

Consultation on guidance, codes of conduct and compliance - February and March 2021

Responses received

The 13 responses to the consultation are reproduced in this document.

- Campaign Collective
- CIPR
- Cogitamus Limited
- Deloitte LLP
- Future Advocacy Ltd
- Group of eight businesses
- Minister of State for the Constitution and Devolution
- PRCA
- Seahorse Environmental Communications
- SEC Newgate
- The Whitehouse Consultancy
- Thorncliffe Communications
- Transparency International UK

Response from Campaign Collective

Support the submission made by the PRCA.

Response from CIPR

The following information summarises the response of CIPR members actively engaged in lobbying.

Clarity and completeness of published guidance

Question 1: How clear and comprehensible do you find the guidance? Where possible, provide examples of lack of clarity or ways in which clarity could be improved.

Question 2: What other areas do you think could usefully be covered by formal guidance?

The guidance in its current form is clear and comprehensible. No members cited any concerns related to the guidance or a lack of clarity within it.

The CIPR believe the guidance could be developed to do more to clearly communicate the procedures and purpose of the register to a wider audience, including to the public, those new to consultant lobbying and even those who may be unfamiliar with being lobbied to.

Provision of a template code of conduct

Question 3: If the Registrar provided a template or framework code of conduct would this be useful to you and/or registrants? What impact do you think this would have?

Question 4: What effect do you think this would have on clients, those being lobbied and others?

The CIPR would not welcome a template or framework code of conduct, particularly if those signing up to it can be selective in editing elements of the code to suit them. This would equate to codes administered by a consultancy itself and would lack credibility. There is no guarantee a template code would encourage those who are not signed up to a code of conduct to do so and, adversely, could potentially encourage some who are signed up to a recognised code of conduct to eventually use a template in its place. This could lead to a weaker standard of professional conduct than currently exists whilst failing to increase the numbers of those declaring any code of conduct.

The CIPR believes only codes which are administered externally to the consultancy itself should be allowed, as a matter of public assurance, and these should be linked to an appropriate mechanism for accountability. The representative body codes require adherence to a level of professional conduct which we identify as being in the public interest in line with our Royal Charter. The CIPR would welcome a discussion on the introduction of a statutory code which offers the same flexibility and process of enforcement as the existing recognised codes with regular input from the profession so as to not lose its expert industry knowledge.

Ensuring compliance

Question 5: What additional or better mechanisms can you suggest that would support compliance with the Act?

Promoting and encouraging membership of the bodies which currently uphold and support high standards of practice, and have considerable experience in doing so, would ensure active engagement in professionalism and ethical conduct through the signing of a code of conduct.

The CIPR would welcome monitoring sweeps to result in reporting summarising the types of complaints or common complaints received. This would go some way to proactively and practically support registrants and potential registrants with ways to avoid having a complaint brought against them.

Response from Cogitamus Limited

Introduction

Cogitamus Limited is pleased to have this opportunity to respond to this consultation.

As a public affairs company we meet the description of consultant lobbyist as defined in the 2014 Act, and therefore ensure compliance with requirements to record all registrable activities on the ORCL Register.

More broadly, we endeavour to act at all times with the highest standards of openness and integrity, and in a professional and ethical manner, in order to preserve our own reputation,

that of our clients, of the public affairs sector, and the political institutions with which we engage.

Clarity and completeness of published guidance

Question 1: How clear and comprehensible do you find the guidance? Where possible, provide examples of lack of clarity or ways in which clarity could be improved.

Overall, both the Guidance on registration and QIRS (August 2020) and the Guidance on compliance, offences and penalties (2020) are clear and complete.

However, for greater clarity, we would propose an amendment to the Guidance on registration and QIRS, as follows:

In section 2.3. What communications are registrable?, sub-section 'Role of the consultant lobbyist:', paragraph 5, at end insert:

...this is not registerable by the consultant lobbyist, however it may be registerable by the client where the client does not meet the exemption criteria.

Question 2: What other areas do you think could usefully be covered by formal guidance?

We consider the guidance to be sufficiently comprehensive.

Provision of a template code of conduct

Question 3: If the Registrar provided a template or framework code of conduct would this be useful to you and/or registrants? What impact do you think this would have?

We agree with the proposition that it may be useful to registrants for the Registrar to provide a template or framework code of conduct which is open to amendment by companies or organisations on the register or intending to register.

The key objective of such an approach should be to enable those registrants wishing to do so to develop a code of conduct which meets the test to qualify as a 'relevant code of conduct' (as outlined in section 3.5 of the August 2020 guidance).

The key challenge will be to provide a template or framework which provides for sufficient information to meet that criteria whilst also remaining flexible enough to be tailored by individual registrants according to their way of working.

The impact of such a template or framework, with that specific objective and sufficient flexibility, should have the impact of encouraging registrants to develop and apply a code of conduct and complaints procedures.

The purpose and function of the template or framework would need to be clear in this regard, and it would be important to guard against evolution towards a formal or de facto ORCL code of conduct which may then give the appearance of an official endorsement to any registrant subscribing to it.

