Aspects of Nolan - MPs and Lobbying

Research Paper 95/60

16 May 1995

Part I of this paper briefly examines the development of political and Parliamentary consultancies and attempts to regulate their activities. Part II looks at MPs and connections with lobbying companies, and Part III presents the Nolan recommendations on MPs and Parliamentary consultancies with some commentary on the implications. A related paper, Aspects of Nolan - Members' Financial Interests no. 95/62 examines the development of the current rules of registration and declaration of interest, and discusses the Nolan recommendations for a new Parliamentary Commissioner for Standards, and a Code of Conduct for Members.

Oonagh Gay
Home Affairs Section

House of Commons Library

Summary

Lobbying at Westminster by pressure groups, industries, companies and multi-agency lobbying firms has grown significantly in the last twenty five years. Attempts to achieve statutory regulation of professional lobbyists have so far been unsuccessful, although the lobbying industry have developed their own Codes of Conduct and Registers.

The relationship between MPs and Parliamentary lobbyists came to the fore following the cash for questions affair, and its regulation forms an important part of the Nolan recommendations. The enormous growth in paid consultancy charted by Nolan has highlighted concerns about the ethics of paid advocacy in Parliament. Although the report does not recommend an immediate ban on this activity it raises major concerns about the effect of Parliamentary consultancies on public confidence. The distinction between advice from advocacy in such consultancies cannot easily be made, and the debate on the practicalities and the value of a ban on Members pursuing the interests of those with whom they hold consultancy or sponsorship agreements is likely to be intense.

CONTENTS

I Professional Parliamentary Lobbyists

Introduction

Lobbying is an imprecise word with slightly pejorative overtones. Different types of activity are associated with the term, and the definition given by Dr Michael Rush, Professor Colin Seymour Ure, Professor Philip Norton and Malcolm Shaw to the Select Committee on Members Interests for their Report on Parliamentary Lobbying[1] is set out below:

(a) professional lobbyists or consultants whose business is to advise their clients on lobbying and, sometimes, to lobby on their behalf.

(b) organisations outside Parliament and government who themselves seek to lobby, ranging from those who are fully professionalised or bureaucratised (eg business and trade associations or trade unions) to entirely voluntary bodies, who have no paid staff and only limited resources.

(c) MPs and other individuals (ie Members' secretaries and research assistants, and journalists) with direct access to Parliament who also have a pecuniary interest in a particular policy area or who receive some sort of remuneration to represent the interests of an outside organisation.

(d) MPs and other individuals with direct access to Parliament who have non-pecuniary interests in a particular policy area and who represent the interests of or make representations on behalf of an outside organisation.

It is normally types (a) and (c) which excite concern and interest and this Paper concentrates on these areas of activity.

There appears to have been a rapid growth in the numbers and work of professional Parliamentary lobbyists in the 1980s. The Select Committee Report of 1990/91 noted:

Political and Parliamentary Consultancies

18. Inevitably the main focus of our attention has been on the "professional lobbyists", those firms or parts of firms providing political and parliamentary consultancy services of various kinds. Until the resent recession in consultancy and public relations business I generally, the most conspicuous feature of the "professional lobbying" industry has been its rapid growth. When, in Session 1983-84, our predecessor Committee was examining this matter, it was given an estimate for Political consultancy business of £3.25 million in fee income. In 1987 a witness representing the Public Relations Consultants Association estimated fee income at about £9 million at which time the industry generally was expanding by between 20 and 25 per cent a year.

---

[1] HC 586 Session 1990/91

19. Although much lobbying business is still associated with the substantially larger public relations industry, political consultancy is now clearly recognisable as being in many respects distinct even if, often, close links still exist. An academic witness made this assessment of political consultancy companies (in 1989): "their number is small, around thirty. It is difficult to be precise because they form and reform, and their activities often resemble those of general public relations firms, of which some are a part. But they have certainly proliferated since 1979. Turnover varies from around £200,000 to £1 million or more per annum". Such consultancies seldom refer to themselves as " parliamentary " consultancies, using a variety of other terms instead such as "political", or "public affairs" consultant. Another academic witness pointed out that the lobbying business was growing much faster than the number of consultants. More recently the trend has been for a levelling off in the amount of business but for a rapid rise in fees.

