

CLOSED SCOTLAND?: LOBBYING AT HOLYROOD

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INTRODUCTION

Scottish devolution has acted as a major spur to the growth of the lobbying industry in Scotland. Of course, lobbying pre-existed the creation of the Parliament and Executive in Edinburgh in 1999. The old Scottish Office was undoubtedly a focus for such activity. However, the creation of new political institutions has changed the terms on which the game is played: in certain respects it has made the role of lobbying in Scotland much more visible. Lobbying is a debatable public policy issue for the first time. The creation of the Parliament has meant that standards of political conduct are now subject to new scrutiny. And at the close of 2001, it looks as though Holyrood is now beginning to approach the question somewhat differently from Westminster. Only as recently as spring 2001, we might have predicted that the lobbyists would find themselves slipping easily into a voluntary regime of self-regulation that simply reproduced that of Westminster. But no. A limited statutory register is in fact being proposed rather than the tacit understandings of the gentlemen's club. How did we arrive here?

This chapter follows on from our book *Open Scotland?*, which analysed the interconnections between political journalism, institutional politics at Holyrood and the lobbying industry (Schlesinger, Miller and Dinan 2001). As a result of that research, we submitted evidence to the Standards Committee's inquiry into lobbying to inject public interest arguments into the debate (Dinan, Miller and Schlesinger 2000; Stirling Media Research Institute 2001; Miller, Dinan and Schlesinger 2001). What follows, therefore, reflects our experience of both researching Scottish lobbying and the response to our arguments.

THE IMPACT OF 'LOBBYGATE'

The 'Lobbygate' inquiry by the Scottish Parliament's Standards Committee in October 1999 has had a significant impact upon the policy debate regarding lobbying of the devolved legislature. 'Lobbygate' centred on claims by lobbyists that they had privileged access to the heart of Scottish government. These claims were exposed by an undercover 'sting' by *The Observer*, and when this story became public, it threatened the credibility of the fledgling Parliament as the vehicle for a new style of open politics that marked a departure from the bad old ways of Westminster (Schlesinger et al. 2001: Ch. 12).

The Standards Committee is charged with upholding the proper conduct of MSPs. Its investigation of 'Lobbygate' was not a resounding success, due in part to its narrow terms of reference. There was no conclusive evidence that any of the ministers or their aides mentioned by the lobbyists had acted improperly. But in the highly publicised case of Jack McConnell, now First Minister, the exoneration was based on evidence which committee members considered to be limited. Coming so early in the life of the new Scottish politics, the media – which seized upon the case and gave it exhaustive attention – and the wider public came away with the distinct impression that the probity of Scottish public life was in question. The proximity of the worlds of politics and public relations and lobbying was widely judged to be at the heart of the matter – just as it had been in the repeated sleaze cases at Westminster during John Major's administrations.

The 'Lobbygate' affair led to an inquiry being set up by the then First Minister, Donald Dewar. This looked into the award of PR contracts in the public sector and it did little to counter charges of cronyism or reassure observers. Even *PRWeek* (28 January 2000), the generally tame trade journal for the UK public relations industry, hinted that a whitewash had taken place.

The Standards Committee returned to consider lobbying once again in May 2000. With 'Lobbygate' behind them, it was evident that members of the committee believed that outside interests required some regulation. The 'Lobbygate' inquiry undoubtedly shaped committee members' views as to how relations with outside interests should be handled at Holyrood. As the public storm abated, Standards Committee member Lord James Douglas-Hamilton wondered whether lobbyists as well as MSPs should have a registration scheme and code of conduct (Standards Committee 1999: col. 233). While the principle of registration received this early airing, the practicalities of who should be registered, and how, confronted the committee. It was clearly signalled that regulation would target commercial lobbyists. The committee were uncertain whether in-house lobbyists for corporations, trade associations and the voluntary sector should be included, and whether such a register would attract wider parliamentary support.

