

TOWARDS A PUBLIC AFFAIRS COUNCIL

ISSUES PAPER

Prepared by a joint APPC / CIPR / PRCA Working Party



May 2009

CONTENTS PAGE

SECTION 1: INTRODUCTION	3
SECTION 2: SUMMARY OF ISSUES	5
SECTION 3: DEFINITIONS OF LOBBYING	7
SECTION 4: THE PURPOSE AND ORGANISATION OF THE PUBLIC AFFAIRS COUNCIL	11
SECTION 5: A COMMON REGISTER	12
SECTION 6: A COMMON CODE OF CONDUCT	14
SECTION 7: MEMBERSHIP AND FUNDING OF THE PUBLIC AFFAIRS COUNCIL	16
SECTION 8: MECHANISMS FOR ACHIEVING UNIVERSALITY	18
SECTION 9: OTHER ISSUES	29
ANNEX A: MEMBERSHIP OF THE WORKING PARTY	21
ANNEX B: THE GUIDING PRINCIPLES	22

1. INTRODUCTION

1.1 In its report on “Lobbying: Access and Influence in Whitehall” (First Report of Session 2008-09, HC 36), the Public Administration Select Committee of the House of Commons (PASC) recommended the establishment of a single umbrella body covering all those involved in lobbying as a substantial part of their work (ibid, paragraph 145 i). The Committee threw out a challenge to the different bodies currently representing those involved in lobbying to come forward with proposals to that end.

1.2 In response, the Association of Professional Political Consultants, the Chartered Institute of Public Relations and the Public Relations Consultants Association formed a Working Party to consider the issue, meeting for the first time on 27th February 2009. The Working Party also met on 25th March 2009 and 24th April 2009. Membership of the Working Party, which included three people independent of the lobbying industry as well as representatives of the industry itself, is attached in Annex A.

1.3 The terms of reference of the Working Party were agreed as follows:

‘To consider the following recommendation in the recent report on lobbying by the Public Administration Select Committee (PASC):

“...establish a single umbrella organization with both corporate and individual membership, in order to be able to cover all those who are involved in lobbying as a substantial part of their work”

and related matters, and to make recommendations.’

1.4 The Working Party has considered a wide range of issues concerning the purpose of an umbrella group, which it has provisionally labelled the Public Affairs Council (PAC); how it might be formed; what the criteria for membership might be; and how it might operate. The aim of this initial paper is to set out the issues that the Working Party has identified and to seek views from all interested parties. Having considered any views expressed, the Working Party intends to come forward with firm recommendations on a way forward.

1.5 The Working Party has approached its task on the assumption – which seems to a degree to be reflected in the PASC report itself – that if a workable and effective system of self-regulation can be established for the industry, that would be both more immediately operable and preferable to a statutory system of control. Our detailed treatment of the issues should be read in this context. However, many if not all of the issues we identify will need to be addressed regardless of whether any further regulation of the industry takes a non-statutory or a statutory form.

1.6 Any comments on any of the issues raised in this paper should be submitted by post to:

Mark Adams
Foresight Consulting
130 Shaftesbury Avenue
London W1D 5EU

or by email to:

mark.adams@foresight-consulting.co.uk

by **no later than close on Friday 5th June 2009**

TOWARDS A PUBLIC AFFAIRS COUNCIL Issues Paper

1.7 Additionally, the Working Party intends to hold an informal workshop, scheduled for Tuesday 19th May. Please contact Mark Adams by post or by email, as above, for details.

1.8 Respondents should note the Working Party intends to publish all the responses received, although we will consider requests not to publish sensitive or confidential information.

2. SUMMARY OF ISSUES

The issues identified in this paper on which we particularly seek views are:

Q1. Has the Working Party correctly set out a workable general definition of lobbying and lobbyist? (Section 3.1-3.4)

Q2. Should the ambit of the PAC cover those undertaking lobbying for material reward as defined above? (Section 3.5-3.7)

Q3. Should the ambit of the proposed PAC be limited to those lobbying the national legislature, executive and civil service or should it be extended to cover other categories of public office holder, and if so, which? (Section 3.8)

Q4. Who should be included in the definition of lobbyists covered by the PAC? Should it include the senior managers of organisations who have occasional contact with public office-holders? (Section 3.9-3.11)

Q5. Is a legally applicable definition necessary if incentives are to be offered or deterrents imposed? (Section 3.12-3.15)

