Transparency International Seminar

Ethics, government and lobbying

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You may have noticed that the United Kingdom Government is currently preparing to introduce legislation requiring the registration of lobbyists. This is an issue that has been bubbling along over there for quite a few years. In 2007 the House of Commons Public Administration Select Committee began working on an inquiry into "Lobbying: Access and influence in Whitehall". In its report in 2009 it recommended a very detailed system of regulating lobbyists. However this was rejected by the incoming Conservative-Liberal Coalition Government. Nevertheless the formal agreement on which the new coalition government took office stated specifically, "We will regulate lobbying through introducing a statutory register of lobbyists and ensuring greater transparency."

The Government published a consultation paper in January last year, "Introducing a Statutory Register of Lobbyists", which asked lots of questions about the way lobbyists should be regulated, but provided little guidance about what the government might eventually do, if anything.

Before the election the Conservative leader and later Prime Minister, David Cameron, gave a speech in which he acknowledged that there was a "far too cosy relationship between politics, government, business and money" and forecast that "secret corporate lobbying" was "the next big scandal waiting to happen." Despite this, the new government did not act until the scandals happened.

First he lost his defence secretary when it was revealed that one of his advisers was funded by companies with a commercial interest in defence-related businesses. He nearly lost another when it was revealed that the then culture minister had developed a very close relationship with News Limited, at a time when that company was seeking permission to bid for the whole of the television network, BSkyB.

And then Peter Cruddas, then co-Treasurer of the Conservative Party, was forced to resign when it was alleged that he had offered men who were supposed to be overseas investors the opportunity to influence government policy and meet senior ministers in return for cash donations to the Tory party of from 100,000 to 250,000 pounds.

Let me stop there, before I list the latest scandals. The allegations against Mr Cruddas were published in the Sunday Times. Two journalists from the newspaper's investigations team set up a fake organisation, with a fake website and other subterfuge, in the guise of being prospective donors. Mr Cruddas sued for libel and earlier this month the High Court in London granted him an injunction to prevent further publication of the allegations on the newspaper's website and ordered the paper to pay damages, which have yet to be assessed. Mr Cruddas is apparently considering whether to pursue a malicious falsehood claim against the newspaper.

Less than a month ago the paper exposed another scandal, utilising the same "investigative" technique that produced the Cruddas allegation. This time they claim to have snared three members of the House of Lords - an Ulster Unionist peer who has resigned his party whip, and two Labour peers who have been suspended. The three peers have denied the allegations made against them. A Tory MP resigned the whip over allegations he agreed to be paid 1,000 pounds a day in return for using his position in Parliament to get Fiji readmitted to the Commonwealth.

True or not, the emergence of these scandals effectively revived the proposals to regulate lobbyists. The Government announced within a few days that legislation would be introduced before parliament breaks for its summer recess in mid-July, and expects it to pass before the end of the parliamentary session next April. It will be interesting to see just how far the legislation will go.

While scandals precipitated action, it is to be hoped that the legislation will be properly guided by ethical considerations such as those considered by the Commons Public Administration committee I referred to earlier. I want to quote just a few sentences from its conclusion (both at p. 60 of the report):

> We have tried to learn from practice elsewhere, but also to root our proposals in our own political tradition. Lobbying enhances democracy; but can also subvert it. Our proposals are designed to strengthen the former role, while making the latter more difficult.

And what I consider to be their most important statement:

> The key, in this area as in others, is transparency. There is a public interest in knowing who is lobbying whom about what.

I shall return to that important principle later.

In Queensland, as indeed in most other Australian jurisdictions, the regulation of lobbyists was also prompted by scandals of one kind or another involving lobbyists. But it was considered sufficient, everywhere, to use administrative schemes to run registers of lobbyists. The idea was that unless lobbyists registered, ministers and public servants would not talk to them. And in most places, registration required lobbyists to adhere to codes of conduct, set down by the respective governments (or their administrators).

In 2009, Queensland put the regulation of lobbyists on a sounder, legislative footing. This followed a review by the Government of Integrity and Accountability in Queensland, that in turn followed the successful prosecution of ex-minister Gordon Nuttall on what amounted to bribery charges, and of some acerbic remarks by Tony Fitzgerald QC on the 20th anniversary of his ground breaking report into corruption in Queensland about possible slippage in accountability by governments. It also followed revelations that some former Labor Ministers had earned huge commissions following successful lobbying of the government. That was the kind of activity and reward that could not be dealt with administratively. It had to be, literally, outlawed.

The *Integrity Act 2009* was introduced with two main purposes. First it transferred from the Public Sector Ethics Act the provisions creating the position of Integrity Commissioner and setting out the Commissioner's functions. These were also updated in various ways. Second, it made the Integrity Commissioner responsible for the lobbyists register and it included provisions limiting lobbying activities in a number of ways. It provided a legislative basis for a code of conduct designed to ensure that lobbying was carried out in accordance with public expectations of transparency and integrity, it prohibited success fees, it put time limits on when former senior government representatives could engage in lobbying, and it prohibited lobbying by unregistered lobbyists.

