CIPR CHARTERED INSTITUTE OF PUBLIC RELATIONS

Failure by design: the Lobbying Act at ten

June 2024

Foreword

As the election draws ever closer, the airwaves and print media will be crammed full of stories about doorstep issues.

But whilst these issues will be of unquestionable importance to voters, what sustains the entire political edifice is trust – and this is now at a dangerously low ebb. The never-ending string of lobbying scandals that has enveloped Parliament since the Lobbying Act was introduced a decade ago with the intention of stopping such practices, has helped drive trust in politicians to its lowest score in 40 years, according to last year's Ipsos Veracity Index.

The country needs nothing short of an overhaul of the lobbying laws. A majority of people recognise that lobbying helps create better public policy. What the public rightly rejects is the whisper in the ear, the cosy chat, and all the things that David Cameron condemned when he introduced the Lobbying Act in 2014.

Our new report - Failure by design: the Lobbying Act at ten – demonstrates not just how the existing rules have failed to provide transparency, but actively conspire to prevent it. Reform is overdue.

No matter who sits on the Government benches after the election, it is vital that the laws are overhauled. After all, lobbying reform might not seem like a doorstep issue, but insofar as it is a bellwether for public probity, it will determine whether the door is actually opened at all.

Alastair McCapra
CEO of the Chartered Institute of Public Relations
June 2024

Introduction

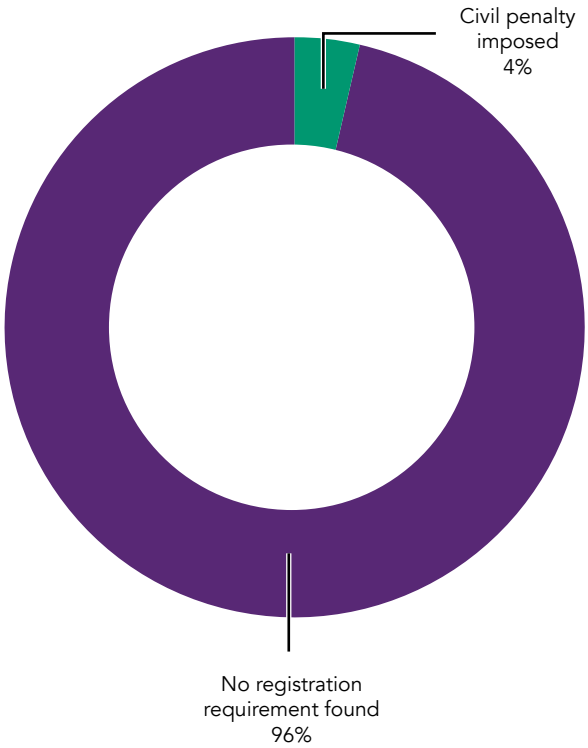
The Office of the Registrar of Consultant Lobbyists (ORCL) has an unenviable job. Responsible for monitoring and enforcing compliance with the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 (The Lobbying Act)[1] - policing the lobbying of Westminster, in other words - ORCL has been asked to catch smoke with its bare hands.

After all, the Lobbying Act is manifestly flawed, being so full of exemptions and loopholes that, despite its best efforts, ORCL, set up under the Act, has found itself powerless to stop the never-ending string of scandals that has enveloped UK politics. In the five years prior to the infamous Greensill affair, for instance, Transparency International identified twelve lobbying scandals,[2] with every subsequent affair not only underscoring the flaws in the Lobbying Act, but further damaging the public's confidence in the democratic process.[3]

Failure by Design lays bare the flaws baked into the very foundations of the Lobbying Act, revealing that:

- In 51 of the **53 (96%)** investigations into suspected unregistered consultant lobbying that ORCL conducted between the 16th June 2019 and the 13th February 2024 – the period for which there was publicly available information at the time of writing – ORCL found there was no requirement for the communication in question to be registered
- There were **three** investigations that did uncover breaches including the two instances of unregistered consultant lobbying and one instance of an inaccurate Quarterly Information Return (QIR) being submitted
- The three investigations resulted in civil penalties of just **£3,180** being imposed, raising questions about whether ORCL is sufficiently equipped to police the lobbying of Westminster

