

Consultation on the incidental exception and APPG secretariats March 2022

Consultation responses – 21 April 2022

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

- Age Verification Providers Association
- CIPR
- Field Consulting Ltd
- Gill Morris Communications Limited (DevoConnect)
- Meadhanan Ltd
- Minister of State Lord True CBE
- T&I Communications Ltd
- Wynchwood Consulting

Response from Age Verification Providers Association

Thank you for the opportunity to respond to the above consultation.

We wish to address only the incidental exception

Question 1: What are your views on the proposed revised guidance?

We find ourselves as it appears the only trade association on the Register. We registered after seeking advice from your office because the Association was given a grant by the EU to develop interoperability between providers of online age verification, which exceed the income we generate from our members. So, we were advised that the trade body exception no longer applied. We were further advised that because of our obvious interest in legislation relating to online safety, our advocacy would not fall under the incidental exception either.

There are a lot of trade associations with income derived from sources other than members – they may have operating companies that run trade shows; property investments; bequests, raffles and bingo games! Yet none of these appear on the register. I worked in for a gambling charity previously, and it was clear that lobbying was an absolutely central part of the role of the 5 trade associations active in that field.

Question 2: How might the proposed guidance be made clearer or simpler, within the confines of the Act?

Please consider, if the definition of incidental in the guidance is being correctly applied to trade bodies “it communicates on behalf of those people in a way that is an incidental part of its general activity “. If as I suspect it is not because the advice provided to us would certainly apply to most trade bodies I have knowledge of, but the intention of the legislation was not to bring the majority of trade bodies onto the Register, can the guidance be amended to allow for Membership Organisations not to be caught by the rules simply because they have other sources of income.

Response from CIPR

Question 1: What are your views on the proposed revised guidance? and Question 2: How might the proposed guidance be made clearer or simpler, within the confines of the Act?

The CIPR would not object to any of the proposed changes and clarifications to the Registrar's guidance on the incidental exception. The Registrar will be familiar with the CIPR's concerns surrounding the narrow scope of the register, as defined by the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014, and our campaign to extend their remit to cover all lobbying activity, beyond consultant lobbying. Therefore, any attempts to the regulations that seek to capture a wider and truer reflection of lobbying activity are well received. We agree that the current regulations are complex and not always universally agreed. The proposals put forward do seek to address this. However, the institute is concerned the suggested copy, while clear in its intention and broader in scope, still allows for interpretation from those engaged in consultant lobbying regarding terms such as a "significant amount of income / contribution to the non-lobbying activities". It is not clear that these amendments would increase registrations and are loosely defined enough to satisfy organisations wishing to avoid registration.

Question 3: Do you agree or disagree with using 'secretariat' rather than 'support provider' in the guidance? If you disagree, please say why.

The CIPR agree with this proposed change. The term 'secretariat' is commonly used when referring to APPG support providers and the regulations should reflect that. Employing this term provides greater clarity about who is required to register.

Question 4: What are your views on the proposed revised guidance as to who are the clients of a secretariat?

The CIPR welcomes the proposed change, in particular to declare external funders.

As we made clear in our written and oral evidence to the committee on standards, APPGs provide an important platform in policy debate but there are examples of bad practice including where APPGs were used by secretariats for commercial gain. We shared one example of a secretariat seeking to sell sponsorship of APPGs to external funders. This proposal addresses that and increases the required transparency. We would argue this change should also be reflected in the *Guide to the Rules on All-Party Parliamentary Groups*.

Response from Field Consulting Ltd

Please see the below consultation response on behalf of Field Consulting.

Questions 1&2

I believe this revised guidance still leaves too much scope for companies who claim lobbying is not their main business to continue to carry it out. For example, massive Management Consultancies carry out lobbying all the time, but because the company is so large these definitions allow them to avoid registration. For example, EY is not registered as a lobbyist. The idea that that organisation does not carry out lobbying is not believable.

This creates a situation which is clearly discriminatory against SMEs. By virtue of our size, lobbying is clearly not incidental to our business. So, we have to register to carry on the same tasks that a larger entity would not. Therefore, I do not think the changes go far enough. All lobbying should be registerable, if carried out for commercial purposes.

Questions 3&4

These changes seem sensible and I have no objection.

Response from Gill Morris Communications Limited (DevoConnect)

DevoConnect welcomes the opportunity to respond to ORCL's consultation on the incidental exception and APPG secretariats.

We detail below DevoConnect's responses to the Consultation questions.

Question 1: What are your views on the proposed revised guidance?

We welcome the proposed revised guidance as we consider it necessary to addressing obvious gaps in the original registration requirements. Two members of DevoConnect are former Chairs of the former Association of Professional Political Consultants (now absorbed into the Public Affairs Board of the PRCA) and have long argued that lawyers, accountants, management consultants and other professional services organisations should fall within the remit of both self-regulatory and statutory registration regimes.

