

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

Registrar's conclusions – 14 May 2021

From 9 February 2021 to 9 March 2021 the Registrar of Consultant Lobbyists consulted on:

- Clarity and completeness of the Registrar's guidance
- Provision of a template code of conduct for registrants
- Ensuring compliance

The consultation and responses to it are available on the Office of the Registrar's website. 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.

Clarity and completeness of published guidance

Consultation text:

The Registrar has issued formal guidance under the Act:

- [Guidance on registration and QIRs, including specialist guidance for think tanks and support service providers to APPGs](#) (August 2020)
- [Guidance on compliance, offences and penalties](#) (June 2019)

The Registrar is seeking views as to the clarity and completeness of this 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?

Respondents felt that current guidance was largely clear, comprehensible and complete. They suggested a number of areas for review:

- *What interactions should be registered.*
- *Registration by those who do not consider themselves to be consultant lobbyists but whose activities fall within the definition in the Act.*

- *Virtual communications.*
- *Interpretation of 'incidental' in schedule 1 part 1 of the Act.*

Registrar's conclusions:

The Registrar will address these points in the next revision of the guidance, whilst recognising that guidance is not intended to deal with every possible situation, but rather to illustrate the principles.

A respondent raised concerns about registrants having to declare clients from whom payment was received in a quarter (whether or not lobbying has yet been done) as well as clients on whose behalf consultant lobbying was done in the quarter, whether or not payment has been received. This is a requirement of section 5(3) of the Act and the Registrar has no discretion in respect of this. Current guidance explains: 'A client must be declared if either lobbying has taken place or payment has been received in a quarter. This means that the same client may be declared in two different quarters for the same lobbying activity.'

One respondent was '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 ... Act to avoid classifying themselves as consultant lobbyists.' This provision of the Act provides exemption where lobbying activity is incidental to a business that consists mainly of non-lobbying activity. Paragraph 5.1 of the guidance makes it clear that this is an extremely limited exemption that would only apply in very unusual circumstances. Whether or not a business classifies itself as a consultant lobbyist is irrelevant and if it engages in relevant communications it is obliged to register this activity.

The Registrar considers that the guidance is clear in this area, but would welcome any concrete proposals to improve its clarity within the bounds of the Act. The Registrar invites the respondent, its members and others to provide information about potential unregistered consultant lobbying activity so that he can investigate any such cases.

A number of comments went beyond the guidance itself and suggested greater dissemination of the guidance and other information to wider groups. The Office of the Registrar has increased pro-active engagement with professional bodies beyond the public affairs sector and will seek other means of direct communication with potential registrants.

Provision of a template code of conduct

Consultation text:

Those registrants who wish to declare on the Register that they observe a code of conduct either undertake to comply with one provided by their professional body or with

a self-written code. The Registrar decides whether a code meets the criteria set out in the Act and the guidance and may be declared on the Register.

The Registrar is seeking views as to whether it would be useful to those on the Register and to others to provide a template or framework code of conduct for registrants.

The Registrar envisages that any such template would set out provisions about the way that consultant lobbying activity is carried out, including the consultant lobbyist's responsibilities to those to whom representations are made. It would be open to the registrant to amend these to suit their way of working. Registrants would need to add their own complaints process to any such template, setting out how they handle any complaints, including external oversight of the complaints process.

The Registrar would continue to decide in each case whether the code met the tests of the Act and guidance.

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?

Respondents were split in supporting and opposing the provision of a template or framework code of conduct. The two professional bodies (PRCA and CIPR) were opposed to any kind of framework code.

Some respondents were concerned that codes created by registrants based on a framework might lack independence and enforceability. One respondent asserted that the provision of a framework would exceed the Registrar's legal powers. A group of respondents believed that "ORCL should have a role in providing a best in class code". Another, who supported the principle of the Registrar issuing a template or framework, was concerned that its purpose should be clear and it should not evolve into a "formal or de facto ORCL code of conduct".