20. Although some firms have been established for a number of years, many, including some of the most successful, are relatively new. The fortunes of particular consultancies tend to change rapidly: recent years have seen takeovers, amalgamations and liquidations. Some of the more successful consultancies have been purchased by large companies, sometimes operating internationally, which may be owned by, or subsequently taken over by, even larger companies. Some political consultants have offices or associate companies in other countries. British based consultancies are increasingly active in Brussels and Luxembourg. There are frequent changes in staff. The industry is very competitive in its approach. The background of those who have entered the industry is very varied. It includes former civil servants, at least one former parliamentary journalist, a few academics, a number of ex-personal staff of Ministers, and Prime Ministers, some former Members of Parliament and a former Clerk in the House of Commons Library.

21. Some consultants have had their past careers in public relations, and retain its ethos. Unlike the United States and Canada, there are very few political consultants with a legal background, and few firms of solicitors provide lobbying services. Again, unlike the United States and Canada, few, if any, former Ministers have become professional lobbyists nor is there anything comparable with the prominent lobbyists in those countries who are also political campaign managers and fund-,raisers. The close links of some lobbyists with the political fortunes and campaigns of individual politicians, also well known across the Atlantic, are not, yet, evident here. However, both Ministers and Government Departments are making greater use of public relations services, and some consultants have been recruited into Government on a temporary basis.

In evidence to a follow up enquiry by the Committee in 1993/94 Andrew Gifford remarked that "I think one of the most noticeable things between 1988 when we last appeared before the Committee and now has been the growth of law firms and to some extent accountancy practices putting themselves out to handle work in the lobbying sphere ... Having said that, if you disentangle the level of work that they are involved in it is far higher than the figures we are quoting, the £20m turnover".[2] Thus turnover has continued to increase since the late 1980s.

---

[2] Minutes of evidence 22/2/94 HC 85-ii PQ162

Areas of Concern

Most concern about lobbying has stemmed from its perceived effect on Parliament. Yet arguably the lobbying addressed to Whitehall - to the Government and the Civil Service - is more important. Claims by lobbyists to have inside access to ministers and civil servants is a matter of concern to many observers, particularly where the access comes from the flow of experienced civil servants into lobbying companies. Sebastian Berry[3] has shown how a considerable proportion of senior employees at lobbying companies come from the higher civil service.

But relatively few lobbying companies concentrate their major business on Whitehall; for many practitioners Westminster is the major target. There are two factors at play as Cliff Grantham[4] has noted - the cosmetic and the substantive. Cosmetic reasons are the interest of client firms in both gaining access to the Palace and receiving information about Parliamentary proceedings. As Grantham puts it "the lure of dining with Members of Parliament and with peers of the realm remains strong".[5] Berry alleges that "lobbyist claims to have particular insights into the legislative process and the activities of MPs may be exaggerated".[6] Business leaders may not fully understand the workings of the legislative process, and may be misled into overvaluing the influence of backbench MPs, or backbench committees, or EDMs.

There are also substantive reasons for employing lobbying companies to target Parliament. One of the most important is information-gathering. Many companies prefer to employ a consultant to monitor Parliamentary proceedings, and government intentions. Secondly, Parliament provides access to ministers and information can be passed to Government through the medium of a PPS or a departmental select committee. Thirdly, there is some scope for influencing decisions through lobbying, although academics have drawn few conclusions as to the value of a professional lobbying campaign. The growth of political consultancies, Grantham notes, has coincided with a growth in the independence of MPs since 1970. Both developments can be seen in the defeat of the Shops Bill of 1985/86 session at Second Reading, accompanied by extensive lobbying. But the defeat of the Shops Bill cannot be attributed solely to the work of a political consultancy, and the defeat on second reading of a Bill promised in the Queens Speech was a rare event. The use of consultants may have more effect at a lower level on an issue where the Government have not taken a firm stance, and where small legislative amendments can be achieved.