In our view this should also be extended to trade unions and charities. If they are sponsors of APPGs (see below) they become registrable anyway as a consequence of your proposed guidance on APPGs, so we would argue that they should be incorporated under ORCL's review of the incidental exception guidance, although we recognise that this is outwith the scope of the, in our view, flawed Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014.

ORCL's consultation states *If lobbying is a small proportion of an organisation's activities but makes a significant contribution to the non-lobbying activities, it will not be incidental.* We welcome this. However, for scene-setting purposes, if a member of the senior management team (Chair, CEO, COO, etc.)

of an organisation which "does not lobby" (i.e. does not have an in-house team nor uses a third-party consultancy, nor its professional services advisers to undertake such activity), how does/should the guidance capture activities undertaken such as attending one-off fundraising events (although they *could* be more frequent) with Government Ministers, where direct communications will take place? It is acceptable to refer to these activities as incidental?

We are disappointed that the consultation does not consider the issue of Codes of Conduct. We consider it unacceptable that organisations can write their own Codes of Conduct and then declare that they abide by a Code. There is no oversight of these arbitrary Codes and whether or not they are

applicable to the work undertaken by consultant lobbyists or those other organisations required to register. There is also no independent or statutory policing of the enforcement of the Codes. We believe this to be an unacceptable oversight. We recognise that these comments might be interpreted as a call to opening up the debate about a Statutory Code of Conduct. We would not be averse to that.

Finally, and because we believe it is worth restating, we believe that any interactions with the institutions of government should be registerable, and we cannot understand the reason the 2014 Act only included direct communications with Ministers and Permanent Secretaries (or their equivalents) and not Opposition Ministers, Front Bench spokespersons, Chairs of Select Committees and APPGs, all MPs, Special Advisers, equivalents within the devolved

Nation States, etc. Such an extended requirement would then also apply to those affected by the proposed changes to the incidental exception”.

Question 2: How might the proposed guidance be made clearer or simpler, within the confines of the Act?

We believe the 2014 Act to be fundamentally flawed – it is not fit for purpose. It does not capture what needs to be registered.

Working within the confines of the Act it remains impossible to have full transparency of lobbying when registration will be constrained by a voluntary interpretation of “significant proportion”, “small proportion”, “significant amounts of income”, “significant contribution” and so on.

Nevertheless, we welcome the inclusion of the following: *If an organisation has employees whose job includes communicating with Ministers on behalf of clients or if the organisation offers a lobbying service to clients, then these activities will be registerable.* We assume that this will require Think Tanks to register themselves? Again, we would argue it should apply to trade unions and charities.

In summary, we do not believe the proposed guidance can be “made clearer or simpler” because the Act does not allow for it to be so and so the requirement to register with ORCL will remain opaque”.

Question 3: Do you agree or disagree with using ‘secretariat’ rather than ‘support provider’ in the guidance? If you disagree, please say why.

We agree with using the term ‘secretariat’. As the provider of such services to a number of APPGs, we use this term already. It provides clarity as to the function of the consultancy providing those services. Anecdotally, it is a term which MPs involved with APPGs understand and prefer. Therefore, we do not disagree with the term ‘secretariat’ “.

Question 4: What are your views on the proposed revised guidelines as to who are the clients of a secretariat?

We agree with the new guidelines. We already provide this information for the PRCA’s Public Affairs Board Register, and did so beforehand with the APPC’s Register. To be clear, we support the registration of external funders who provide funding for secretariats. We also believe that if a secretariat makes relevant communications for any of the APPG funders separately, these sponsors are individual clients and must be declared as such. This is often where the registration of trade unions and charities is captured, hence our assertion above. As it happens, we are very relaxed about disclosing the levels of sponsorship too, and will do so upon request, as it is not a requirement of ORCL registration and there is no process to enable this.

We are firmly of the view that, generally, APPGs provide very valuable vehicles for collaborative, cross-Party, House of Commons/House of Lords inquiries into key public policy issues which are not necessarily addressed in detail through other Parliamentary means. They provide a forum for Parliamentarians, academics, and key stakeholders in specific areas of public interest to inquire into, and provide analysis of, the current policy landscape in those areas and make recommendations to the Government for legislative and/or regulatory change. The minutes and Reports from APPG hearings are made available on the APPG websites. The meetings are advertised in advance and open to anyone who wishes to attend. This has been especially true as processes have moved on-line during Covid-19. Secretariats to APPGS often provide resources which are not ordinarily available to MPs and Peers to undertake forensic research into policy issues such as Net

Zero, Adult Social Care, Left-Behind Communities, Debt & Personal Finance, Health, Land Value and so on.