Q6. How detailed a definition of those to be covered by the PAC should be adopted? If a detailed definition along the lines of that in paragraph 3.18 above is favoured, is that definition satisfactory? Should any of the suggested exceptions in that definition be deleted or should any new ones be added? (Section 3.14-3.18)

Q7. Has the Working Party correctly identified the key roles for the PAC? What other roles might it usefully perform? (Section 4.1)

Q8. Has the Working Party correctly identified the key features of the PAC's organisation? (Section 4.2-4.4)

Q9. The Working Party would welcome comments on the contents of the register, particularly in the light of the issues raised with respect to the CIPR. (Section 5.1-5.4)

Q10. Should derogations to the requirement to register be permitted in exceptional circumstances? How should these be defined and how should they be verified? (Section 5.5)

Q11. Should individual career details of lobbyists be included in the register and, if so, how and for what purpose? (Section 5.6)

Q12. Who should hold the register of lobbyists and lobbying organisations? Should it be the PAC or an "independent" body? If the latter, which body should this be? (Section 5.7-5.8)

Q13. Provided the practical difficulties mentioned can be overcome, would it be desirable to work towards a common Code covering all those involved in lobbying? If so, how might the practical difficulties identified best be addressed? (Section 6.1-6.6)

Q14. Does the proposed basis for membership of the PAC, in particular that membership should be through affiliated member organisations, represent the best way forward? Who should be eligible for membership? (Section 7.1-7.4)

Q16. Is a kite mark desirable? How should it be accredited? (Section 7.5)

Q17. Do respondents agree that some such action by Government and Parliament (i.e. by those being lobbied) would be desirable? (Section 7.6-7.7)

Q18. What issues should the Working Party consider regarding funding mechanisms for the PAC?
(Section 7.8)

Q19. Are sanctions or incentives required to make the self-regulatory system universal? What sanctions and incentives can be put in place and to whom should they apply?
(Section 8.1-8.8)

Q20. Is the Working Party's view correct that once the issues set out earlier in this paper have been clarified, the PAC should be established as quickly as possible, leaving other, more detailed issues to be resolved later?

and

Q21. Are there any important issues overlooked in this paper that need to be addressed now? (Both Section 9.1-9.2)

3. DEFINITIONS OF LOBBYING

3.1 If the Public Affairs Council (PAC) is to subject some or all lobbying activities to a form of regulation (whether or not this is statutorily based), it will be important, in the view of the Working Party, to define what is meant by lobbying, in order to set clear boundaries to the ambit of the Council. This is not as straightforward as it may seem. No definitive definition of lobbying seems ever to have been agreed upon in the UK and we note that none emerges clearly from the PASC report.

3.2 It is important to define those who should be subject to enhanced levels of regulation which go beyond the current system of self regulation in the industry. A broad definition of lobbyists, which all lobbyists would be likely to agree, might be that lobbying is the process of seeking to influence the government and its institutions by informing the public policy agenda.

3.3 A more concrete set of definitions might be:

Lobbying involves the attempt to inform and influence a public office-holder to discharge their role in a direction favourable to the interests of the person lobbying or of a person, company or charitable or other interest on whose behalf the person who is doing the lobbying is acting.

A **lobbyist** is someone who seeks to inform and influence the decisions of public office-holders in a direction favourable to the interests of the person, company or charitable or other interest on whose behalf they are acting.

3.4 This broad definition makes the point that a lobbyist, and the accompanying regulatory principles, are not defined by the profession of the person conducting the lobbying but rather by the activity of lobbying itself.

Q1. Has the Working Party correctly set out a workable general definition of lobbying and lobbyist?

3.5 In the view of the Working Party, all lobbyists should be self-regulated, but not all lobbyists do the same job. Some are engaged in “low-level” parliamentary and media monitoring or are organising events. Other more senior lobbyists directly meet civil servants, MPs, Peers and Ministers.

3.6 Therefore, as is common in regulation there is a good case for arguing that there should be varying levels of regulation as they relate to the activities of those who are regulated. The primary areas of public concern, and the concerns expressed by PASC, appear to relate to those advocates directly lobbying MPs, the Lords and civil servants.

3.7 We suggest that the remit of the proposed PAC should include all those undertaking such lobbying who are doing so in return for, or in anticipation of, material (i.e. normally, financial) reward, whether as agent, consultant, officer or employee. It should also cover those who normally undertake lobbying for, or in anticipation of, material reward where they are, exceptionally, engaged in lobbying on a pro bono basis.

Q2. Should the ambit of the PAC cover those undertaking lobbying for material reward as defined above?