---

3 "Lobbyists: Techniques of the Political Insiders" *Parliamentary Affairs* 1992

4 "Parliament and Political Consultants" *Parliamentary Affairs* October 1989

5 p.505

6 p.224

Lobbying by professional lobbying companies tends to attract criticism on the basis that money should not buy influence. Direct lobbying by industrial, or charitable concerns does not attract the same opprobrium. Yet many of these concerns need professional advice in presenting a case to Whitehall or Westminster, and many professional lobbyists would equate their work with that of a barrister or lawyer. Further criticism is founded on the effect on MPs of excessive lobbying but MPs are expected to use their judgement to resist pressure from outside influences, and can always hide behind the cloak of party. Grantham and Berry argue for the usefulness of professional lobbyists, in ensuring that information reaches the relevant MP or Minister.

Regulation of Parliamentary Lobbyists

Registration of lobbyists has frequently been suggested in the last couple of decades as a solution to the perceived problem of abuse. However, one has to be clear about what registration is designed to achieve. Registration can take either an informational form or a regulatory form. A registration list of the clients or activities of lobbying firms can be an attempt to assist transparency or it can serve as part of a system designed to regulate the behaviour of such firms.

The Select Committee on Members Interests Report into Parliamentary Lobbying noted that it was not the first examination of the issue of regulation:

Evidence

4. We began our inquiry into "parliamentary lobbying" some three years ago. We were by no means the first select committee to consider this issue. Concern over the growth of lobbying, "professional lobbying" in particular, was a subsidiary theme of the Reports of the Select Committees on Members' Interests (Declaration) of 1969 and 1974. During the last two Parliaments previous Select Committees on Members' Interests considered this matter, and a Report based on that inquiry was published in the spring of 1985. We review the findings of these Committees below. We make no apology for looking at this matter afresh. There have been significant changes over the last five years and concern inside and outside Parliament about the activities of lobbyists has not diminished. As a group of academic witnesses commented in their memorandum to us: "developments in this area, justifiably or otherwise, have given cause for concern and, if for no other reason, further consideration should be given to establishing a Register of professional lobbyists ".

Registers for journalists, all party and registered groups

In 1985 the House had approved a recommendation from the Select Committee on Members Interests that additional registers be introduced relating to journalists, all party and registered groups and Members' staff. This followed concerns about the introduction of professional lobbyists into the House under the guise of Members staff. The 1990/91[7] report gave further details:

Three Additional Registers

43 Our predecessor Committee identified some minor abuses connected with lobbying and one major abuse, though it was uncertain as to its extent. This was the use of privileged access to the Palace by Journalists and Members' staff to advance other interests for which they were paid. It also felt that the links between outside interests and backbench all-party groups should be more easily identifiable to Members generally. Upon our predecessor Committee's recommendation, the House agreed to set up three new Registers, copies of which are placed in the House of Commons Library for the use of Members. First, a Register in which those holding permanent passes as lobby journalists, as journalists accredited to the Parliamentary Press Gallery, or for parliamentary broadcasting, are required to register not only the employment for which they receive their pass, but also any other paid occupation or employment where their privileged access to Parliament is relevant. Secondly, a Register in which holders of permanent passes as Members' secretaries or Members' research assistants are required to register any relevant gainful occupation which they may pursue other than that for which the pass is issued. Thirdly, a Register in which Commons officers of All-Party Groups, Parliamentary Groups, and Groups open to Members of more than one party' are required to register the names of officers of the Group, the source and extent of any benefits, financial or in kind, from outside sources that they may enjoy, together with any other relevant gainful occupation of any staff which they may have. Where a public relations agency provides the assistance, the ultimate client should also be named in the Register. Between them, the three Registers include all those "professional lobbyists" and paid representatives of outside organisations who hold a House of Commons pass.