Nonetheless, we are surprised that ORCL has not taken the opportunity in this consultation to address the often media reported claims of some secretariats being sometimes staffed by Parliamentary Pass Holders. We believe that this is unacceptable and oppose anybody working within a secretariat being a Parliamentary Pass Holder.

We also believe the 2014 Act and the corresponding ORCL requirements of registration of APPG activities deliver nothing but obfuscation. "Direct communications with Ministers" have become an unclear definition when it comes to the work of APPGs, which essentially work as administrators, not lobbyists. This ambiguity has confused the ORCL registration process regarding APPG compliance. The PRCA Public Affairs Board's self-regulatory approach provides much better clarity. If you engage with the institutions of government, then it is registerable, because it is inevitable that as a secretariat you will ordinarily engage with MPs and Peers, Special Advisers and so on. Unnecessary and unclear delineations around responding to meeting-request RSVPs from a Minister's Private Office, for example, simply cause confusion and unintended forced errors on the part of registrants.

As stated above, DevoConnect welcomes the opportunity to respond to this current ORCL consultation. However, we are firmly of the view that this represents merely a tinkering around the edges. The 2014 Act is not fit for purpose; it does not provide for a truly transparent regime regarding the ways in which lobbying is undertaken throughout our communities.

Response from Meadhanan Ltd

Further to the Consultation on the incidental exception and APPG secretariats, March 2022, on behalf of Meadhanan Limited, I respond as follows:

Question 1: What are your views on the proposed revised guidance?

- I am satisfied with the proposed revision.

Question 2: How might the proposed guidance be made clearer or simpler, within the confines of the Act?

- I do not believe that any further revision is needed.

Question 3 (APPG secretariats): Do you agree or disagree with using 'secretariat' rather than 'support provider' in the guidance? If you disagree, please say why.

- I prefer 'support provider' rather than the proposed 'secretariat' reference. My reason is that 'support provider' was already clear and unambiguous. While 'secretariat' is defined, such definition is not required if 'support provider' is used.

Question 4: What are your views on the proposed revised guidance as to who are the clients of a secretariat?

- I am satisfied with the proposed revision.

Response from Minister of State Lord True CBE

Thank you for informing me of the consultation you have launched in relation to the definition of the incidental lobbying exemption and APPG secretariats. I have read the consultation and am responding on behalf of HM Government.

The development and publication of guidance on consultant lobbying is part of your functions as Registrar as a statutory office holder independent of Government (Transparency of Lobbying, Non-Party Campaigning Act and Trade Union Administration Act 2014 (Lobbying Act), and in accordance with the Memorandum of Understanding with the Cabinet Office.

I welcome your approach on seeking to provide clear and accessible guidance.

The incidental exemption

I am grateful that you are consulting on the matter of clarifying the guidance on "incidental exemption" and welcome your broad approach of seeking to provide greater clarity in the guidance and aid consistency.

APPG Secretariats

Furthermore, I note your consultation on revised guidance on APPG secretariats. I have noted your rationale (as set out in your consultation) and again I welcome your efforts to provide greater clarity on whose interests are being represented to the Government. I would like to thank you for your work and for consulting on these important matters. I look forward to hearing the outcome of your consultation and continuing to work with you.

Response from T&I Communications

T&I Communications Ltd provides secretariat services to two APPGs, the APPG Rail and APPG Maritime and Ports, on a pro bono basis.

In various different guises, John Stevenson has supported both groups and no payment has ever been taken for secretariat services provided.

There is no intention to take payment for providing APPG secretariat services in the future.

T&I Communications has no objections to the proposed changes.

Observations:

As proposed, T&I would not need to register any communication with a Minister or senior official. T&I would be happy to register each communication, regardless of whether the company receives any funding or not for the secretariat services. For example, recently T&I was in touch with the CEO of GBR / Network Rail and the CEO of the MCA to arrange two

APPG sessions.

On a regular basis, in writing, I inform the Chair of the aforementioned APPGs of T&I's up-to-date client list.

Response from Wynchwood Consulting

I am responding to the questionnaire both in my capacity as a UK businessman with many years' experience in this sector and also as one who provides Secretariat services to a number of APPGs.

Question 1: What are your views on the proposed revised guidance?

This is a difficult question because there are many exceptions which one can think of and a number of cases where it is clear that lobbying has been engaged in where it is to the disadvantage of other parties. One of the examples cited is lobbying to be granted a Government contract. This is a good example where lobbying is likely to be to the

disadvantage of another party. Moreover, given that Government contracts are supposed to be awarded through existing processes then it is clear the lobbying circumvents, or seeks to circumvent, that established process. There is thus an important measure which it would be beneficial to ask: Does this lobbying seek to circumvent or influence an established process to gain unfair advantage (perceived or actual) over competitors? I think that this could be used as the yardstick.