3.8 The focus of PASC and public unease about lobbying tends to be on those who are seeking to influence the national legislature, executive and civil service. Of course the public policy agenda does not just consist of matters within the remit of those bodies but also includes matters

on the agendas of the devolved institutions, quangos, regulators, local government and even the media.

Q3. Should the ambit of the proposed PAC be limited to those lobbying the national legislature, executive and civil service or should it be extended to cover other categories of public office holder, and if so, which?

3.9 When journalists talk about lobbying they are usually talking about multi-client lobbying consultancies. Some of these firms solely undertake lobbying; some are public affairs divisions of larger public relations firms. These in turn may be subsidiaries of advertising agencies. As in the US, law firms are now also active in the lobbying arena as consultants. Karl Milner¹ [source?] estimates that there are between 700-800 lobbyists in consultancies in the UK (it is not clear whether or not he included law firms), although the total number of registered consultants on the APPC Register was 825 in February 2009.

3.10 However a far larger contingent of lobbyists work 'in-house' and the majority are not currently members of the CIPRs Government Affairs Group. That is they work directly for representative bodies, corporates, charities, NGOs and other campaigning groups. They sometimes employ multi-client consultants to assist them. Since lobbying has acquired a negative connotation in the media, in-house practitioners have adopted alternative job titles. However, the dedicated function – to influence the public policy agenda – remains the same and, arguably, all such lobbyists should also be within the PAC's remit. Milner estimates that there is a ratio of 4 to 1 between in-house and in-consultancy practitioners. This would put the total number of dedicated lobbyists at between 3,500 and 4,000.

3.11 There are also executives of companies, often members of their senior management, who seek to influence public policy by occasionally acting as advocates and communicating messages, sometimes informed by their dedicated lobbying teams. It is not immediately clear if Milner includes this group, or whether or not they should be included in the definition of lobbyists². Equally not all lobbyists actively communicate with Ministers, MPs, Peers or civil servants. Nevertheless somewhere between 3,500 and 4,000 seems a reasonable guess as to the numbers that may be regulated using this definition.

Q4. Who should be included in the definition of lobbyists covered by the PAC? Should it include the senior managers of organisations who have occasional contact with public office-holders?

3.12 It may be argued that, in the absence of statutory regulation, a tightly drawn definition is not important. What is important is that any definition should be sufficiently widely drawn to catch lobbying activity wherever it is undertaken for material reward. It should also pass the 'Duck test' (i.e. if it looks, walks and quacks like a duck it is indeed a duck). However, any new self-regulatory system needs to encourage lobbyists to join it who do not form part of the existing self-regulatory system. Equally it must encourage all to join in the context of what is likely to be an increased regulatory "burden". Accordingly the definition of lobbyists to be covered should be such as to work effectively within a new deterrent and incentive system.

3.13 In such a system it becomes crucially important to understand who is entitled to those incentives and subject to the deterrents, and who is not. It may be argued that incentives and

¹ From "Lobbying: The art of political persuasion" by Lionel Zetter, Harriman House, 2008

² We note that there are also other occasions where a non-professional might lobby for a short period of time or as a one-off on a particular legislative matter. For example a small businessman who is concerned with the impact of a new law, but has never lobbied before. These should be subject to the same ethical standards, but it may be naïve to expect them - as non professionals - to be aware of an enhanced self-regulatory system.

deterrents actually make the question of a definition less important. If, for example, senior civil servants and Ministers decide as a matter of policy that they will only meet with "lobbyists" covered by the new PAC, then all the lobbyists will join a voluntary scheme. The scheme will be self-defining.

3.14 However, in the scenario outlined above, this argument only holds with respect to incentives. There will be those who argue that they should be entitled to meet with Ministers and civil servants, but should not have to carry the burden of any regulation, because they are not "lobbyists".

3.15 Therefore it seems crucial to establish a sufficiently tightly drawn definition of lobbyist which is approved not only by the industry, but by the Cabinet Office and other organs of the government and the legislature, and which will enable a satisfactory system of incentives and deterrents to operate in order to encourage good behaviour.

Q5. Is a legally applicable definition necessary if incentives are to be offered or deterrents imposed?

3.16 How tight should the definition be of those to be covered? Given that a primary purpose of effective self-regulation is to meet the concerns of parliamentarians and the public, one approach would be to say that only those activities which give rise to public concern should be included within the scope of the PAC. This would suggest that the PAC should be primarily involved in applying enhanced levels of self-regulation only to those lobbyists engaged in direct communication with lobbying contacts in parliament or government at the national level.