Question 4: What effect do you think this would have on clients, those being lobbied and others?

An increase in the number of registrants with a Code of Conduct and complaints procedure which meet the test to qualify as a relevant code of conduct - for the purposes of the register - could lead to increased confidence in the robustness and transparency of the lobbying sector.

Ensuring compliance

Question 5: What additional or better mechanisms can you suggest that would support compliance with the Act?

We consider the scope of measures at the disposal of the Registrar to be commensurate with the purpose and function as outlined in the Transparency of Lobbying Act 2014. However, a higher profile and regular information campaigns regarding the Register may assist in increasing awareness, registration and compliance.

Response from Deloitte LLP

Thank you for the opportunity to respond to the call for views related to the UK Register of Consultant Lobbyists ('the Register').

As we noted in our recent reply to the Post-legislative Scrutiny Review of the Lobbying Act, Deloitte does not undertake paid consultant lobbying on behalf of third parties and no part of our business offers this as a service to clients. Although we chose to join the Register - and undertake internal checks on a quarterly basis to identify any activity that may require registration - we have to date only submitted nil returns. This contrasts with other registrants, for whom such activity is a core business activity. As such, the Register includes a wide range of organisations that carry out variable levels of consultant lobbying activity.

Our comments in this letter are made in this context and in the spirit of our support for both proportionate regulation and appropriate transparency in the public interest.

Specific question areas posed by the consultation

Regarding the Office of the Registrar's Guidance:

- We consider that it is helpful that the Registrar keeps the existing guidance under review and communicates as and when it is updated, highlighting key changes. For example, we found the additional clarification around what constitutes a "relevant" Code of Conduct - part of the January 2020 update - to be useful.
- Reflecting on the last year specifically, and the digital evolution more generally, it would be helpful for the Registrar to explicitly address whether virtual communications e.g. meetings taking place by videoconference are in scope.
- We consider that section 5.1 could perhaps benefit from a wording review, to ensure that registrants are very clear about what is deemed to constitute "incidental" and hence does not qualify as consultant lobbying or require registration.

Other reflections

While we have no fundamental objections to the status quo, we wonder whether it is appropriate that firms such as Deloitte - which are registered but are wholly or generally inactive and do not offer consultant lobbying services to clients - face the same requirements as those organisations for whom consultant lobbying is a core business activity. A tiered or otherwise differentiated approach might also help the public's understanding of the differences between the various organisations on the Register, and make it more clear to the market which organisations are typically in the business of consultant lobbying.

Under such an approach, the Register could more clearly segment a) active, b) inactive, and c) solely nil return registrants. Registrants could also select their type of organisation from a list of options (for example public affairs agency or law firm) with a space for further clarification - users could then search the Register on the basis of activity level and type of organisation. Active registrants could perhaps also be required to submit returns more frequently than those in the other categories.

We are aware that within the public affairs industry there has been some discussion of aligning the registration fee to the size of organisation. While a variable rather than flat fee may have some merits, we believe it should be applied on the basis of the scale of active consultant lobbying undertaken, rather than in relation to an organisation's overall size. We would not support the latter approach, which would be unfair to organisations which have multiple lines of business, are inactive or have only ever submitted nil returns.

Response from Future Advocacy Ltd

Thank you for this opportunity to respond to your consultation.

We would find a template/framework code of conduct useful. It would allow us to develop our own in-house code of conduct which I would prefer to using some of the other external options/organisations and which I think would be more robust and more relevant to us.

As a small organisation it would be helpful if the template/framework was short, sharp, and clear and focused on the most important issues.

One tiny additional thought - I think it would be preferable for you not to send emails from an "Enquiries" mail box. It's a minor point but I think your emails would be harder to miss and more authoritative if they came from another address.

Response from group of eight businesses

We submit this response as a group who have come together over:

- A joint commitment to the highest ethical standards and best practice in lobbying
- Shared concerns over whether existing codes are being independently and robustly enforced
- A desire to continuously enhance standards across our profession

As a group, we represent a strand of thinking from organisations of all types of sizes from micro-consultancies all the way to large global businesses, including both agencies and in-house. However, our concerns and ambitions are shared. We have therefore come together to develop a joint submission to this consultation. We appreciate that ORCL can act only within the remit set by the legislation and would welcome the opportunity to discuss these areas with the registrar in further detail.

Question 1: How clear and comprehensible do you find the guidance? Where possible, provide examples of lack of clarity or ways in which clarity could be improved.

Whilst we appreciate that ORCL has made efforts to provide clarification around certain ambiguities in the guidance, the narrow nature of the legislation means that the guidance is often not clear or comprehensible to practitioners, for example, when dictating which interactions are deemed to be registrable and which are not.

We appreciate that ORCL does not have the power to change certain parts of the guidance, however, we would recommend that clearer explanations around the interpretation of the legislation be made available and better publicised to practitioners who come under the scope of the legislation.

Question 2: What other areas do you think could usefully be covered by formal guidance?