ORCL investigations into suspected Lobbying Act breaches 16th June 2019 - 13th February 2024



[1] For a summary of ORCL's responsibilities, see the FAQ it published on its website. ORCL, Frequently Asked Questions (accessed online 15th April 2024)
[2] Transparency International, *Transparency International UK's submission to the post-legislative review of Part 1 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 (2021), p.3*
[3] For the public's attitude towards lobbying scandals, see CIPR, *The Never-Ending Scandal* (2023), p.10

The outcomes of the investigations matter because they show how – and how often – lobbying flies under the radar, typified by the investigations into the infamous David Cameron-Greensill and Owen Paterson scandals. The former sparked a wave of public concern, and the latter preceded the MP's resignation, and yet ORCL was powerless to mandate registration or impose a penalty.

That ORCL found neither Cameron or Paterson in breach of the Act demonstrates clearly, to borrow the words of the Treasury Committee tasked with exploring the 'Lessons from Greensill', the 'insufficient strength of the rules' and reflects 'a strong case for strengthening them'.[4]

This report has been published by the Chartered Institute of Public Relations (CIPR) to inform discussion around the reform of ORCL and the transparency regime that should operate in Westminster and Whitehall to support and restore trust in our political institutions and politics.

No tinkering here or amending there can fix an Act that is so fundamentally inadequate. Until proper reform is implemented, with the current register of consultant lobbyists being replaced with a register of lobbying itself, ORCL will find itself unable to shine the light of transparency the UK urgently needs. Reform is long overdue.

This report has been conducted by the Chartered Institute of Public Relations (CIPR) to inform discussion around the reform of ORCL and the transparency regime that should operate in Westminster and Whitehall to support and restore trust in our political institutions and politics.

[4] Treasury Committee, *Lessons from Greensill Capital* (accessed online 15th May 2024)

Part One

The rules

The background

In 2013, the Conservative-Liberal Democrat Coalition launched the first attempt by a UK government to legislate for the direct regulation of professional lobbyists.[5] The intention was to shine a light of transparency on UK politics amidst concern that lobbying, as David Cameron himself claimed, was 'the next big scandal waiting to happen'.[6]

Passing through Parliament and receiving Royal Assent in January 2014, the Lobbying Act introduced a statutory register that consultant lobbyists – those communicating with a UK Government Minister or Permanent Secretary on behalf of a third party in exchange for payment[7] – were obliged to sign, revealing the names of clients paying them to lobby.[8] By providing ministers with greater transparency of the range of interests consultant lobbyists were representing and by also allowing the public to see who was attempting to influence lawmakers, it was hoped that some much-needed transparency would be injected into the lobbying of Westminster.

The Act also established ORCL, which was empowered to set up the Westminster Register of Consultant Lobbyists and enforce compliance with the 2014 Act. ORCL was given the power to impose civil penalties of up to £7,500 on those who failed to comply with the Act and to refer serious breaches to the Director of Public Prosecutions.[9]

In 2013, as the Bill was making its way through Parliament, the Political and Constitutional Reform Committee (now replaced by the Public Administration and Constitutional Affairs Committee) wrote in its report on the Bill that '[a]s proposed, the Bill would do little, if anything, to impact upon the scandals that led to all parties supporting legislation. This will disappoint the public and reduce further their trust in politics'.[10]

Thus, in a turn of events that surprised no-one, the Act failed to provide the promised transparency. This is not down to the efforts of ORCL, stretched and under resourced though it arguably is. Rather, the creation of the Register itself, as academic and lobbying expert Dr Barry Solaiman wrote, 'cannot be considered a success because only a very narrow range of easily-circumventable communications are registrable'.[11]

Even as the Act was taking shape, these limitations were obvious to observers. Lobbying trade bodies and campaigners warned that the Register could capture as little as one per cent of lobbying activity – a warning later vindicated by the dawning realisation amongst observers that the majority of lobbying, in the words of Transparency International, takes place 'in the shadows'.[12]