3.17 This would mean that:

1. The lobbyists to be covered would be defined as those who actively communicate with public officeholders, and would not include the purely administrative staff of lobbying organisations.
2. Lobbyists would be defined as those who lobby on behalf of clients or employers for material advantage
3. The lobbying activities to be regulated would be deliberately restricted to those involving direct communication with MPs, Peers, and Civil Servants

3.18 In pursuit of such an approach, it would be possible to adopt a very detailed definition of those to be covered, perhaps modelled on the lines of existing US arrangements, along the lines of the following:

DEFINITION.—A lobbyist means any individual who, for material advantage, engages in contact which is oral or written communication (including electronic communications) with a Member of the House of Commons, a Member of the House of Lords or a Civil Servant with regard to—

- (i) the formulation, modification, or adoption of national legislation (including legislative proposals);
- (ii) the formulation, modification, or adoption of a national rule, regulation, Executive order, or any other programme, policy, or position of the United Kingdom Government;
- (iii) the administration or execution of a UK Government programme or policy (including the negotiation, award, or administration of a UK Government contract, grant, loan, permit, or license)

EXCEPTIONS.—The term lobbyist or lobbying contact does not include a communication that is—

- (i) made by a public official acting in the public official's official capacity;

- (ii) made by a representative of a media organisation if the purpose of the communication is gathering and disseminating news and information to the public;
- (iii) made in a speech, article, publication or other material that is distributed and made available to the public, or through radio, television, cable television, or other medium of mass communication;
- (iv) a request for a meeting, a request for the status of an action, or any other similar administrative request, if the request does not include an attempt to influence a Member of House of Commons, a Member of the House of Lords or a civil servant;
- (v) testimony given before a committee, subcommittee, or task force of Parliament, or submitted for inclusion in the public record of a hearing conducted by such committee, subcommittee, or task force;
- (vi) information provided in writing in response to an oral or written request by a Member of House of Commons, a Member of the House of Lords or a civil servant for specific information;
- (vii) required by subpoena, civil investigative demand, or otherwise compelled by statute, regulation, or other action of Parliament or an agency, including any communication compelled by a UK Government contract, grant, loan, permit, or license;
- (viii) not possible to report without disclosing information, the unauthorised disclosure of which is prohibited by law;
- (ix) made to an official in an agency with regard to—
 - (i) a judicial proceeding or a criminal or civil law enforcement inquiry, investigation, or proceeding; or
 - (ii) a filing or proceeding that the Government is specifically required by statute or regulation to maintain or conduct on a confidential basis,
- (x) if that agency is charged with responsibility for such proceeding, inquiry, investigation, or filing;
- (xi) a written comment filed in the course of a public proceeding or any other communication that is made on the record in a public proceeding;
- (xii) a petition for agency action made in writing and required to be a matter of public record pursuant to established agency procedures;
- (xiii) made on behalf of an individual with regard to that individual's benefits, employment, or other personal matters involving only that individual, except that this clause does not apply to any communication with a Member of House of Commons, a Member of the House of Lords or a civil servant (other than the individual's elected Members or employees who work under such Members' direct supervision), with respect to the formulation, modification, or adoption of private legislation for the relief of that individual.

Q6. How detailed a definition of those to be covered by the PAC should be adopted? If a detailed definition along the lines of that in paragraph 3.18 above is favoured, is that definition satisfactory? Should any of the suggested exceptions in that definition be deleted or should any new ones be added?

4. THE PURPOSE AND ORGANISATION OF THE PUBLIC AFFAIRS COUNCIL

4.1 The Working Party understands the purpose of the proposed PAC as being to promote public confidence in those who undertake lobbying by encouraging and sustaining high ethical standards amongst those whom the Council regulates. In that context, it has identified four key potential roles for the Council, as follows:

- i) To be the custodian of the Guiding Principles covering those who lobby (see Annex B), including establishing a common Code of Conduct for all member bodies and keeping under review any related Codes of affiliated bodies;
- ii) To maintain a Register of those engaged in lobbying and of the organisations on whose behalf they lobby;
- iii) To oversee the disciplinary arrangements necessary to enforce the common Code and to consider complaints against member bodies or organisations;
- iv) To be a source of general advice on ethical matters for all those engaged in lobbying.

Q7. Has the Working Party correctly identified the key roles for the PAC? What other roles might it usefully perform?

