

Consultation on codes of conduct – 2019

Registrar's conclusions – 6 November 2019

From 1 July 2019 to 12 August 2019 the Registrar of Consultant Lobbyists consulted on possible changes to the published guidance in relation to codes of conduct. The consultation and responses to it are available on the Office of the Registrar's website.

The Registrar has considered the responses in the context of his duties under the Act and has reached the conclusions below. The Registrar will publish amended guidance in due course. Current guidance remains in force until the revised guidance is published.

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What makes a code of conduct 'relevant'?

Consultation text:

The Act defines a 'relevant code of conduct' as one '*which governs the carrying on of the business of consultant lobbying (whether or not it also governs other activities)*'.

Current practice allows codes of conduct that set out general good, professional behaviour such as the SRA Code of Conduct or the ICAEW Code of Ethics to be declared as codes of conduct by registrants. Other registrants name a code that deals explicitly with lobbying, such as the Public Affairs Code of the PRCA's Public Affairs Board. Others declare their own company-specific codes.

The Registrar is considering amending the guidance so that in order to be 'relevant' under the Act, a code must go beyond setting out general good professional behaviour and must provide guidance or a framework that is of particular and specific relevance to consultant lobbying activity.

Question 1: What is your view of this proposed change?

Question 2: 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*'?

Conclusion:

Some respondents to the consultation supported this proposal and one was against it.

The Act defines a relevant code of conduct as one '*which governs the carrying on of the business of consultant lobbying ...*'. 'Govern' is defined by the Oxford English Dictionary as to '*control, influence, or regulate (a person, action, or course of events)*'. The purpose of allowing registrants to claim adherence to a code of conduct must be to help the public,

those being lobbied, clients and others to understand how the consultant lobbyist will approach this activity.

The Registrar has concluded that a code of conduct that requires no more than adherence to general, good professional behaviour is unlikely to ‘govern the carrying on of the business of consultant lobbying’.

The Registrar will not prescribe how the required control, influence or regulation of the business of consultant lobbying should be demonstrated in a code – this is a matter for registrants and the Registrar will assess each code on its merits. However, indicators might include referring explicitly to consultant lobbying and/or setting out rules for conducting that activity. Or a code might not refer explicitly to consultant lobbying, but might provide guidance on specific aspects of consultant lobbying, for example: a duty to those being lobbied and/or the public; truth and honesty in representations; or disclosure of the client’s identity.

A code that fails to recognise a consultant lobbyist’s responsibilities to those to whom representations are made is unlikely to be ‘relevant’, in that it would not govern the business of consultant lobbying.

This change will be implemented in the next revision of the guidance.

One respondent suggested that third-party involvement and independent sanctions should be required for a code to be relevant. The Registrar has concluded that an absolute requirement of this kind would go beyond the provisions of the Act.

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

Consultation text:

The Act requires registrants to state *‘whether there is in place an undertaking by the person to comply with a relevant code of conduct’*.

The Registrar currently simply asks new registrants to state which code of conduct they subscribe to and where it can be inspected.

Question 3: Should ‘undertaking’ require a more formal commitment or is current practice sufficient?

Question 4: If you believe there should be a more formal commitment, what form should this take?

Registrar’s conclusion:

Some respondents to the consultation considered that a simple statement by a registrant that an undertaking was in place was not sufficient and one felt that it was.

The Act requires that Register entries must include a statement of ‘whether there is in place an undertaking by the person to comply with a relevant code of conduct’. The OED

defines 'undertaking' as: 'A formal pledge or promise to do something'.

Registrants are currently asked at initial registration: 'Is there in place an undertaking by your organisation to comply with a relevant code of conduct?' and, if there is, they give details of the code and where it can be inspected. The Registrar subsequently relies on registrants complying with their duty under the Act to keep their entry on the Register up to date.

The Registrar has concluded that in order for the declaration on the Register to be meaningful and in support of the Registrar's statutory duty to monitor compliance, registrants who claim a code should be required to sign a formal written undertaking confirming that they comply with a code of conduct. This would be at initial registration and at any point that they claim compliance with a new code. Registrants will also be asked to confirm any ongoing undertaking alongside each Quarterly Information Return.

This change will be implemented in the next revision of the guidance, with suitable transitional arrangements.

It is an offence under the Act to provide inaccurate information. The Registrar considers that a false or inaccurate claim to comply with a code of conduct is seriously misleading to the public, those being lobbied and to clients.