Areas that could be strengthened in the guidance through greater clarification would include:

- Who is registrable - we note that there continues to be low registration from legal firms, management consultancies and think tanks for example and in-house lobbyists do not need to currently register.
- Greater clarification on interactions that are registrable

Question 3: If the Registrar provided a template or framework code of conduct would this be useful to you and/or registrants? What impact do you think this would have?

We believe that ORCL should have a role in providing a best-in-class framework code of conduct. At present, it is not possible for any practitioner/agency to sign up to a best-in-class, independent code without incurring a cost, for example membership of a trade association that holds a code. We believe this creates a barrier to entry for many practitioners/agencies who are eager to sign up to an independent code, but who cannot afford to pay the often very pricey fees of membership bodies.

The content of any code is vital and ORCL can have an important role in setting out a framework for what a Gold Standard would look like.

We note, however, that a code is largely powerless unless it is properly enforced. Whilst we appreciate that ORCL does not have the power, as set by the legislation, to enforce a code, we would like to see ORCL make recommendations for independent and robust enforcement of any adopted code.

Enforcement should be independent of any party suspected to be in breach, and independent of any conflict of interest, in order to give confidence in the enforcement process.

As a group, we have further ideas on what this could look like and would welcome the opportunity to discuss it further with the Registrar.

Question 4: What effect do you think this would have on clients, those being lobbied and others?

By having a code and enforcement processes that is endorsed by ORCL, we believe that a greater number of practitioners would enter into such a code, which would in turn enhance business, government and public trust in the profession.

We would note that the current registration fee can act as a barrier entry to smaller organisations.

Question 5: What additional or better mechanisms can you suggest that would support compliance with the Act?

As a group, we would welcome the development of a Code that is maintained and enforced by a truly independent body and which is either directly or indirectly linked to ORCL.

For any organisation that currently holds a code, we would welcome greater transparency around enforcement of that code. We would like to see a greater onus on any organisation that holds a code to undertake regular reporting around enforcement of the code; for example on data including the number of complaints received, number of complaints actioned, process those complaints have gone through (e.g. through internal complaints processes or external, independent

complaints processes etc). Developments in technology also mean that reporting does not need to be onerous or time consuming in order to complete.

Response from the Minister of State for the Constitution and Devolution

Thank you for informing me of the consultation you have launched in relation to guidance, codes of conduct and compliance. I have read the consultation with interest, and am responding on behalf of HM Government.

Clarity and completeness of the Registrar's updated guidance

I am grateful for your work updating the guidance to provide greater understanding and clarity on issues such as registration and quarterly information returns. The guidance on the requirement to join the Register of Consultant Lobbyists is a matter for yourself as Registrar. I am sure you will carefully consider the views raised by respondents to the consultation, and we will welcome any improvements to the guidance that may result from this.

Provision of a template code of conduct for registrants

As you know, when registering, consultant lobbyists are required to include a statement of whether they comply with a relevant code of conduct, and if so, where a copy of the code may be inspected. It is also for the Registrar to determine which codes are relevant, and whether to provide a template. We welcome that you are seeking views from registrants about whether a template code of conduct could be helpful and we look forward to seeing the outcome of this work.

Ensuring compliance

As you state in your consultation, the industry's compliance with the Act's legal requirements is generally high, nevertheless, I am pleased that you are consulting on this matter as per your duty to monitor compliance, set out in the Transparency of Lobbying, Non-Party Campaigning Act and Trade Union Administration Act 2014, and in accordance with our Memorandum.

I would like to thank you for your work to maintain the Register and for consulting on these important matters in order to provide clarity on the guidance, determine whether to provide a template code of conduct for registrants, and ensure compliance with the Act's legal requirements. I look forward to hearing the outcome of your consultation and continuing to work with you.

Response from PRCA

Who we are:

- The Public Relations and Communications Association (PRCA) welcomes the opportunity to contribute to this consultation. The PRCA is the world's largest professional PR body. We represent and regulate more than 35,000 PR professionals in 70 countries worldwide.
- The PRCA promotes all aspects of public relations and communications work, helping organisations and individuals to maximise the value they deliver, within an ethical and professional framework. The Association exists to raise standards in PR and communications, providing members with industry data, facilitating the sharing of communications best practice, and creating industry understanding. All PRCA members are bound by our Professional Charter and Codes of Conduct. The Association works

for the greater benefit of the industry and society, representing the profession, and lobbying on its behalf.

- Within the PRCA is the PRCA Public Affairs Board (PAB), the voice of the public affairs and lobbying industry. The PRCA PAB's role is to ensure transparency through our quarterly Public Affairs Register; to enforce high standards through our Public Affairs Code; and to promote a wider understanding of public affairs and the contribution it makes to public life. The PRCA's public affairs membership totals 124 organisations, employing approximately 2,000 practitioners, and working for approximately 3,000 clients.
- The PRCA Public Affairs Code is the only code automatically recognised by ORCL. Currently, 75 registrants declare the PRCA Public Affairs Code on the Register of Consultant Lobbyists.