I need to mention another development at about this time. The Crime and Misconduct Commission had conducted an inquiry into the activities of a former departmental Director-General and as well as recommending several changes to the Criminal Code also decided that all agencies for which it was responsible should in future keep records of contacts with lobbyists. The CMC set out a detailed formula, with drop-down menus, that had to be filled in. In 2001 I wrote to Ministers asking them to adopt the same system. I carried out a check in September that year that satisfied me the system had been implemented.

This was carried over into the new government after the election in March 2012. I don't need to analyse what went wrong (or perhaps was done properly) in the administration of this system but in the second half of 2012 there were political problems that resulted in two Ministers quitting their posts at least partly because of it. The government responded in a number of ways, but for present purposes what is most important is that it introduced legislation into Parliament to amend the Integrity Act to give the Integrity Commissioner power to amend the lobbyists code of conduct so as to require lobbyists to provide the Commissioner with information about their lobbying activities.

This is where the plot thickens.

In his second reading speech introducing the amendments, the Attorney-General said, inter alia

> …(T)hese amendments will clarify that the Lobbyists Code of Conduct can include requirements for lobbyists to give information about their lobbying activities to the Integrity Commissioner…

> The government's intention is to now put the full onus on registered lobbyists to record their contact with government and opposition representatives and to move away from the current internal ad hoc systems that were put in place by the former government. The provision of this information will be an extra source of information for the Integrity Commissioner to ensure that lobbying activity is being carried out with transparency and integrity in Queensland.

The Parliament did not make it mandatory for the Integrity Commissioner to change the Code of Conduct to oblige lobbyists to give the Integrity Commissioner information about their activities. At least in theory, the Integrity Commissioner, as an independent officer of the Parliament, was not required to give effect to the policy enunciated by the Attorney-General in his second reading speech, though that speech explained the reasons why the Government wanted the changes to the Integrity Act. In my view, however, the policy the Attorney wished to have implemented was an appropriate one, given the purpose of the lobbyists provisions of the Integrity Act as set out in s. 4(b), namely, "to encourage confidence in public institutions by regulating contact between lobbyists and State or local government representatives, and contact between lobbyists and key representatives for the Opposition, so that lobbying is conducted in accordance with public expectations of transparency and integrity". The reference to "transparency" alone was sufficient, in my view, to justify seeking relevant information from lobbyists about their lobbying activities with a view to making that information public.

As it turned out, my views, and my implementation of them, did not fully coincide with those of the Government. In writing a new code of conduct for lobbyists I was required by s. 68 of the Act to consult with the Parliamentary Committee. Before doing that I informed lobbyists and anyone who visited my website of the changes I was proposing. A dozen lobbyists made submissions to me, objecting to some of the details about their lobbying contacts that I was proposing to ask from them, and also objecting to the fact that I intended to make those details public. I had a one-hour meeting with the committee at which members questioned me closely about those objections. The committee later informed me that it considered I should not ask lobbyists for two of the matters on my list. I agreed not to pursue one, but argued that the other – the identity of the lobbyist's client – was essential. The committee then reported to parliament, saying I should not ask for both the client's name and the purpose of the lobbying activity, only one of them. I declined to follow its proposal.

So as from 1 May lobbyists are required to provide me with details of all their lobbying activities, each month, including the name of the lobbyists, date of contact, who they lobbied, their client and the purpose of the lobbying contact. I regard all these as important – they fill out the formula set out by the House of Commons committee – who lobbies whom about what.

Most important, in my view, is the other part of the committee's conclusion. It's about transparency. There is a public interest in knowing these things. Which is why I make all this information public, through publication on the website.

Now this, it seems, was not what the Government wanted. It thought I should collect the information just so that I alone could see that everything the lobbyists was doing was in accordance with proper standards. However in my view that wasn't sufficient. I thought – I think – that the public is entitled to make its own evaluation of whether lobbyists' conduct meets public expectations.

Also, government agencies are encouraged by the Right to Information Act to publish information in their possession freely and without people have to use the RTI's provisions to obtain the information. In my view, and that of the Information Commissioner and the Privacy Commissioner, the information I was obtaining from lobbyists would be able to be obtained under RTI.

In my view there is a strong ethical and democratic argument for making as public as possible what David Cameron described as the "far too cosy relationship between politics, government, business and money" and for trying to do away with what he called "secret corporate lobbying."

Mind you, what will be revealed in Queensland through the lobbyists code of conduct exercise is only a small proportion – perhaps 20 per cent – of the corporate lobbying that does occur. Another small proportion emerges in the diary extracts that Queensland Ministers have been publishing since the beginning of the year. But those diaries don't capture meetings with ministerial staff or departments of corporate and other entities that don't use third party lobbyists, and who are not themselves required to register as lobbyists. There is a very long way to go.

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