44. Although we received some evidence suggesting that the Registers should be open for public inspection, we do not propose to recommend any changes at this stage. Since one of the purposes of all three Registers is to provide information on lobbying influence, the adoption by the House of a "Register of Lobbyists" might make these Registers unnecessary. Their future should be reconsidered when the House has taken a decision on this matter. The present Register relating to Parliamentary journalists does not show any connection between any journalist and any parliamentary consultant. The Register relating to All-Party and Parliamentary Groups has shown that although many Groups (64 in January 1991) receive assistance from outside the House this is generally of a modest kind; the part-time use of a secretary or some other administrative support being the most frequent. Some of this assistance is provided by commercial organisations; rather more is provided by charities and other non-commercial interests of various kinds. Perhaps the most important facility for Members, which some commercial interests supporting Groups provide, is the arrangement of visits in the United Kingdom and abroad in connection with the purposes of the Group. Since this benefit is usually provided to Members as individuals, notification of visits appears in the Register of Members' Interests and is only occasionally referred to in the Register of Parliamentary Groups.

---

[7] HC 586

In the Register of Secretaries and Research Assistants, a substantial number of Members' staff declare other relevant occupations but there are many entries where the relevance is marginal and many more where the expertise indicated by the declaration would clearly appear to be the reason for their employment by the Member. Some professional lobbyists, and some staff representing charities, trade unions, trade associations and other pressure groups appear regularly in this Register.

The Select Committee on Services had reported in 1987/88 that abuses were continuing:[8]

51. There may be arguments in favour of the recognition, and possible registration, of commercial lobbyists, and we understand that this possibility is currently under consideration by the Select Committee on Members' Interests. If such recognition were to be afforded, however, it should certainly not be intended to provide a passport to lobbying organisations to roam the national parliamentary buildings at will. And **there can be no argument in favour of the introduction of lobbyists into the House under the covert guise of registration as Members, staff in return for largely unspecified favours**.

The Committee recommended the withdrawal of a pass when there is clear evidence that an individual is primarily engaged in commercial lobbying activities, and this was accepted by the House. The Select Committee on Members' Interests Report on Parliamentary Lobbying in 90/91 noted that the number of Members' staff registering parliamentary consultancy interests had fallen sharply recently:

47. We informed the Services Committee early in its inquiry that at that time approximately 50 staff of Members had submitted entries indicating a connection with parliamentary consultancy or research services or with public relations firms. Over the past two years this number has fallen sharply as a result of the implementation of the Services Committee's recommendations and the comparable number is at present just over 20.

There has been continuing criticism of the fact that these registers are not published and only available only to Members. Evidence given to The Nolan Committee records the reasoning behind the lack of such publicity:[9]

PROF. ANTHONY KING: Finally, could you tell us about a document that I confess in my ignorance I had not known existed until a few days ago, the Register of the Interests of Members, Secretaries and Research Assistants. Could you tell us briefly how that works and how it happens not to be public when the Register of MPs' interests is public?

GEOFFREY JOHNSON-SMITH: Yes, please go ahead.

---

8 HC 580 1987/88

9 Cm 2850-II p.128

ROGER WILLOUGHBY: Well, how it works - it is in my office, I am ultimately responsible for it. When a staff member signs on and gets a pass from the pass office that is passed on to us and so that is how we know of their existence. We then send a letter to them asking about their outside interests. Why is it not public? When the Committee set it up in 1985 there was really no discussion of that, particularly, was there, sir?

GEOFFREY JOHNSON-SMITH: No ----

ROGER WILLOUGHBY: It simply assumes in the report it said that this should be kept privately by the Registrar. I am not sure that that has ever been ----

GEOFFREY JOHNSON-SMITH: I agree - my memory is such that there was no real discussion as to whether it should be public. It was ----

PROF. ANTHONY KING: Should it be public and available?