Executive summary:

- As the voice of the public affairs industry, we believe that lobbying is integral to a thriving democracy and contributes positively to the policy-making process. Our membership is varied and includes consultancies, in-house teams (including charities, private sector organisations, and public sector bodies), and individual practitioners. The expertise of our members is relied on by MPs, Ministers, and civil servants when it comes to delivering well informed legislation and scrutiny.
- The proposals for a template code of conduct will do very little to change behaviours or increase transparency and they risk undermining existing codes of conduct that work well. More importantly, such templates could encourage lobbyists to adopt a 'lowest common denominator' approach. Instead, the Registrar should recognise only credible codes that are independent and enforceable, such as the PRCA Public Affairs Code.
- The Registrar should no longer allow registrants to declare self-written and self-policed codes which are neither independent nor independently enforceable.
- We are concerned that certain organisations which engage in lobbying on behalf of clients are evading registration simply by using a loophole in the law that allows them not to classify themselves as consultant lobbyists. The Registrar should proactively engage with these organisations to ensure they are compliant. If this issue persists, the Registrar should propose changes to the law to ensure that all relevant organisations are covered.

Detailed commentary:

Question 1: How clear and comprehensible do you find the guidance? Where possible, provide examples of lack of clarity or ways in which clarity could be improved.

Question 2: What other areas do you think could usefully be covered by formal guidance?

The guidance in question is clear and detailed. However, we are concerned that certain organisations are evading registration because they are able to use the loophole in Schedule 1, Part 1, paragraph 1(1) of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 to avoid classifying themselves as consultant lobbyists.

In particular, our members have consistently raised concerns that many lawyers, accountants, and management consultants carry out the business of consultant lobbying, yet few if any are captured under the scope of the Act.

We appreciate that the guidance specifically urges these organisations to register even though the focus of their business may not be consultant lobbying. However, it would be useful for the Registrar to provide more detailed guidance on this and do more to encourage organisations that are engaging in consultant lobbying but are not currently registered to do so. If this issue continues, the Registrar should consider recommending to the Government that the Act is amended to close the loophole.

Question 3: If the Registrar provided a template or framework code of conduct would this be useful to you and/or registrants? What impact do you think this would have?

Question 4: What effect do you think this would have on clients, those being lobbied and others?

The PRCA supports the development and enforcement of ethical and professional standards. All PRCA members are governed by the PRCA Code of Conduct and the PRCA Public Affairs Code. We require members to disclose their lobbying activity quarterly on the PRCA Public Affairs Register and we expect them to behave in an ethical and transparent manner. With this in mind, we believe where existing codes work well, they should be respected, and we should preserve the distinction between those who are committed to transparency and openness and those who are not.

The introduction of a template code has the potential to undermine established and successful codes and remove this distinction for politicians, businesses and the public viewing the Register who wish to make an informed decision about the ethical standing of the organisations which appear. A template code of conduct risks a situation where members of the public viewing the Register assume that all organisations on there are committed to high ethical standards. Templates may also encourage 'lowest common denominator' behaviour, with lobbyists feeling that there is little benefit in going beyond the bare minimum standards in the template.

A key advantage of our code is its flexibility; we can change and review the Public Affairs Code to reflect the changing political environment or emerging techniques relatively quickly. In fact, the Public Affairs Code has been reviewed and strengthened twice over the past year and our members have strongly supported these changes. The Code was amended in May 2020 to provide members with more clarity around the employment of politicians and the use of privileged information. The Code was then amended in February 2021 to provide members with clarity on taking advisory roles within Government Departments. The political landscape is constantly changing, and we need to ensure that our Code reflects that change. We are not convinced that a templated code would have the same degree of flexibility as the PRCA Public Affairs Code.

The PRCA Code is independent and enforceable. Potential breaches of the Code are investigated under a thorough and independent complaints procedure. A key part of the PRCA Code is that sanctions are enforceable - including expulsion for the most serious breaches. Therefore, we are not convinced that the Registrar's vision for registrants themselves deciding how to handle complaints under a template code is suitable. Self-written and self-policed codes are meaningless: if registrants are allowed to implement their own complaints procedure under the template code, how will the Registrar police transgressions?

Finally, we strongly urge the Registrar to reconsider the inclusion of self-written and self-policed codes on the register. These codes have no standing, as they are neither independent nor enforceable. Instead, the Registrar should recognise only serious and credible codes such as the PRCA Public Affairs Code.

Question 5: What additional or better mechanisms can you suggest that would support compliance with the Act?

As mentioned earlier, the Registrar should increase its engagement with organisations that are not traditionally classified as consultant lobbyists but still provide lobbying services for their clients. We are concerned that lawyers, management consultants, and other professional service firms could evade registration without proper engagement from the Registrar and, if necessary, changes to the law.

We believe existing rules should be enforced to drive better behaviour. To ensure compliance, it could be helpful for the Registrar to conduct workshops with registrants to remind them of the rules. This can also be an opportunity for registrants to raise questions with the Registrar. We are confident that our members would find the workshops useful and we are happy to work with the Registrar to make them a reality.

Response from Seahorse Environmental Communications

Question 3: If the Registrar provided a template or framework code of conduct would this be useful to you and/or registrants? What impact do you think this would have?