TALKING SHOP

In May 2000, the Standards Committee agreed a phased consultation on the issue, beginning with Members' experiences of, and attitudes towards, lobbying. Forty-seven MSPs responded to a survey which revealed lobbying to be a commonplace activity at the Scottish Parliament. MSPs seemingly showed little interest in regulating the practice (Standards Committee 2000: 7). In October 2000, the Standards Committee issued a public consultation document seeking views on the organisation and experience of lobbying the Scottish Parliament in its first year. Those who responded were largely insiders to the world of Scottish public affairs and were mostly satisfied with the status quo. The Parliament was proving to be an accessible institution to the growing policy community in its orbit, and while some sought further guidance on how MSPs would prefer to be lobbied, nobody except the present authors appeared to favour registration.

At this point it seemed the prospects for registration of lobbying had receded, but this was to change as the committee opted to take oral evidence from representative bodies, including the Association of Professional Political Consultants in Scotland (APPCS), the Association for Scottish Public Affairs (ASPA), the Scottish Civic Forum, the Convention of Scottish Local Authorities (COSLA), the Scottish Council for Voluntary Organisations (SCVO) and the Scottish Trades Union Congress (STUC).

The substance of the oral evidence heard by the Standards Committee concerned the possible pros and cons of regulation. In our evidence for the Stirling Media Research Institute, we argued that a register of all lobbyists would bolster the code of conduct governing MSPs and make a telling contribution to the probity, openness and transparency of Scottish politics. In essence, we proposed that both MSPs *and* lobbyists should be regulated. The SCVO opposed regulation, repeating the conventional wisdom that this would create a barrier to participation by giving those registered an 'elite' status, though without offering any convincing evidence for this proposition. The Scottish Civic Forum also opposed regulation of voluntary sector lobbyists for the same reasons but accepted that regulation of 'lobbying for hire' was a different matter (Standards Committee 2001b: col. 769). The STUC's oral evidence expressed concern that a register of lobbyists might compromise Parliament's accessibility, although the registration of only fee-based or commercial lobbyists was deemed acceptable. The STUC wished to ensure equality of access for resource-poor groups.

The limitations of voluntary self-regulation were exposed when ASPA and the APPCS spoke on behalf of the lobbying industry in Scotland. ASPA, with members drawn mainly from consultancies, law firms, and in-house lobbyists, conceded that they represented a 'relatively small percentage' of those lobbying the Parliament (Standards Committee 2001b: col. 734). When asked 'What on earth would be the use to MSPs of a voluntary code of which many

organisations are not part?' (ibid: col. 753) the APPCS were similarly unable to satisfy the concerns MSPs raised about those not subject even to voluntary sanctions.

Members of the committee were unimpressed to learn during questioning that Beattie Media, central figures in the 'Lobbygate' affair, had been members of ASPA and subject to self-regulation. When probed about their investigation and complaints procedures it became evident that ASPA had quietly swept the matter under the carpet, preferring to let the scandal die down when Beattie Media's lobbying arm was wound up during the Standards Committee's investigation. Alan Boyd, convener of ASPA at the time of 'Lobbygate', insisted that as the association had not received a complaint against Beattie Media, it did not investigate. Chairman Mike Rumbles MSP contrasted the response of his committee, which did not have a remit to investigate Beattie Media but did so speedily once evidence came into the public domain, with ASPA's failure to police its own membership.

The committee was interested to hear why ASPA had been founded. When committee member Tricia Marwick MSP suggested that ASPA was set up to 'see off any future regulation that the Scottish Parliament might introduce' (ibid: col. 743), Boyd replied that it had actually been an attempt to replicate the open, transparent and participative culture of the Parliament amongst lobbyists. This account is somewhat at odds with the minutes of an early ASPA meeting at which Boyd suggested: 'We can allow the Parliament to regulate our own affairs [or] we can get our act together and write a code which will allow us to regulate on our own' (Schlesinger et al. 2001: 212).

