20 clients and 10 non-clients, inviting the Minister to address the audience. In the coffee beforehand, the lobbyist introduces several of the clients to the Minister, and leaves them to chat to them.

6. The lobbyist has a roundtable breakfast meeting for 150 clients and 100 non-clients, inviting the Minister to address the audience. In the coffee beforehand, one of clients discusses government business with the Minister, and does not report to the lobbyist that they have done so.

7. The lobbyist has an In Conversation event with the Minister, in front of an audience of 200 people, clients and non-clients. The lobbyist asks the Minister, in the Q&A session, about government policy, specifically issues that the lobbyist knows affect one or more of the clients.

8. The lobbyist has an In Conversation event with the Minister, in front of an audience of 200 people, clients and non-clients. The lobbyist asks the Minister about government policy, but not specifically about issues affecting one or more of the clients.

9. The lobbyist chairs a conference (meeting) with 500 people in the audience, including coincidentally a handful of clients, and asks the Minister questions about government Business.

10. A conference company, that is not a registered lobbyist, invites the Minister to a conference where all the delegates (clients) pay £500. The conference company questions the Minister about government business, and delegates are invited to question the Minister both in a Q&A session and in the coffee afterwards.

Were these changes to be made, it might place a consultant lobbyist in an impossible situation with regard to registration. It could have the effect of making the lobbyist responsible for what their clients do outside their knowledge.

It could also potentially dramatically expand the number of companies that would need to register as Consultant Lobbyists.

Letter drafted by a consultant lobbyist, but sent by a client: Question 4

While there may be a case for regarding a lobbyists' input in drafting a letter to be sent by their client as part of lobbying, and requiring registration for the sake of transparency, we agree with the regulator that the change is not really justified as there is no direct communication between the lobbyist and the Minister.

If the change were made, it would have the effect of considerably widening the number of agencies which would now fit the legal definition of lobbyists and the classes of letters which would require registration. In our field we are aware that planning consultancies and law firms frequently draft such letters on behalf of clients, but are not the intended focus of the law on consultant lobbyists.

Response received from PRCA

Questions 1, 2 & 3

We strongly welcome this clarity from the Registrar, and we agree that in all of the cases outlined above, the consultant lobbyist is making a personal communication with a Minister, and is therefore lobbying, as defined by the Act.

We have consistently argued that the statutory register of consultant lobbyists must deliver greater transparency, especially given the industry's commitment to this aim. The proposed change would deliver on this and it would also give our members greater clarity on what communications are registerable. It has not always been clear what type of communications are registerable given that the Registrar has previously advised registrants not to over-declare.

As noted earlier, the PRCA requires members to declare lobbying activity through the Public Affairs Register, which covers a much broader definition of lobbying than the statutory register of consultant lobbyists. The PRCA requires its members to err on the side of caution, and we always encourage members to declare public affairs activity even if they are unsure of whether it falls under the scope of the register.

Question 4

Taken as a whole, the PRCA believes that these recommendations are proportionate and reasonable and will advance our common goals of transparency in the conduct of lobbying.

In the interest of consistency and clarity for registrants, we agree that the first instance is nonregisterable as the consultant in question is not making direct communication with the Minister, and this therefore does not constitute lobbying under The Lobbying Act. It is important to note that there are evident disparities between the statutory and voluntary regimes.

The PRCA's definition of lobbying would include the first activity, and therefore members would have to declare this activity on the Public Affairs Register. Most consultant lobbyists will be declaring their lobbying activity on multiple registers, which can be time-consuming and confusing if registers have different requirements. Therefore, it is extremely important that these distinctions are communicated to registrants in a clear manner. This is the only way that the statutory register can deliver transparency in a meaningful way.