This would be really helpful. Seahorse has an internal code of conduct which we believe is above and beyond those from the PRCA and others. Our business model is based around the highest ethics and morals. I did not want to select the PRCA box on the Registrar website or pay to join the PRCA just to show publicly that we signed up to a code of conduct.

The PRCA look through the Registrar Lobby list and contact agencies who are not members of their organisation.

They send pretty direct emails implying that we will be looked down upon for not signing their code and joining them. This really should not be the case for a business such as mine. A new one which I could edit and publish on your Registrar would allow us to be independent still but showcase that we stick to the highest ethical codes.

Question 4: What effect do you think this would have on clients, those being lobbied and others?

This would allow for smaller more independent agencies to set their own high bar and be recognised for this rather than having to join expensive membership organisations just to show that we have a code. Thankfully my staff, clients and Members of Parliament value our ethics and therefore this would not impact them much but I would be happy for a code to be made public alongside Seahorse's listed clients on your website for full transparency.

Response from SEC Newgate

Who we are:

- SEC Newgate UK is one of the larger UK consultancies providing Communications, Advocacy and Research. We have 130 consultants operating out of seven offices in the UK and are part of SEC Newgate Group, headquartered in London/Milan with 600 staff operating out of 37 offices across 6 continents.
- SEC Newgate UK is part of the PRCA, with colleagues who sit on the PRCA Management Board and the PRCA Public Affairs Board. We sign up to the PRCA Public Affairs Register and we support the PRCA submission below:

SEC Newgate's submission reproduced the full PRCA submission, which is elsewhere in this document and is therefore not repeated here.

Response from The Whitehouse Consultancy

The Whitehouse Consultancy Ltd, since its launch in 1998, has been in the vanguard of attempts to deliver ethical practice across the lobbying profession. We are grateful for the Registrar of Consultant Lobbyists' invitation to comment upon questions relating to guidance, codes of conduct and compliance.

We would remind the Registrar that, as the consultation document sets out:

Under the Act, the Registrar is required to:

- establish and manage the UK Register of Consultant Lobbyists;
- develop and publish detailed guidance for consultant lobbyists on their duties under the Act;
- monitor and enforce compliance with the Act's legal requirements; and
- publish an annual statement of accounts.

The proposal to issue a template code of practice goes considerably beyond those statutory responsibilities since it creates a new power for the Registrar, not to assess whether a the code adopted by a registrant meets the tests set out in statute, but to exceed that statutory provision and to dictate **how** those tests should be met:

Section 4 of the Act provides that: ... (2) The entry for each registered person must include ... (g) a statement of whether there is in place an undertaking by the person to comply with a relevant code of conduct, and if so, where a copy of the code may be inspected.

A "relevant code of conduct" is clearly defined by the Act:

(6)(b) a "relevant code of conduct" (in subsection (2)(g)) is a code of conduct which governs the carrying on of the business of consultant lobbying (whether or not it also governs other activities) and is open to inspection by members of the public.

The Act does not give the Registrar power to go further than the two tests that the code "governs the carrying on of the business of consultant lobbying" and "is open to inspection by the public".

Any further interpretation of that provision and definition would lack lawful authority and can only be determined by interpretation of the courts or embellished by further legislation.

To that extent, other previous Guidance issued by the Registrar (Guidance on registration and QIRs, including specialist guidance for think tanks and support service providers to APPGs (August 2020)) is without legal foundation where it goes on to say:

To be 'relevant' a code of conduct must:

- Go beyond setting out general, good professional behaviour and must contain provisions that are of particular relevance to the way that consultant lobbying activity is carried out. A code that fails to recognise a consultant lobbyist's responsibilities to those to whom representations are made is unlikely to be 'relevant'.
- Provide a mechanism for complaint about an alleged breach of the code of conduct by anyone affected by the registrant's consultant lobbying activities.
- Include some oversight or control of the process of handling complaints of alleged breach of the code, which is not carried out by the registrant themselves. This might be demonstrated in a number of ways, including, for example, by an external adjudication or arbitration process defined in the code, or by the mechanisms of a professional body. A registrant can choose to develop and adhere to a 'self-

authored' code, but to be considered 'relevant' and to appear in the Register, it must contain this external element.

The Registrar's comments above are an attempt to seize unto that office, powers of interpretation and regulation that have not been conferred upon it by the Act.

The Registrar does have power to give guidance to "consultant lobbyists on **their duties under the Act**" but it does not give the Registrar power to create new duties as in the Guidance it issued above such as that (to paraphrase) it must contain an external element, provide mechanisms for complaint handling, or provisions for new duties to those to whom representations are being made.

Indeed, the Act goes on specifically to give the Registrar the power, and only the power:

Guidance

The Registrar may give guidance about how the Registrar proposes to **exercise the functions under this Part**.

The only function created by the Act in this regard is that the Registrar shall include in the register

4 (2)(g) a statement of—

whether there is in place an undertaking by the person to comply with a relevant code of conduct, and

i. if so, where a copy of the code may be inspected;

Of course, most observers might consider that the provisions alluded to in the earlier Guidance might reasonably be expected to be found in a "relevant code of practice", but they absolutely are not a requirement of the Act; and it is upon compliance with the Act that the Registrar may give guidance, not the recommended provisions of a code of conduct.