4.2 The PAC would be a self regulatory, disciplinary council covering all those who, for or in anticipation of material reward, lobby the institutions of government. Most, if not all, “lobbyists”, including those who make a virtue out of non-membership of the existing regulatory bodies, would be covered by the PAC through their membership of their respective trade bodies.

4.3 The PAC would be governed by an elected council made up primarily of representatives from its membership. Terms of office would need to be agreed. In the view of the Working Party, it would be highly desirable to have an independent chair, i.e. someone from outside the “lobbying industry”, as well as a number of independent members. It would also be necessary to have a small secretariat to manage the organisation, possibly sub-contracted to one of the affiliated organisations.

4.4 The PAC would be a separate legal entity (either a company limited by guarantee or an association) with articles of association or a constitution. However, in the short run, the PAC might be established as “work in progress” with a view to making quick progress and refining certain details subsequently. To help matters forward, we consider some of the issues relating to the Council in more detail in the following sections of this paper.

Q8. Has the Working Party correctly identified the key features of the PAC’s organisation?

5. A COMMON REGISTER

5.1 The APPC and the PRCA both currently publish a register of member companies offering public affairs activities, detailing the names of the consultants engaged in public affairs and the clients they work for. Currently the APPC register is published quarterly and the PRCA register biannually. In both cases, the APPC and PRCA registers relate to member companies.

5.2 The CIPR, which is based on individual membership, does not have a comparable register.

5.3 In its report the Public Administration Select Committee called for a statutory register to include the following information:

- a) the names of the individuals carrying out lobbying activity and of any organisation employing or hiring them, whether a consultancy, law firm, corporation or campaigning organisation;
- b) in the case of multi-client consultancies, the names of their clients;
- c) information about any public office previously held by an individual lobbyist— essentially, excerpts from their career history;
- d) a list of the relevant interests of decision makers within the public service (Ministers, senior civil servants and senior public servants) and summaries of their career histories outside the public service;
- e) information about contacts between lobbyists and decision makers—essentially, diary records and minutes of meetings. The aim would be to cover all meetings and conversations between decision makers and outside interests.

Item d) in the list is for others to consider.

5.4 The Working Party believes that (a) and (b) in the list are the key requirements which any common register should meet. Accordingly we suggest that the content of the register should be the names of those carrying out lobbying activity and the organisations for whom they do so. For the APPC and the PRCA, this is essentially the same information as both organisations already collect. It would be a relatively straightforward matter to collate the two in a common format. For the CIPR such a move would involve changes. There could be a return to the voluntary register of the 1970s, which required individual members to list their clients, or the organisations they represent. Alternatively there could be a move towards companies employing CIPR members being required to disclose their employees engaged in public affairs and the interests represented.

Q9. The Working Party would welcome comments on the contents of the register, particularly in the light of the issues raised with respect to the CIPR.

5.5 The register may need to allow individuals or organisations not to be listed in a very narrow range of cases, where to do so would risk exposing the individual or the organisation to threats of physical violence or intimidation. A robust system would need to be identified to ensure that there was no abuse of this derogation.

Q10. Should derogations to the requirement to register be permitted in exceptional circumstances? How should these be defined and how should they be verified?

5.6 The Working Party has considered PASC's recommendation that the career history of individual lobbyists should be registered. PASC suggested that this information would "enable the public to judge the extent to which former public servants or politicians were using their contacts or experience to pursue a private interest." In the opinion of the Working Party, such a conclusion relies on an implicit assumption that contacts or experience are automatically used to

pursue a private interest. Additionally, it is clear that such information could only be collated with some difficulty, inevitably depending on the level of detail to be published. With the list of individuals engaged in lobbying activity likely to run to several thousands, even very outline career details would be cumbersome and arguably very difficult to interpret. The Working Party's provisional view is that individual career details should not be included in the register.

Q11. Should individual career details of lobbyists be included in the register and, if so, how and for what purpose?

5.7 The Working Party also considered the request to register information about contacts between lobbyists and decision makers. PASC called for the register to include both diary records and minutes of meetings. In the initial view of the Working Party, the latter would simply lead to the production of sterile and anodyne records of meetings. The requirement to place such information in the public domain would be extremely burdensome and of doubtful public benefit. The placing of "diary records" in the public domain would be less cumbersome, but does raise some important issues about the equal treatment of "lobbyists" compared to others. An alternative approach would be to work with the government in considering the establishment of a new system for publishing diary records for Ministers and, possibly, senior civil servants. The Working Party is inclined to believe that this would be a preferable approach.