The mood during ASPA's evidence grew fractious when Boyd, a former president of the Law Society of Scotland, warned the committee of possible conflicts between their focus on giving private advice to clients on public policy issues by commercial lobbyists and certain rights to privacy protected by the European Convention on Human Rights (ECHR). Although at the time considered by some committee members to be a red herring, invoking the ECHR was to become a favoured refrain of those opposing registration for the duration of the consultation, and this possibility clearly shaped the registration scheme eventually favoured.

In their evidence to the committee, the APPCS quickly distanced themselves from ASPA. They stated that none of their members were affiliated to ASPA, that they did not represent legal firms with public policy arms, that they published a register of their clients and that they had acted on allegations of impropriety during the 'cash-for-access' or 'Drapergate' scandal at Westminster in 1998, immediately launching an investigation and suspending two firms from their association. The APPCS were asked to explain why they now favoured self-regulation in Scotland, as opposed to their previous support for a statutory register during the Nolan and Neill inquiries. Robbie MacDuff, secretary of the APPCS, claimed that evidence from other parliaments suggested that

registration had not worked effectively. However, there is evidence that statutory registers can and do work and even the APPCS recognised that certain registers had failed due to industry non-compliance and obstruction (ibid: col. 759) – a situation that might well apply in Scotland.

During its questioning of the APPCS, it became evident that the Standards Committee was trying not to replicate the Westminster lobbying model. After taking evidence, the committee decided upon another phase of consultation, this time explicitly focused on how a registration scheme might work in practice, rather than revisiting the principles of regulation, which had by now been well rehearsed.

LOBBYING FOR LOBBYING: ANATOMY OF A CAMPAIGN

As submissions came in during August 2001, they were accompanied by media reports, editorials and behind-the-scenes lobbying. The underlying strategy by the lobbying industry's trade associations (APPCS, ASPA and the Institute of Public Relations), who had met and coordinated their responses over the summer, was to take the spotlight off themselves, shifting it firmly onto the politicians and seeking to discredit the committee's arguments. The same objective was pursued by the bodies representing other professions engaged in lobbying (such as the Institute of Chartered Accountants of Scotland, ICAS). The APPCS and IPR at a UK level all began to take an active interest in this phase of the consultation.

The opening salvo had come on 9 May 2001, when lobbyists briefed *Business a.m.* over the perceived shortcomings of the likely Standards Committee proposals. The paper played down the importance of 'Lobbygate' as 'overblown'. Angela Casey, convener of ASPA and managing director of Countrywide Porter Novelli in Edinburgh, cast doubt on the committee's grasp of the realities and alleged that the commercial lobbyists were being used as scapegoats. The trade associations ought not to be exempted, she argued. In another broadside, Hazel Moffat of Saltire Public Affairs held that 'if there is a lack of trust, the MSPs have nobody to blame but themselves' (*Business a.m.*, 31 October 2001).

On 2 July 2001, *Holyrood* published an article by Robbie MacDuff that restated his organisation's preference for a voluntary code but also indicated its willingness to help shape a statutory registration scheme. He went on to argue (in line with the APPCS's submission to the Standards Committee) that lobbying by trade associations and companies should also come within the net. This reflected concern – which was to be reiterated – that 'in-house' lobbyists would be untouched by any likely legislation, thereby severely disadvantaging commercial lobbyists alone (MacDuff 2001: 24).

On 13 August 2001, the deputy director of the accountants' trade body, ICAS, was quoted as saying that 'The committee has gone way beyond its

remit', while *Business a.m.* (13 August 2001) editorialised in ICAS's support, claiming the committee's ideas did not 'add up'. The arguments were repeated in the accountants' trade journal, *Accountancy Age*, the same week (16 August 2001). A day later, *PRWeek* (17 August 2001) reported that the Scottish Parliament might be acting illegally by attempting to regulate lobbying. It was noted that the PRCA and the APPCS had submitted evidence and that the former believed that the proposals contravened the 1998 Human Rights Act.