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[5] Barry Solaiman, 'Lobbying in the UK: Towards Robust Regulation', *Parliamentary Affairs* (2023)
[6] Matt Mathers, 'We don't know who is meeting whom': What David Cameron said about lobbying in 2010', *The Independent* (14 April, 2021)
[7] ORCL, *FAQ*
[8] *Ibid.*
[9] ORCL, *Guidance on compliance, offences and penalties* (March 2024), p.4
[10] House of Commons Political and Constitutional Reform Committee, *The Government's Lobbying Bill* (2013)
[11] Solaiman, *Lobbying*
[12] Cited in Transparency International, *Submission*

Failure by design

It is not so much the case that the Lobbying Act contains loopholes. Rather, its exemptions provide an expansive and open door to those seeking to avoid registration. Its failure was assured from the moment it entered Parliament: exemptions and loopholes being baked into the very text of the Act.

For one, only consultant lobbyists – who make up around 20% of UK lobbyists[13] - are actually allowed to sign the Register. Those working in-house at banks, law firms, trade unions, think tanks, and charities, for instance, could send a message to a UK Minister or Permanent Secretary every minute of every day and would be unable to register their activity.

What's more, only communication with Ministers or Permanent Secretaries needs to be registered: there is no requirement to log correspondence with APPG chairs, SpAds, MPs, select committee chairs, the Shadow Cabinet, regional mayors, peers, local government and junior civil servants, no matter how voluminous or significant its content. In short, ORCL has been left blind to the vast majority of lobbying in the UK.

The question arises: how did these limitations find their way into the text of the Act? When it comes to the omission of in-house lobbyists, the Government argued at the time such individuals didn't need to be included because it is clear whose interests in-house lobbyists represent.[14] The other reason, long suspected by many, is that the Lobbying Act may have had its wings clipped, ironically, by the lobbying of some business interests to ensure their activities remained out of the spotlight.

Whatever the cause, there are six key exemptions within the Act:

1. Non-registerable communications

2. VAT exemption

3. No payment for communications

4. Incidental lobbying exemption

5. Employee status exemption

6. Representative organisation exemption

1. Non-registerable communications

Non-registerable communication occurs where no messages have been sent to a Minister or Permanent Secretary directly from a consultant lobbyist on behalf of a client. It could also mean that the messages were sent to those political figures not caught by the Act.

As ORCL's guidance notes, only communication where a lobbyist has 'visible involvement' – correspondence sent directly by a lobbyist to a minister or permanent secretary – needs to be registered.[15] This means in practice that even if an individual meets the consultant lobbyist criteria, having been paid to draft a letter to a minister on behalf of a third party, provided the client sends it from their email address or on their own organisation's headed paper, it need not be registered.

The salient point here is that where ORCL is obliged to find that non-registerable communications have occurred, it is not a sign that no lobbying has taken place. Rather, it could also mean that any lobbying that has taken place, no matter how significant, is simply exempt from registration.

2. VAT exemption

As ORCL's guidance notes, one of the criteria for being a consultant lobbyist is being registered under the Value Added Tax Act 1994.[16] Indeed, the same guidance further clarifies that an entry cannot be added to the Register until this process has been completed, so lobbyists who have submitted details to HMRC are obliged to wait until they are able to add their name to the Register.[17]

The result, then, is that it's quite possible for anyone or any organisation who is not VAT registered to lobby on behalf of paying clients with no obligation to disclose anything. It also allows businesses domiciled abroad to lobby Westminster in secrecy. It is for this reason, then, that ORCL itself has said unequivocally that 'the Act's transparency purposes would be supported by the removal of the VAT registration test' with it potentially being replaced with a different *de-minimis* test.[18]

[13] Quoted in Solaiman, *Lobbying*
[14] *Ibid.*
[15] ORCL, *Guidance on registration and Quarterly Information Returns* (2023), p.4
[16] ORCL, *Guidance*
[17] *Ibid.* p.8
[18] Public Administration and Constitutional Affairs Committee (PACAC), 'Written evidence from the Registrar of Consultant Lobbyists (LOB17)', Lobbying and Influence: post-legislative scrutiny of the Lobbying Act 2014 and related matters inquiry (2023)

3. No payment for communications

In order for an individual to act as a consultant lobbyist they must receive payment from a client.[19] Importantly, this can be payment in cash or kind, although *pro bono* lobbying need not be registered. As will be seen, this exempts a significant volume of communication from registration.