The current position

The [Act \(Part 1, section 4\(2\)\)](#) requires that: "The entry for each registered person must include ... a statement of ... whether there is in place an undertaking by the person to comply with a relevant code of conduct".

Section 4(6) explains that a "relevant code of conduct" 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."

Registrants are therefore entitled to write and declare their own code of conduct so long as this meets the test of being 'relevant'. A number of respondents oppose the notion of self-authored codes, that is a debate that falls outside the Registrar's remit

and powers. As the law stands, the Registrar is bound to allow a registrant to declare any code that meets the test of relevance.

Section 3.5 of the Registrar's [guidance](#) says that 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, through his office, currently engages with registrants to guide them on the topics that need to be included in a code if the Registrar is likely to approve it. This helps registrants to understand and meet the criteria for 'relevant' codes set out in the Act and guidance, but does not recommend particular behaviours or approaches to consultant lobbying.

Many of these matters were considered in detail in November 2019 by the Registrar in his [conclusions](#) following the consultation on codes of conduct. Current guidance is the result of that consultation.

Registrar's conclusions:

In order to be accepted as 'relevant' by the Registrar, a code must have some independence or enforceability. The Registrar recognises that this does not require, as some respondents wish, a code to include sanctions against a registrant who was in breach of their code. The Registrar considers that it would exceed his powers to impose such a requirement.

The Act does not require registrants to work to a code of conduct, nor does it specify standards of behaviour that should appear in a code. The Registrar considers that it would exceed his powers if he was to require that particular standards of behaviour appear in a code of conduct. In addition, if he was to issue a template code there is the undesirable risk that this might be seen by some as an official or required ORCL code of conduct.

However, the Registrar considers that it is in the public interest and in the spirit of the Act for it to be as easy as possible for those who wish to adopt and work to a code of conduct to do so.

The Registrar will therefore issue a framework for codes of conduct that will expand on the current guidance by pointing registrants clearly at the areas that must be included in a relevant code.

The framework will not “set out provisions about the way that consultant lobbying activity is carried out” as suggested in the consultation, nor will it include draft text. The Registrar considers that either of these approaches could lead to the framework mistakenly being seen as an official ORCL code or might stray into the field of regulation.

Ensuring compliance

Consultation text:

The Registrar has a statutory duty to ensure compliance with the Act and the mechanisms he uses include:

- Engaging with those who are required to register, including providing clear information and guidance.
- Ensuring that systems and processes are as simple as possible in order to minimise the administrative burden on registrants.
- Publishing data about registrations and the information declared in Quarterly Information Returns.
- Cross checking the information declared by registrants against the published record of meetings held by Ministers and Permanent Secretaries.
- Carrying out formal investigations into organisations where there is reasonable information suggesting non-compliance.

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

Registrar’s conclusions:

Respondents suggested:

- *Increased engagement with those ‘not traditionally classified as consultant lobbyists’.*
- *An information campaign.*
- *Workshops for registrants.*
- *Communicate with those being lobbied.*

The Office of the Registrar increased pro-active engagement with professional bodies beyond the public affairs sector during 2020 and will seek other means of direct communication with potential registrants. The Registrar will consider how best to support compliance by communicating with those being lobbied, whilst recognising that the obligations of the Act are on lobbyists, not Ministers or Permanent Secretaries. The Office of the Registrar will offer further information workshops for registrants and potential registrants.

Respondents proposed that:

- *Detailed data be gathered from registrants about complaints in relation to their code of conduct.*
- *ORCL should promote and encourage membership of professional bodies*

The Registrar has concluded that these proposals would exceed his powers under the Act.

A respondent suggested that ORCL should publish reports summarising the types of complaints received. The Registrar accepts the merits of this idea, but the number of complaints and investigations may not allow for meaningful data. The Office of the Registrar publishes details of all civil penalties, information notices and formal investigations. The Registrar will consider whether any meaningful trends or data can be drawn from this.