The view that regulation might breach the European Convention on Human Rights is questionable. Article 8 of the Convention, on privacy, is intended to protect personal privacy, not that of large corporations or other such bodies. To breach the Convention, it appears, would require a government to take actions deemed to be 'disproportionate'. A requirement by the Standards Committee to disclose lobbying tactics and spending would be intended to prevent the exercise of undue influence on Parliament. According to the Scottish Human Rights Centre, such disclosure would be 'probably the least intrusive and most effective means of achieving this end' (personal communication, August 2001).

In another refrain to be repeated, commercial lobbyists also attacked the exemption of in-house public affairs as unfair to consultancies. *PRWeek's* editorial accused the Standards Committee of 'a knee-jerk reaction to the Beattie Media scandal' (17 August 2001). The leader went on:

It looks bleak for PA [Public Affairs] consultants, but the constraints could be halted. The Human Rights Act, which brought the European Convention on Human Rights into UK law, comes down hard on those who limit freedom of expression or restrain trade. The Parliament could find itself up against greater barriers than even it is proposing.

On 19 August 2001, in an evident counter-strike, the *Sunday Herald* reported Mike Rumbles as saying, 'We want to take on those who practise the dark art of spin and make sure there is no threat to the reputation of the Scottish Parliament' (19 August 2001). The Standards Committee was reportedly considering 'naming and shaming' firms contravening its proposed registration scheme and barring their access to MSPs. The rather dramatic headline was to be recycled in the coming months as lobbyists sought to defend self-regulation. In the following week's letters page, Ian Coldwell, chairman of IPR (Scotland), denounced the committee's proposals as a threat to the Parliament's openness (*Sunday Herald*, 26 August 2001).

Coldwell's letter was part of an orchestrated campaign. On 20 August 2001, *Business a.m.*, *The Herald*, and *The Scotsman*, which had all been briefed on the matter, reported the views of the Scottish Council for Development and Industry (SCDI), which attacked the Standards Committee's proposals. In a covering letter, Alan Wilson, SCDI chief executive, stated boldly that the Council did 'not believe that a registration scheme for commercial lobbyists in

the Scottish Parliament is necessary or workable. Nor . . . that such a process would be effective in ensuring transparency in the lobbying process. The focus should instead be on MSPs themselves.'

SCDI emphasised problems of definition and of enforcement, saying that 'it would be more realistic to scrutinise the lobbied than the many forms of lobbyist', and called for a strengthening of the code of conduct for MSPs – which had already been suggested by the Standards Committee. The idea that there should be any ethical expectations about lobbyists was rejected (Wilson 2001). *The Herald* (20 August 2001) ran an editorial supporting SCDI's argument. The leader entirely bought the Council's line, saying that it had no particular axe 'to grind because it does charge a fee for lobbying on the behalf of its wide membership' (echoing the words of that organisation's own submission). It endorsed SCDI's view that the scheme was unworkable, putting the onus on MSPs. In fact, the editorial missed the point because the committee had already decided on the principle of regulation.

Although purporting to be impartial, this attempt to sway informed opinion was actually handled by David Whitton, the one-time spin-doctor for Donald Dewar and now a PR consultant and columnist for the *Record*, who had been retained by SCDI to handle the release of its document.

Far from being a source of neutral advice, therefore, SCDI did have a partisan agenda and self-interest. Its executive board has a number of lobbying organisations on it, such as Countrywide Porter Novelli, the multinational corporation with a leading role in ASPA. The PR directors of Railtrack, Shell and EW&S Railway are members, as are a number of accountancy and law firms with lobbying interests. In its own submission, SCDI indicated its unhappiness with any principle of disclosing clients as some of its members 'prefer to remain anonymous and current Data Protection legislation would prevent publication'. SCDI's chief economist and policy manager, Ian Duff, in a letter to *The Scotsman* wrote that the Council had taken the view that regulation of lobbyists was a bad idea since June 1998 and had said so in a submission to the Consultative Steering Group; he maintained that this view was supported by a cross-section of SCDI's membership (*The Scotsman*, 1 September 2001). Yet SCDI had not submitted any evidence to the previous two consultations held by the Standards Committee.