4. Incidental lobbying exemption

The incidental exemption is potentially 'the most contentious, vague and problematic drafting in the legislation', to borrow ORCL's own words in the evidence it gave the Public Administration and Constitutional Affairs Committee's inquiry on the Act.[20] Put simply, it exempts those from signing the Register, even if they are being paid by a third party to lobby, if they can show that their business consists mainly of non-lobbying activities.

Perhaps in an attempt to deter individuals trying to exploit the incidental lobbying exemption, ORCL's guidance states clearly that 'this is a narrow exception and will not apply to most businesses or individuals that engage in consultant lobbying'. However, it also provides room for manoeuvre by adding that should lobbying make up a 'significant proportion' of an organisation's activities – a quantity not defined – then it is not incidental.[21] Ambiguity remains, and with it, a large exemption.

5. Employee status exemption

Coming to the fore during the Greensill scandal, the employee status exemption holds that anyone lobbying npractice, this means that those working in-house are not able to sign the Register, creating an incentive to simply put lobbyists on the payroll to avoid the need to register.

6. Representative organisation exemption

This exemption applies to an organisation if it represents a particular group or body of people rather than a specific organisation; its income is derived wholly or mainly from those people; and its communications on behalf of those people is no more than an incidental part of its general activity. Political parties and trade and business groups often fall within this exemption.

These exemptions, as will be demonstrated, allow significant lobbying to take place unregistered. Far from promoting transparency, the Lobbying Act is stifling it.

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[19] *Ibid.* p.3
[20] PACAC, ORCL evidence
[21] *Ibid.* p.13

Part Two

Cameron and Paterson

From DC with love

On the 21st March 2021, in the midst of the pandemic, the *Sunday Times* reported that former Prime Minister David Cameron had tried to secure Covid-19 loans for Greensill Capital by sending messages directly to senior political figures. The resulting scandal was sparked not simply by the sight of a former prime minister lobbying on behalf of a private company, but the volume and informality of the messages.

In all, 62 messages were sent from Cameron, including nine WhatsApp messages to the then Chancellor Rishi Sunak; twelve texts to the Permanent Secretary of the Treasury; and a dozen texts, emails, phone calls and other messages to the ministers Michael Gove, Matt Hancock, Nadhim Zahawi, John Glen and Jesse Norman.[22] Some, reports noted, were signed 'love DC'.[23] None were entered in the Register of Consultant Lobbyists.

On the 22nd March, the day after the *Sunday Times* broke the news, ORCL launched an investigation into whether the former Prime Minister had acted as an unregistered consultant lobbyist by sending a request to The Office of David Cameron for an email address to which it could send a formal letter. One day later, a formal letter was sent to Cameron to establish whether his activities fell within the criteria to be registered. The next day, Cameron sent a letter to ORCL confirming he was employed by Greensill in a personal capacity, meaning he was exempt from registering.

After further correspondence and clarification about the nature of Cameron's employment and contacts with government ministers, ORCL sent a final letter confirming the investigation had concluded almost a week after it had started. Cameron's activities weren't found to be within the scope of the Act, meaning he hadn't broken any rules.[24]

The reason for this was clear: Cameron was employed by Greensill and received no payment for lobbying other than his remuneration as an employee, meaning he was exempt from registering. The scandal may hang over Cameron's return to frontline politics, to quote *The Guardian*,[25] but in accordance with the Lobbying Act, Cameron was completely in the clear. Public confidence might have been dented, but ORCL, which moved with incredible and commendable speed, had no basis on which to act.