5.8 As regards who holds and publishes the register, it would seem a straightforward matter to make the register available at a central point, such as through the website for the proposed PAC. PASC suggested that a statutory register might be held by the Office of the Information Commissioner. It might be an option to consider whether a voluntary register could similarly be held by an "independent" body. We are inclined to believe that holding and maintaining the register should be one of the primary duties of the new PAC, but we would be happy to hear other views on this issue.

Q12. Who should hold the register of lobbyists and lobbying organisations? Should it be the PAC or an "independent" body? If the latter, which body should this be?

6. A COMMON CODE OF CONDUCT

6.1 There are obvious attractions in having one streamlined complaints' handling, system where the bodies with substantial numbers of members working in UK public affairs agree to share processes and outcomes. Such shared activity could strengthen the effect of regulation in the public mind, and create more 'clear water' between the regulated and the unregulated.

6.2 There are however a number of difficulties to resolve:

- 1) Any shared system would have to address the fact that PRCA and APPC members are corporate bodies, whereas CIPR members are individuals.
- 2) Certain elements of detail would have to be clarified in relation to practice in the industry about:
 - the publication of client lists
 - the permitting of Parliamentary passes.
- 3) It would have to cover the same aspects of members' activity, resolving the current difference that PRCA and CIPR Codes relate to their members' broadly-defined business activities whilst the APPC Code relates purely to their interaction with Government.
- 4) The nature of the complaint-handling process would need to be addressed. There is, at the moment, a difference in approach to handling complaints, with the PRCA and CIPR adopting a less formal 'conciliation' process, and the APPC having a more expensive, potentially legalistic one.

6.3 As regards the first of these issues, the Working Party believes that the way forward might lie in a review already on-going with CIPR members as to the creation of a supplementary code to cover those working in public affairs. The two issues listed at 2) above might be resolved in the first instance in the context of the development of a common register and in the latter case by referring the question of the issuing of passes to the Parliamentary authorities themselves.

6.4 Turning to issues 3) and 4) in the list in paragraph 6.2, three options to address these problems have been suggested:

- A. Continue with separate processes, but bring them into line, and include in each other's Codes statements to the effect that the findings of named organisations could be admitted as evidence in their procedures. There might have to be a challenge mechanism.
- B. Include provisions that would enable each organisation, on request from another, to state that it would accept and act appropriately upon the findings on a complaint where a member had dual membership. For those complaints where a member was found guilty in some way, but was not currently a member of one of the other bodies, there would be some mechanism for 'noting' the conclusion against any future membership application.
- C. Introduce a mechanism so that a complaint which was deemed to be a 'public affairs' one would be handled by a PAC Committee which would include nominees of the member organisations as well as Lay members. This would require agreement by the existing bodies on mechanisms and cost sharing etc. All bodies would be bound by that Committee's decision, and would then enforce their own sanctions against the individual or organisation concerned. There would need to be appeal mechanisms built in, and there would need to be some common understanding of appropriate sanctions across the organisations concerned.

6.5 Our initial view is that C is the most effective and workable option. This would require, however, either the adoption of a joint Code or at least a shared understanding on the following points:

1. Can members withhold client lists? If so, in what circumstances, and with what safeguards?
2. Can they/their staff hold Parliamentary passes
3. Are they held accountable for their broadly-defined business activities, or purely for their interaction with Government?
4. Is the process (at least initially) an informal, conciliation one, or a legalistic one?

6.6 It might be that a hybrid approach would be necessary, with those parts of the industry which can subscribe to a common Code and disciplinary system doing so and any which cannot undertaking to take into account relevant guidance from the PAC when applying their own disciplinary arrangements.

Q13. Provided the practical difficulties mentioned can be overcome, would it be desirable to work towards a common Code covering all those involved in lobbying? If so, how might the practical difficulties identified best be addressed?

7. MEMBERSHIP AND FUNDING OF THE PUBLIC AFFAIRS COUNCIL

7.1 Currently there is no standard code of conduct for those organisations involved in lobbying and no universality in respect of ethical guidelines for those organisations working in government-related activity. Furthermore, there is no compulsion to join any organisation set up to self-regulate lobbying activity.

7.2 The Working Party proposes a universal Public Affairs Council which will cover all those involved in lobbying activity, on the following basis:

- The PAC will be the holder of a unified code of conduct.
- The PAC will be the sole policeman and enforcer of its own code of conduct.
- The PAC will act as a central repository of the public affairs register.
- Membership of the PAC will be by professional or membership bodies
- Membership of the PAC will involve adherence to the code of conduct. In return, members will be accredited in the form of a kite mark. Failure to adhere to the code will result in removal of the kite mark.