SCDI's report and the related press coverage were picked up by the BBC's *Newsnight Scotland*. Jack Irvine, executive chairman of Media House International, was fielded to put the lobbyists' case in a live debate. Meanwhile Beattie Media were again making headlines for all the wrong reasons as press reports claimed they were implicated in a dirty tricks campaign against trade unionists seeking to represent workers at the National Semiconductor plant in Greenock (*Sunday Herald*, 12 August 2001). Moreover, questions regarding the probity of public sector PR contracts resurfaced in a report that Beattie Media had hired a former chief executive from West of Scotland Water (*The Herald*, 31

July 2001). The appointment was seen as a crude attempt to secure PR work prior to the amalgamation of Scotland's three water authorities.

The summer season of discontent continued with a further story in the *Sunday Herald* (26 August 2001) which reported on the setting up of the Scottish Parliament Business Exchange (SPBE), backed by the Parliament's Presiding Officer, Sir David Steel, and the chief executive, Paul Grice. The central purpose of the organisation was reported as improving links between business and politicians on the lines of Westminster's Industry and Parliament Trust. The *Sunday Herald's* headline ran: 'Want access to MSPs? The price is £6000', the figure referring to the sum committed by each of the founder members which included Pfizer, ScottishPower, Royal Bank of Scotland, BAA Scottish Airports, Deutsche Bank, Shell, BP, Conoco, British Energy, Scottish & Newcastle and Tesco. As lobbying and potential kickbacks for politicians were the post-'Lobbygate' frame, the story was structured on those lines. This theme was pursued the next day in *The Herald* (27 August 2001). Then, in a column, the paper's Scottish political editor, Murray Ritchie, asked 'When is a lobbyist not a lobbyist? Answer - when he's a member of a posh institute' (28 August 2001). Casting no aspersions, he called for complete openness in dealings between lobbyists and MSPs, a slight shift from the *Herald's* original editorial line. The answer to Ritchie's question came from Paul Grice, chief executive of the Parliament. He argued that the business exchange was not a body for lobbyists and that it would encourage MSPs to gain experience not just in the business world but in the public sector and in NGOs. Indeed, he maintained, SPBE members would be expressly forbidden to lobby (*Sunday Herald*, 2 September 2001). Much lobbying involves the pursuit of contacts and seeking 'face time' with decision-makers. It is a trade that thrives on opportunities to network with the powerful. Therefore it will be extremely difficult to ensure that its members rigorously abide by any prohibition on lobbying.

By October 2001, the lobbyists and their business sponsors were regrouping at a seminar held by SCDI under the Chatham House rule, a convention described as 'a musty rubric which lets me tell you what was said but not by or to whom' by the *Scotsman's* Keith Aitken, who was at the meeting. Lobbyists met the Standards Committee's chairman, Mike Rumbles, at the seminar and took the opportunity to lobby privately on behalf of lobbying. They evidently pursued a new line of argument, complaining that 'MSPs are more inclined to heed the public's perception than those of business' (*Scotland on Sunday*, 23 September 2001). Claiming that the Parliament was 'anti-business' seems to have had some effect.

WHERE NEXT?

By the close of 2001, the Standards Committee had agreed to the principle of limited regulation. Even this required determination in the face of concerted opposition. Although it marks an important development, there are some key shortcomings in the approach taken. The proposed register will only require lobbyists to declare the names of staff involved in lobbying and the clients for whom they are acting, information already required by the APPCS's voluntary code. Failure to comply will result in 'naming and shaming' rather than fines or any other sanctions being imposed on rogue lobbyists.