In short, the Registrar has already exceeded his statutory powers by, frankly, inventing tests that do not exist in law; and now risks compounding that offence further by seeking to codify and reissue ever more detailed guidance which has no legal authority either in statute or as yet by interpretation of the courts.

We would also observe that in seeking to define what a code of practice should cover, the Registrar would limit new, innovative forms of regulation through developments of such codes, and would risk providing a false sense of security to registrants that compliance with the Registrar's guidance on this matter would meet the tests in statute and regulations.

In short, the Registrar should not only desist from issuing further, proscriptive Guidance that has no lawful basis, but should also reconsider the validity of Guidance already published.

In closing, we would add that we are not members of one of the leading trade bodies in this sector because we have concerns about the ethical practices of some of those involved in its administration and governance. Any move that would give its code of practice enhanced credibility or suggest that compliance with its particular code is necessary, as a further step towards a requirement to have such a code, would risk placing in an invidious position those consultant lobbyists who have chosen to put ethics before convenience ever since their inauguration.

If the Registrar of Consultant Lobbyists is not constrained to comply with law, then what hope for the profession?

Response from Thorncliffe Communications

I am very pleased to respond to your consultation, which follows on from our meeting last Summer. Here are my comments:

Question 1: How clear and comprehensible do you find the guidance? Where possible, provide examples of lack of clarity or ways in which clarity could be improved.

We have found the ORCL guidance on registration requirements and quarterly information returns to be very clear and helpful.

Question 2: What other areas do you think could usefully be covered by formal guidance?

Nil declaration

We are pleased that you have taken a different line to your predecessor on the issue of Nil declarations.

We think it is perverse to prevent companies from staying on the Register if they make regular nil declarations.

Overdeclaration

We are also pleased with your attitude towards overdeclaration. My understanding is that declaration of a client in one particular quarter does not automatically mean that the registrant undertook consultant lobbying during that quarter.

There are scenarios, that I talked through with you last Summer, where a registrant may declare a client without having undertaken consultant lobbying. To put it bluntly, I would hope that you would not prosecute a company that overdeclared a client if it was subsequently found that the registrant did no consultant lobbying for that client.

Clarity on quarter issue

I think the tick statement that you offer registrant to tick is too simple and might confuse issue in a few, very unusual circumstances.

- The registrant has engaged in lobbying in return for payment, and/or received payment to engage in lobbying

We would like you to clarify the issue where the registrant believes consultant lobbying could have been done in Q1, and believes they will be paid for that work, but subsequently is not paid in Q2 or subsequent quarters.

Please indicate what you believe the registrant should do in this instance. If you believe the registrant should register the client in Q1, you need to explain why that sits comfortably with the simple tick box statement that you have asked registrants to tick.

Payment issue

You ask registrants to declare when they have been paid by clients for consultant lobbying. Whilst I understand the reason for this declaration, you must understand the inherent difficulties in reporting this.

It is not unusual for the practitioners of a business (i.e. the people who actually do the work, rather than the accountants or bookkeepers) of any size to not know when a particular invoice has been paid. It would not be unusual for consultant lobbying to take place in Q1, and for the invoice on that work to be paid by the client in Q2 or even Q3, or perhaps even later. If the work was done in Q1, but not paid until Q2 or later, you would expect a declaration in both quarters.

I would not be surprised if there are numerous breaches of this second declaration by registrants, because they do not have the systems to tally up the work and the lobbying declaration with the payment of an invoice. Perhaps you should acknowledge this inherent difficulty.

Lack of respect for ORCL from a membership organisation

One of the membership organisations in this industry showed its complete lack of respect for The Registrar last year by wilfully ignoring The Registrar's decision-making on areas on which The Registrar had competence. The Registrar has been given authority by Parliament for this competence, yet the arrogance of this membership organisation ignored that basic fact.

In April last year, you told one registrant that their independent code was approved by ORCL because it had an independent adjudicator. In other words, it had an external or externally enforced code. Despite this, the membership organisation used their publicly available press channels to denounce the registrant as not having an "external or externally-enforced code". They continued to leave this up on their website and Twitter for two months, despite being told repeatedly that they were in the wrong.

It would be helpful if you reminded registrants, and their membership organisations, that you are the authority, given by parliament, to adjudicate on these matters.

Aged Guidance

It may be helpful for ORCL to retain previous versions of the guidance so that it is clear to people what changes have been made and how the guidance has been developed. If this is done, it would be appropriate to mark any superseded versions of guidance to show it had been superseded.

Question 3: If the Registrar provided a template or framework code of conduct would this be useful to you and/or registrants? What impact do you think this would have?

Having a proper code of conduct is a good thing, but it takes effort, time and sometimes money to produce it. Our code of conduct is bespoke, has taken 15 years to produce – and we still regularly revised it.

Unfortunately, many companies do not take the time to produce their own code, instead relying on a code produced by a membership organisation, which we believe is often an inferior code.