7.3 A number of issues relating to the coverage of the proposed PAC have been identified already in this paper. A further question concerns whether individual membership of the PAC should be possible (as PASC envisaged) or whether membership of the proposed Council should be limited to representative bodies, so that individuals would affiliate to the Council through the appropriate member organisation.

7.4 The Working Party's view is that membership of the PAC should, at least initially, be via the existing regulatory bodies. As they allow both individual (CIPR) and corporate membership (APPC and PRCA), this will allow all lobbyists to join via the individual or corporate route. As PAC will also discipline members via those bodies (see 6.4 above), membership should be via bodies with a disciplinary function. However, some organisations or individuals currently decline to be part of one of the existing regulatory bodies, citing as a reason that they do not agree with regulation or that they do not see any value in membership. However permitting direct membership of the PAC would immensely complicate the task of establishing the Council, including the question of its disciplinary powers, governance and funding. Moreover, it would mean that those affiliating directly did not take on either the obligations or the benefits which come from being part of, and thus represented in the deliberations of, one of the existing regulatory organisations. For these reasons, the Working Party believes that membership of the PAC should be through an affiliated regulatory organisation.

Q14. Does the proposed basis for membership of the PAC, in particular that membership should be through affiliated member organisations, represent the best way forward? Who should be eligible for membership?

7.5 Given that membership of the PAC will involve taking on certain obligations, it is reasonable to expect some system of accreditation to be established, and that demonstrating compliance with the PAC's requirements will enable those organisations which are compliant to adopt an agreed badge or kite mark.

Q16. Is a kite mark desirable? How should it be accredited?

7.6 If a self-regulatory system were to work, it would need to be underpinned by an understanding that kitemarked organisations are subject to the ethical standards enforced by the PAC. Conversely, organisations not kitemarked could be presumed not to be compliant with those standards. Those seeking to use the services of a lobbyist could be guided accordingly.

7.7 Similarly, those in government or Parliament who were being lobbied would have a clear basis on which to assess those who were approaching them. It would help the effectiveness of the new arrangements if government and Parliament would either deal only with bodies regulated by the PAC or decline to give bodies which were not regulated the same level of access as they would give to regulated bodies.

Q17. Do respondents agree that some such action by Government and Parliament (i.e. by those being lobbied) would be desirable?

7.8 PASC proposed that the PAC should be funded by those it regulated. The Working Party is open-minded about the basis on which PAC should be funded, and recognises that the level of funding required will be determined by the decisions made with regard to PAC's precise function, and the method chosen to deal with public affairs complaints. The Working Party would welcome any comments on funding and will be considering both costs and funding in the next stage of its work.

Q18. What issues should the Working Party consider regarding funding mechanisms for the PAC?

8. MECHANISMS FOR ACHIEVING UNIVERSALITY

8.1 A key principle of the self-regulatory system is to achieve universality. All those conducting lobbying business should be included in a new system of self-regulation to meet public, parliamentary and Government concerns.

8.2 The current system is not universal and the PASC identified this as a serious weakness. Not all public affairs consultancies are signed up to the self-regulatory system. Moreover only a small proportion, perhaps one in ten, of in-house lobbyists is currently members of the CIPR Government Affairs Group (GAG). Even more broadly, there are many more that would fall within the definition of "lobbyist" as set out in Section 3. This means that there are thousands of lobbyists outside the existing regulatory net. How will they be convinced to join a new self-regulatory system? Will enhanced levels of regulation mean that those currently in the regulatory system will actually leave, making the system less effective?

8.3 There may be a distinction here between in-house lobbyists and consultancies. Those in consultancies tend to be the particular target of media and parliamentary concern. Therefore those who consultants are already in the self-regulatory system will likely remain in it. For many consultancies the threat of statutory regulation is sanction enough.

8.4 However, in-house lobbyists are not often the focus of public concern and the threat of statutory regulation is more distant. Those inside the system may leave if it becomes burdensome, and this is a problem for CIPR GAG in particular. Those outside the system will be unlikely to see the point in joining in the absence of sanctions or incentives to encourage them to do so. Therefore in the absence of sanctions or incentives, there is a strong danger therefore that any new self-regulatory system will only really apply to those consultants who already sign-up, and that a small proportion of consultants and most in-house lobbyists will continue to escape the regulatory net.

8.5 Sanctions or incentives, of whatever form, would have to be introduced by the institutions being lobbied, including Parliament, government, the devolved institutions, local government, and government bodies. This is outside the control of the PAC. Some possible sanctions and incentives are set out below, but this is by no means intended to be exhaustive.