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[22] Rupert Neate, 'What is the Greensill scandal overshadowing David Cameron's return to cabinet?' *Guardian* (2023)
[23] Jim Pickard, Kaye Wiggins, George Parker and Cynthia O'Murchu, 'Grilling looms for David Cameron after MPs press Lex Greensill over collapse', *Financial Times* (2021)
[24] ORCL, *Summary of Investigation – Rt Hon David Cameron* (2021)
[25] Neate, *'Overshadowing'*

And then Paterson

Greensill would not mark the final chapter in the history of lobbying scandals, nor would it even be the last of that year. As 2021 drew to a close, *The Guardian* reported on consultancy work Owen Paterson, the then MP for North Shropshire, had undertaken for two companies, potentially lobbying on their behalf.[26]

As with Greensill, ORCL moved quickly, concerned that three unregistered communications with ministers between October 2016 and January 2017 might fall within the scope of the Act.

After a protracted back and forth that consumed a full year, Paterson was found not to have undertaken consultant lobbyist activities even as the MP, who would subsequently resign, was found by the standards authority to have broken rules on paid advocacy.[27]

Perhaps more than Greensill, the Paterson scandal highlights the limitations of the Act. Regardless of the content of the messages, or the fact he was contacting the highest echelons of government, Paterson's three communications fell outside of the scope of the rules solely because the MP was not registered for VAT when they were sent. Crucially, though, the investigation also noted that 'it is likely that the three communications would otherwise have been registerable if payment had been made to a VAT registered entity'[28] - an indication, perhaps, of just how tightly ORCL's hands are bound by the provisions of the Lobbying Act.

There is some irony that two of the incidents now synonymous with 'lobbying scandals', and which still attract significant press attention to this day, were, by the letter of the law, above board. ORCL moves quickly – a clear sign of its commitment to its task – but just as quickly hits the buffers thrown up by the Lobbying Act. As we shall see, it's not ORCL that's failing, but the Act.

There is some irony that two of the incidents now synonymous with 'lobbying scandals', and which still attract significant press attention to this day, were, by the letter of the law, above board.

[26] See the timeline in ORCL, *Summary of Investigation – The Rt Hon Owen Paterson* (2022)
[27] Adam Forrest and Liam James, 'What did Owen Paterson do? Everything you need to know about Tory lobbying scandal', *The Independent* (2022)
[28] ORCL, *Owen Paterson*

Part Three

Failure in practice

Breaches

That ORCL is doing its best to shine the promised light of transparency is beyond doubt. After all, between the 16th June 2019 and the 13th February 2024 – the period for which there was publicly available information at the time of writing – the watchdog opened **53** investigations into suspected unregistered lobbying.

And yet, for all its efforts, ORCL has been consistently let down by a Lobbying Act that serves to keep lobbying activity off the Register and from public view. After all, of the **53** investigations into suspected Lobbying Act breaches only **three investigations** – or **6%** – resulted in civil penalties: **one** for submission of an inaccurate QIR and **two** for unregistered consultant lobbying. In response, ORCL imposed civil penalties totalling £3,180.

The remaining **50** investigations into lobbying activity found no requirement to register demonstrating just how frequently ORCL bumps into the wall of exemptions that keeps lobbying off the Register:[29]

- In **44% of investigations** ORCL found **no registerable communication** had been made – the largest single category of results
- In **20% of investigations**, ORCL found that the **VAT registration** of the company in question exempted it from signing the Register
- In **18% of investigations**, ORCL found that **no payment** had been made to those making communications on behalf of a third party, thereby exempting them from signing the Register
- In **eight per cent of investigations**, ORCL found no registration was needed on account of the **incidental lobbying exemption**
- In **six per cent of investigations,** individuals lobbying were found to be **in-house employees**, rather than third-party consultant lobbyists, meaning they were exempt
- In **four per cent of investigations,** individuals lobbying took advantage of the representative organisation exemption

That is not to say that any of these companies are guilty of wrongdoing or unethical lobbying, simply that the Act is failing to provide the transparency that it promised.