Some do not have a code at all, because of the effort required to create it.

Registrants have such a wide variety of business models and practices, and are required to serve a diverse group of clients so that they are involved with many different fields of business. Many regard the codes of conduct established by membership organisations to be of marginal relevance to their actions and wish to be governed by a code which addresses directly the issues relevant to their activities.

We believe it would be very beneficial to have a standard, framework or template code, for which people can add bespoke elements to suit their company.

A template code of conduct document would, without being prescriptive, go beyond the existing guidance on relevance and show the standard that they should aspire to meet.

The template code from ORCL would allow more companies, that do not see the value of joining an out-of-touch membership organisation, to create their own trusted independent code.

I suspect this will become even more important if, as expected, the lobbying of special advisers and senior civil servants is included in the remit of consultant lobbying; as well as the third parties who work alongside in-house lobbyists.

Question 4: What effect do you think this would have on clients, those being lobbied and others?

We feel it would lead to a general improvement in standards across the field. It will also improve the respect and authority of ORCL.

Question 5: What additional or better mechanisms can you suggest that would support compliance with the Act?

I think there are several things you can do to ensure compliance with the Act. My suggestions are:

1. Publicise the work you do to the industry, to the media and to companies that are likely to be registrants etc. I know of a company that set up last year as a public affairs firm that did not know of your work.
2. Publicise the work you do in parliament amongst the people that are being lobbied. Speaking to a very senior minister last year about ORCL, he told me that he had not heard of your office.
3. Make sure that membership organisations respect your authority. It is clear, from my letter above, that they appear to wilfully treat your authority with disdain. If your authority is not respected by membership organisations, then perhaps their members may not understand compliance.

Response from Transparency International UK

Transparency International UK believes that lobbying should be open, transparent and ethical. We support a comprehensive statutory lobbying register that includes in-house as well as multi-client and consultant lobbyists. The purpose of such a register should be to reveal information about:

- who is being lobbied,
- the purpose of the lobbying (for example, the policy, issue or area of spending being targeted),
- the form of engagement (for example, meetings, phone calls, emails etc.), and
- an estimate of how much is spent on this activity.

We also believe that all lobbyists should abide by a code of conduct. However, this is not the legislative framework that we have at present. The 2014 'Lobbying Act'¹ only regulates consultant lobbyists and does not require them to sign up to a code of conduct.

We welcome the work that the Registrar has been doing within this legislative context to improve codes of conduct for registered lobbyists. Whilst statutory lobbying registers can help to increase transparency, codes of conduct are essential to ensuring that lobbying is done ethically. As the Irish Standards in Public Office Commission stated when their code of conduct was introduced '*While the act and the register has made lobbying more transparent, it does not address the manner in which such lobbying activities are conducted.*'²

¹ Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014

² Standards in Public Office Commission, *Report by the Standards in Public Office Commission on a consultation process regarding a Code of Conduct for persons carrying on lobbying activities* (November 2018) p.3 <https://www.lobbying.ie/media/6129/published-report-re-consultation-on-code-of-conduct-english-1.pdf>

The International Standards for Lobbying Regulation¹ call for mandatory codes of conduct with powers for investigations of potential breaches and sanctions where rules have been broken. Increasingly codes of conduct are being introduced alongside transparency registers, most recently in Ireland and Scotland. Codes of conduct are used to ensure that lobbyists behave with honesty, integrity and avoid behaviours which could lead to undue or improper influence. This can include policies on gifts and banning members of the legislature from acting as paid lobbyists. Codes should also ensure compliance with any anti-corruption laws and ensure there are systems for managing conflicts of interest. The Annex below sets out international examples of codes of conduct, how they operate, and where improvements are needed to meet the International Standards for Lobbying Regulation.

Recent analysis from the PRCA has found that 39 per cent of registered lobbyists do not subscribe to a code of conduct.² Unregulated lobbying is a significant concern. The UK's lobbying regulation is weak by international standards and the poor take up of independent and accountable ethical standards increases the risks of policy capture and behaviour that will undermine trust in our democracy.

We note that the PRCA analysis also found that some registered lobbyists used their own internal codes of conduct with no independent oversight or accountability. This is also a concern. There are examples of internal codes of conduct that would not only fail to promote and uphold ethical standards but discourage individuals from making a complaint as the costs, both financial and in terms of career development, would be too high.

The proposal for ORCL to provide a template code of conduct may help in removing some of the more egregious conditions from internal codes of conduct but three significant problems remain. Companies cannot be required to subscribe to a code of conduct, there is no independent oversight to ensure that the codes are being complied with and no sanctions if the rules are broken. So while the template code of conduct may be useful in starting discussions about expected standards of ethical behaviour in lobbying, we do not believe it would be effective at raising standards. There is a risk it could even mask the problem. It is unlikely that this measure alone can deliver public trust in lobbying in the UK.

About Transparency International UK

Transparency International (TI) is the world's leading non-governmental anti-corruption organisation. With more than 100 chapters worldwide, TI has extensive global expertise and understanding of corruption.