One can think of cases where lobbying has or might take place and is solely for the benefit of the business concerned without effecting other parties. I do not see a need for this activity to be registered. A good example would be compulsory purchase of a business premises. Most people would agree that it is reasonable for the business owner to lobby against this due to the disruption to the business. It would not confer an advantage on that business over other ones nor would it unduly influence a market. Both HS2 and the London Olympic Games of 2012 have provided examples of companies which have lobbied the Government to protect their own interests. It cannot be argued that this activity is somehow working against an established process to gain advantage over competitors. Moreover, it is the exercising of the right of any business owner to contact their constituency MP who may in turn make an introduction to or write to the relevant Minister on behalf of the constituent. One can envisage how this may involve the business owner having to contact the Minister directly in order to put their case. If a business owner contacted their MP to help influence the outcome of a tender or other commercial process, I would expect the MP to reject this of course.

The important measure is, in my opinion and given the guidance around incidental lobbying being a small part of the business' activity, "does this lobbying activity seek to disadvantage a 3rd Party and / or circumvent a Government process such as a tender?"

[Question 2: How might the proposed guidance be made clearer or simpler, within the confines of the Act?](#)

I think that the yardstick which I mention above, namely "Does this lobbying seek to circumvent or influence an established process to gain unfair advantage (perceived or actual) over competitors?" would be a good one to use to make the guidance clearer.

[Question 3: Do you agree or disagree with using 'secretariat' rather than 'support provider' in the guidance? If you disagree, please say why.](#)

I agree with the term Secretariat. This is widely accepted in Parliament and is therefore the term that people use to describe the administrative function for an APPG. It is also important to understand what the role is: The Secretariat's role is to provide the administrative function to allow an APPG to function. This naturally includes working closely with the Parliamentary Chair and any other APPG officers. Those providing a Secretariat function should organise and minute meetings, recording what was said and took place. Their role is not to take part in the debate or seek to guide it in a particular direction. It is to organise the meetings, find the speakers, make the room or call bookings etc. It is a recording and administrative role and not a lobbying one. APPGs provide an open forum for areas in our national life to engage with Parliamentarians under a clearly laid out set of rules.

[Question 4: What are your views on the proposed revised guidance as to who are the clients of a secretariat?](#)

The purpose of a Secretariat is to provide an administrative function to run an APPG (CF. answer to Q3) under the direction of the Chair who is an MP and the other Parliamentary members. These then are the clients of the Secretariat. In terms of making contact with Ministers and senior officials, if the Secretariat contacts a Minister this will should only be at

the request of the Chair. Many Secretariats are provided by the MP's own office who would be contacting Ministers anyway as part of their job.

As APPGs exist to inform Parliamentarians about a given topic, it is natural that the APPG may communicate with a Minister. If this is to invite the Minister to speak at an APPG meeting, forward the minutes of an APPG meeting or research undertaken by the APPG then that is a part of the Secretariat's function which would be undertaken at the behest of instruction of the Chair. This should not be declarable as lobbying as it is part of the administration function. Alternatively, an external Secretariat (i.e. non-Parliamentarian) could simply ask the Chair's office to perform these functions and thus not need to register.

The alternative is that the MP's office performs all of these functions at the expense of the taxpayer (who ultimately funds all Parliamentarians and their staff). Does the ORCL include these individuals as Secretariats and how would this process be controlled? MPs who want to run an APPG will need some link into that particular area of national life and could therefore become reliant on a 3rd Party to introduce speakers etc. This would allow for lobbying by the back door as the MP becomes the conduit through which all interaction takes place without any need to declare this.

If the Secretariat contacts a Minister on behalf of a non-Parliamentarian (e.g. a sponsor, member or attendee of an APPG) then that should be declarable as a lobbying activity. In that case the Secretariat would be working on behalf of a client. The guidance should make clear that work done at the behest of the MP who chairs the APPG is not declarable whereas work done for any non-Parliamentarian is declarable. This would be the right guidance and would work for the good of APPGs as it would force the Secretariat to be either an administrative function or a lobbying function and therefore declarable.

Moreover, APPG's have to declare who funds the APPG anyway and within which band as part of the rules governing the running and format of APPGs. The proposal seeks to duplicate this effort and make public what is already made public. Have the relevant authorities in the Houses of Parliament been included in this consultation? It would be interesting to see what their views are. In my opinion the clarity on funding is there, what is important is to define properly the Secretariat's role as an administrative function and not a lobbying one. If organisations which supply Secretariat services then wish to engage in lobbying, they are free so to do but separating the functions out.