A. Lobbying restrictions - informal

8.6 The House of Parliament and the Cabinet Office could introduce a system by which it is desirable, that lobbyists obtain a "kitemark" which demonstrates that they have met the regulatory standards set out by the PAC. As in Brussels, this might operate informally, so that it is not essential but is certainly desirable. The disadvantage of such a system would be that, as it is not a requirement, it may simply be ignored. Reports from Brussels suggest that the system has not been entirely effective.

B. Lobbying restrictions - formal

8.7 The House of Parliament and the Cabinet Office could introduce a system by which it is essential that lobbyists obtain a "kitemark" which demonstrates that they have met the regulatory standards set out by the PAC. Brussels is currently investigating such a system. The disadvantage of such a system is it may be seen to restrict democratic contacts. A transitional period is likely to be needed to allow all lobbyists time to sign up to the system before it begins in earnest.

C. Parliamentary passes

8.8 The Houses of Parliament could sanction those who remain outside of the self-regulatory system by making it conditional on their being issued Parliamentary passes. Alternatively they may introduce a new pass, restricted to advocates who have signed up to the new system. This might be as part of an overhaul of the pass system which also introduces more consistency to the issuing of passes. Whilst most consultancies do not deem it appropriate to take parliamentary passes, it is more common for in house practitioners to have passes, for example in their support role for parliamentary groups.

Q19. Are sanctions or incentives required to make the self-regulatory system universal? What sanctions and incentives can be put in place and to whom should they apply?

9. OTHER ISSUES

9.1 The Working Party is very conscious that this issues paper has only set out in summary the issues that will arise in establishing a new umbrella body for lobbying. The Working Party takes the view that a pragmatic approach would be not to over-complicate the steps to be taken to enable the creation of the Public Affairs Council as soon as possible. Once the PAC has been established, it will be for the new body to consider any further issues.

9.2 However the Working Party would welcome views on any other issues that respondents feel should be addressed before the PAC is established.

Q20. Is the Working Party's view correct that once the issues set out earlier in this paper have been clarified, the PAC should be established as quickly as possible, leaving other, more detailed issues to be resolved later?

Q21. Are there any important issues overlooked in this paper that need to be addressed now?

ANNEX A: MEMBERSHIP OF THE WORKING PARTY

Mark Adams OBE (APPC)

Rod Cartwright (PRCA)

Colin Farrington (CIPR)

Professor Justin Fisher (Independent)

Philippa Foster Back OBE (Independent)

David Gallagher (PRCA)

Francis Ingham (PRCA)

Keith Johnston (CIPR)

Robert Khan (CIPR)

Robbie MacDuff (APPC)

Sir Philip Mawer (Independent)

Gill Morris (APPC)

Note: Nicky Edwards and Richard Messingham of the Law Society each attended one meeting of the Working Party, on 25th March 2009 and 24th April 2009 respectively.

ANNEX B: GUIDING PRINCIPLES OF CONDUCT FOR INFLUENCING POLICY

It is a fundamental right of all to make representations to holders of public office in pursuit of a change in policy or legislation, to seek information, to plead a case or to set out views. It is however important that all those making representations do so in an appropriate manner consistent with safeguarding standards in public life and trust in the democratic process.

These principles should apply to everyone seeking to influence policy and the institutions of government, whether for their own benefit or on behalf of others, and whether through direct representation, advice to others, or third parties.

The principles are designed to complement, rather than replace, any codes of conduct applicable to specific professions or groups which aim to influence policy.

1. Transparency & Openness

- Always be clear and precise about your identity and any organisation you represent, either directly or on an advisory basis.
- Never give a false identity or claim to represent an individual/organisation without express permission.

2. Accuracy & Honesty

- Never knowingly make false or misleading claims or misrepresent the views of others, and take action to avoid doing so inadvertently.
- Always provide accurate information.

3. Integrity

- Never offer financial or any other inducement, including direct or indirect payments, offers of employment or substantial gifts or entertainment, to any holder of public office in an attempt to influence the decision making process.
- Clearly declare any relevant financial or other links to the public office holder in order to ensure he or she is protected from a potential conflict of interest.

4. Propriety

- Always seek to follow the rules of the public body to which you are making representations, and where appropriate seek guidance from the public body on any rules of relevance.
- Ensure that in any dealings with holders of public office, you do not encourage them to break the rules of the institution they represent governing their activities.