If a Registrant claims to comply with a code of conduct, but it is later demonstrated that they have failed to do so, the Registrar may review whether the declaration on the Register is therefore inaccurate and whether an offence was committed in making a false or inaccurate declaration.

This will be reflected in the next revision of the guidance.

The content of codes of conduct

Consultation text:

The Registrar's view is that the Act does not give the Registrar the right to comment on or shape the content of codes of conduct – the only test he can apply is relevance, as defined by the Act.

Question 5: Do you agree with this view? If not, why not?

Registrar's conclusion:

Most respondents to the consultation believed that the Registrar should feel able to comment on or shape the content of codes of conduct.

The Registrar has concluded that his powers under the Act in relation to the content of codes of conduct are limited. The Registrar is obliged to decide whether a code is 'relevant' if compliance with it is claimed by a registrant – see questions 1 and 2 above. The Registrar does not consider that he can apply further or different tests or prescribe the content of codes beyond 'relevance'.

Which codes of conduct may be declared?

Consultation text:

The Registrar's view is that the Act does not give the Registrar the right to restrict which codes of conduct may be declared. So long as a code is 'relevant', a registrant can declare it on the Register. This means that codes might come from a trade or professional body or be self-written by the registrant.

Question 6: Do you agree with this view? If not, why not?

Registrar's conclusion:

Two respondents to the consultation considered that codes written by and/or enforced by a registrant (self-written codes) should not be considered 'relevant' by the Registrar.

The Act requires that if a registrant wishes to claim adherence to a code of conduct, it must be one that 'governs the carrying on of the business of consultant lobbying'. The OED defines 'govern' as meaning 'to direct and control the actions and affairs of a country, city or people, etc'. This suggests a degree of external control over a collective entity or group.

Following the consultation, the Registrar considers that a self-written code would struggle to meet this test and may therefore not be 'relevant' under the Act. Each proposed self written code will be considered on its merits, but it is unlikely that a code that has no external or independent oversight would be 'relevant'.

A respondent to the consultation raised the issue of a registrant claiming adherence to a membership body's code of conduct when they are not a member of it. A non-member would not be subject to external control by the membership body and the code is therefore unlikely to be a 'relevant' code and could not be claimed by the registrant..

This change will be implemented in the next revision of the guidance, with suitable transitional arrangements.

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

Consultation text:

Some codes of conduct govern the behaviour of individual members of a professional body, rather than a business as a whole. The Registrar's guidance says that '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'.

Question 7: Do you agree with this? Why or why not?

Registrar's conclusion:

One respondent to the consultation disagreed with current guidance and suggested that a focus on individual lobbyists was more appropriate. Another suggested that parts of a

business should be able to register as a consultant lobbyist.

The Act requires the declaration in relation to a code of conduct to be made in respect of 'the entry for each registered person'. In this context 'person' is the legal person - a company, partnership or individual being paid to act as a consultant lobbyist. The Registrar considers that a code of conduct that appears on the Register must therefore apply to the whole of the registered 'person', not to parts of a business or some individuals within the business.

Those who see a code of conduct listed on a registrant's entry on the Register would quite reasonably believe that the claimed code would apply to all of the consultant lobbying activity of the organisation.

The Registrar has concluded that this part of the guidance will not be amended.

If a code of conduct for individuals is claimed by a business as a whole, the statutory test of relevance will be applied. If the code in question only provides oversight in relation to an individual who is (for example) a member of a professional body, the Registrar will require evidence that the code applies fully to all members of the business.

This will be reflected in the next revision of the guidance.

Question 8: If you agree with the guidance, how can adoption by every member of the organisation be demonstrated?

The Registrar has concluded that it could be an unreasonable burden to require a sign-up by every member of staff in all organisations claiming to comply with a code written for individuals. The Registrar does not require such a sign-up by every individual working for an organisation claiming a code written for a business as a whole.

However, it is the duty of an organisation claiming a code of any kind to demonstrate that every member of the organisation subscribes to the code. The Registrar will not prescribe how this is done, but the undertaking to comply with a code of conduct will include explicit confirmation that all relevant staff comply with the code. In practice it may be that this is demonstrated by individual sign-up or through monitored training or through terms in contracts of employment or otherwise.

This change will be implemented in the next revision of the guidance.