Transparency International UK (TI-UK) is the UK chapter of TI. We raise awareness about corruption; advocate legal and regulatory reform at national and international levels; design practical tools for institutions, individuals and companies wishing to combat corruption; and act as a leading centre of anti-corruption expertise in the UK.

We work in the UK and overseas, challenging corruption within politics, public institutions, and the private sector, and campaign to prevent the UK acting as a safe haven for corrupt capital. On behalf of the global Transparency International movement, we work to reduce corruption in the high risk areas of Defence & Security and Pharmaceuticals & Healthcare.

We are independent, non-political, and base our advocacy on robust research.

¹ These standards are the result of two years of collaborative work with civil society led by Transparency International, Access Info Europe, Sunlight Foundation and Open Knowledge International.

<http://lobbyingtransparency.net/>

² <https://news.prca.org.uk/sharp-rise-in-unregulated-lobbyists-highlights-ethical-divide-in-lobbying/>

TRANSPARENCY INTERNATIONAL UK's ANNEX: INTERNATIONAL EXAMPLES OF STANDARDS IN CODES OF CONDUCT

Country	Contents	Other relevant codes/legislation	Sanctions	Criticisms
Canada ¹	Sets out 'Principles' and 'Rules'. Includes 4 principles: respect for democratic institutions, integrity and honesty, openness and professionalism. Includes 10 rules based on: transparency, use of information and conflict of interest. Applies to in-house and consultant lobbyists.	Lobbying Act, ² Lobbyists' Code of Conduct under the Act. ³	Commissioner of Lobbying has the power to investigate alleged breaches of the Code (Principles and Rules). Sanctions are limited to censure in Parliament.	Administrative monetary penalties should be introduced to deal with minor transgressions. ⁸
Ireland ⁴	Principles based code: respect for public bodies, acting with honesty and integrity, ensuring accuracy of information, disclosure of identity and purpose of lobbying activities, preserve confidentiality, avoiding improper influence, observing the provisions of the Lobbying Act and having regard to the Code. Applies to 'employers; to representative or advocacy bodies; to professional lobbyists or third parties who are being paid to communicate on behalf of a client or other person; and, significantly, to any person communicating about the development or zoning of land.'	Regulation of the Lobbying Act (2015) ⁵	Act does not provide for a mandatory Code of Conduct, it is not enforceable. It is a principles-based code rather than a rules based one.	A report by the Standards in Public Office Commission on a consultation process concerning the Irish Code of Conduct included submissions stating that: the Code should be mandatory, language used in Code is not sufficiently explicit, the Code should recognise some lobbyists have exceptional access due to advisory group membership, and reading the code should be a requirement of registration. ⁶
Scotland ⁷	Six principles: 1) act with honesty, integrity, respect, 2) not expect preferential access or treatment from MSPs, 3) disclose the identity of who you are lobbying for and the motives, 4) not offer payment or benefit in kind which would involve an MSP acting as a paid advocate, 5) not provide information which is inaccurate, misleading untrue, 6) full awareness of the Code if you are lobbying an MSP. Code covers making a communication of any kind to a member of the Scottish Parliament in relation to the member's function.	Lobbying (Scotland) Act 2016 ⁸	Unclear. Code sets out that lobbyists 'should respect' the code.	Submissions to the lobbying inquiry highlighted that check and balances on lobbyists already existed such as voluntary codes of conduct. ⁹ The Commissioner for ethical standards highlighted how few allegations of lobbyist wrongdoings there were before the Code was introduced. ¹⁰

¹ Office of the Commissioner of Lobbying in Canada, <https://lobbycanada.gc.ca/en/rules/the-lobbyists-code-of-conduct/lobbyists-code-of-conduct/>

² <https://laws-lois.justice.gc.ca/eng/acts/l-12.4/FullText.html>

³ <https://lobbycanada.gc.ca/en/rules/the-lobbyists-code-of-conduct/lobbyists-code-of-conduct/> ⁸ Office of the Commissioner of Lobbying in Canada, Administering the Lobbying Act Observations and Recommendations Based on the Experience of the Last Five Years , https://lobbycanada.gc.ca/media/1810/administering_la_2011-12-13-en.pdf

⁴ Standards in Public Office Commission, <https://www.lobbying.ie/media/6119/code-of-conduct-english-final-version-for-web.pdf>

⁵ <http://www.irishstatutebook.ie/eli/2015/act/5/enacted/en/print.html>

⁶ Standards in Public Office Commission, Report by the Standards in Public Office Commission on a consultation process regarding a Code of Conduct for persons carrying on lobbying activities, <https://www.lobbying.ie/media/6129/published-report-re-consultation-on-code-of-conduct-english-1.pdf>.

⁷ Scottish Parliament, <https://www.parliament.scot/gettinginvolved/107152.aspx>

⁸ <https://www.legislation.gov.uk/asp/2016/16/contents>

⁹ http://www.parliament.scot/S4_StandardsProceduresandPublicAppointmentsCommittee/Inquiries/evidence_summary_for_web.pdf

¹⁰ http://www.parliament.scot/S4_StandardsProceduresandPublicAppointmentsCommittee/Inquiries/ESClob.pdf