Of course, ORCL doesn't rely on investigations to impose civil penalties. Rather, Lobbying Act breaches, be they for unregistered consultant lobbying, or late or inaccurate QIRs, can also be revealed as a result of self-reporting, ORCL's monitoring activities, or through declarations made when registering. Thus between 2016 and 2023 the watchdog imposed **78 civil penalties**, totalling £25,340.86 - giving an average fine of £324.88.

Reason for civil penalty	No. of civil penalties issued	Monetary Value (£)
Submission of inaccurate QIR(s)	5	1,000
Late submission of QIR(s)	48	8,350
Unregistered consultant lobbying	25	15,990.86
Grand Total	**78**	**25,340.86**

The imposition of just four civil penalties a year for unregistered consultant lobbying – arguably the most serious offence – hardly suggests that the Lobbying Act is a weapon to be feared.

[29] These percentages use rounded figures.

In Conclusion

The Lobbying Act is a failure by design. Rather than promoting transparency, the sheer number of exemptions serve to keep significant amounts of lobbying from the Register and, with it, from public view.

The time has come for reform. The Chartered Institute of Public Relations (CIPR) is not alone in demanding change. It is joined by Transparency International who has called for a statutory register of lobbyists covering both in-house and consultant lobbyists,[30] whilst the Institute for Government has called for the next prime minister to 'amend the Lobbying Act 2014 to include all lobbying of government, including that by in-house business lobbyists, incidental lobbying and lobbying of special advisers'.[31] The Committee on Standards in Public Life's *Standards Matter 2* report simply concluded that '[it] is too difficult to find out who is lobbying government'. [32]

And no less significantly, the lobbying industry itself is demanding reform: a recent CIPR survey, for instance, found that 86% of lobbyists think there should be greater transparency in Westminster lobbying.[33]

The UK needs to start again. The Act is broken beyond amending, so fresh legislation is needed to create a register of lobbying rather than lobbyists. Transparency needs to be at the heart of the new register, ensuring it seeks to include activity rather than turn a blind eye.

ORCL is dedicated to acting quickly and promoting transparency – it is time it is rewarded with the tools it needs to do its job.

The Lobbying Act is a failure by design. Rather than promoting transparency, the sheer number of exemptions serve to keep significant amounts of lobbying from the Register and, with it, from public view.

Methodology

Whilst the Cameron and Paterson scandals are household names, there have been many other investigations into lobbying non-compliance that do not involve MPs or former MPs as the lobbyist.

The research included in this report was sourced from the Office of the Registrar of Consultant Lobbyists' website.[34] Data is divided into investigation summaries (Statutory Notices) and Penalties.

Of the Statutory Notices issued between the 16th June 2019 and the 13th February 2024 – the period for which public data was available at the time of writing the report - only three investigations resulted in civil penalties. In the remaining 50 investigations ORCL provides the 'Registrar's decision' and 'summary of rationale for decision'. Every summary was manually audited and broken down into six different exemptions as identified by the CIPR: no registerable communication having been made; VAT exemptions; no payment having been made; the incidental exemption; lobbying having been conducted by an in-house employee; and the representative organisation exemption.

ORCL lists 106 cases of civil penalty notices issued by the Registrar since the Lobbying Act came into force in 2014, which at the time of writing covered the period 2016 and 2023. Only 78 cases resulted in the Registrar issuing a penalty, and this data was then broken down by penalty year, and monetary value of penalties issued per year. The CIPR also broke down the penalties by reason: Quarterly Information Return Non-Compliance, namely inaccurate or late submissions, and Lobbying Non-Compliance, which includes instances of pre—registration lobbying and an instance of unregistered consultant lobbying.

A draft of the report was sent to ORCL in advance of publication to ensure all the data provided is accurate.

[30] Transparency International, *Submission*
[31] Tim Durrant, 'Rebuilding trust in public life', *Institute for Government* (2024)
[32] Committee on Standards in Public Life, *Standards Matter 2 – Committee Findings* (2021)
[33] CIPR, *Nearly nine in ten UK lobbyists and PRs say that greater lobbying transparency is needed* (2024)
[34] Office of the Registrar of Consultant Lobbyists (ORCL), Investigations Summaries

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