By concentrating on commercial lobbyists the committee has left untouched the place of in-house public affairs activity. Were consultants to face too much scrutiny, lobbying would most likely be conducted from inside large corporations and public organisations that fall outwith the proposed rules. Trade associations and the entire voluntary sector also escape the net. There are good reasons of political expediency for this. There is a particular reluctance to deal with a voluntary sector that wraps itself in the protective flag of civic Scotland. The significance of ignoring the in-house lobbyists seems to have eluded the committee - or perhaps it simply thinks this is too big a nut to crack. The committee are keen to satisfy themselves that the lobbying process is transparent for MSPs, perhaps forgetting that the wider public might appreciate a more complete account of relations between all lobbyists and decision-makers in Scotland.

The commercial lobbyists are right in one key criticism: if there is no level playing field for all significant attempts to influence public policy and mobilise resources to this end, regulation is too narrowly conceived. That is unfair and it is also short-sighted. Those left outside the rules will be able to conduct their business without the same measure of accountability as those caught within them. Our picture of the exercise of political influence in Scotland will be that much less complete. The public and Parliament will be that much less informed. Anomalies will appear and questionable cases will arise that will throw this incomplete attempt to address the issue into disrepute.

The Standards Committee, in any case, has quite a political struggle on its hands. Not only does it have to see off its critics in the lobbying industry and devise a workable scheme, it also has to convince the entire political class that its approach is right. The committee has gone through a major learning process in developing its approach. It has taken some two years of deliberation to arrive at its present destination, which in our view is a poorly conceived attempt to apply the principles of openness and transparency. The committee has been headed off at the pass by industry opposition. The wider political class in Parliament remains uneducated in the arguments and may need some persuasion to adopt the committee's line. The Scottish Executive will doubtless watch the process closely because if the Standards Committee successfully

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establishes a new benchmark for relations between at least some lobbyists and MSPs, eyes will turn to the Executive, and questions will be asked as to why it should conduct itself differently.

Of course, MSPs do have a fall-back position that will please the lobbyists' lobby. They can look again at their code of conduct and tighten it up even further. There is no doubt that this would be easier to police than using a registration scheme. There are 129 Members to scrutinise as against numerous daily acts of lobbying. There is no doubt, too, that MSPs as public representatives should be seen to be acting with propriety. But should the lobbyists' argument simply be accepted? That is doubtful. The Parliament was created to improve democracy in Scotland and not for the convenience of lobbyists. For politics to acquire widespread respect, those who try to influence the political process need to be rule-governed as well as those who legislate and take executive decisions. Only then is there any chance of the game being seen as reasonably clean, with some positive consequences for public confidence.

The lobbyists have repeatedly argued that some of the Standards Committee's proposals would fall foul of the Human Rights Act. Legal opinion on this is, at best, equivocal. Significantly, though, it was precisely its own toughest proposals that the Standards Committee abandoned when deciding on the kind of information to be registered. Details on the resources devoted to shaping legislation – lobbyists' fees, expenditure and their communication techniques – were rejected by the committee as they sought to balance the interests of lobbyists and their clients against the wider public interest in parliamentary transparency. The minimal form of registration proposed for Scotland may, at best, lead to a marginal increase in transparency and openness. A register stripped of meaningful information is of little use to the Scottish public. The committee has indicated that it will keep the scope of the register under review, but it will be difficult to demonstrate the benefits of registration on the basis of current proposals. It is likely that the scheme will go the way of others that have been tried in various legislatures: where a register is uninformative and therefore unused, it falls into disrepute and is eventually scrapped altogether.

Some lobbyists like to argue that the Scottish media will act as our watchdogs over both politicians and lobbyists. On this score, since 'Lobbygate' – a story actually broken by a London paper – the record has been patchy, to say the least. With the odd honourable exception – the *Sunday Herald* and the BBC's *Newsnight Scotland* – what is most striking is the ease with which Scotland's quality press has simply fallen in line with the lobbyists' lobby. The lobbyists' case has been recycled without any serious challenge or analysis. In the run-up to devolution the political press was assiduous in denouncing lobbyists and in distinguishing itself from them. That critical bite has become a compliant bark – which is another reason why some general principles are needed.