GEOFFREY JOHNSON-SMITH: Oh, yes, I certainly have no objection - I can speak very freely on this matter. But I think it really arose because a lot of Members, including Members of the Services Committee, got fed up with the extra number of people who used to be wandering round the House of Commons wearing labels round their neck and saying they were research assistant to a colleague, or had somehow gained admittance by having this ticket. They thought that the place was over-crowded, the library was filled with people, and that something ought to be done about it. So "let's cut down on the number of research assistants" - I think one Member was thought to have ten. I don't think any Member, however busy he is, could have ten. So they were probably up to something else. So, in order for Members to keep a check on one another, we thought it was a good idea if we had a register - we took this up and said, okay, in future secretaries and research assistants should be registered".

CLIFFORD BOULTON: Can I just mention a factor which projected this consideration, and that is that many of the people who work for Members and have these passes may be only part-time and have many other interests and haven't entered into public life in the same way that a Member has, and it was felt that although the information was interesting and relevant to other Members, because they saw these people all around having facilities and access, it was not necessarily something which should fall into the public domain without much more thought as to what effect one was having on the private affairs when asking about the other interests of these people. It wasn't a case made that it manifestly should be in the public interest. I think that was one of the arguments.

In evidence to the Select Committee in 1994 a spokesperson for the Institute of Public Relations claimed that there were abuses of Parliamentary passes:[10]

125. In paragraph 21 of the memorandum you claim that some registered journalists and lobby correspondents working in the Palace of Westminster provide professional lobbying services as well?
(Ms Taylor) Yes.

126. Do you have any firm evidence to substantiate that claim and would you be prepared to lay that evidence before the Committee?
(Mr Smith) Yes. We have made it very clear in the past there are certain abuses and it is for parliament to stop those abuses. I think that if people who have an extra special privilege within the Palace of Westminster through another professional interest are allowed to use that professional interest for another type of interest for which they are paid, then we believe that that has difficulties for us because that puts us in a situation where we may become confused with those people on the one hand and also it places Members of Parliament in a difficult position, we believe, because you do not know whether you are being approached by, say, a journalist as a journalist or a lobbyist on behalf of a third party interest. I think that that is an abuse that has been there for some time and that we believe ought to be stopped.

127. And you are going to give us the evidence that you have?
(Mr Smith) We could supply you with details on a confidential basis.

Select Committee recommendations on regulating lobbyists

The Select Committee of 1990/91 recommended a mandatory register of professional lobbyists to be enforced by the Resolution of the House, although they were much impressed with the recent introduction of a register of the lobbyists in Canada, by Act of Parliament. The Select Committee concluded that there was no realistic prospect of effective self-regulation in the industry because there was no fully representative organisation which commanded universal respect and could have exercised effective discipline. It defined the term "professional lobbyists" as follows:

> "Someone who is professionally employed to lobby on behalf of clients or who advises on how to lobby on their own behalf (para 2).

[10] HC 85-ii

The details of the proposed register were given in paras 75-80 of the Report:

75. Some of the criticisms that can be made in respect of a voluntary register also apply to our favoured option, which is a mandatory Register established by Resolution of the House. We recommend that the House should pass a Resolution requiring all those whom we have defined in paragraph 2 above as " professional lobbyists " to register details of their business and listing their clients. We would envisage that any lobbyist failing to register, or providing inaccurate or incomplete information, would be in contempt of the House. However, we doubt very much if the House would ever need to resort to its historic powers. We believe that if the House required lobbyists to register the vast majority would do so. If they did not, then the House should not hesitate to establish a statutory system of registration. In practice we believe that a high degree of co-operation would be achieved once the House had made its intentions plain. Agreement by the House to our recommendation would have implications for the House of Lords, and such a decision would, no doubt, be considered by the appropriate Committee of that House.

76. We recognise that there is a risk that the Register we propose will be interpreted as an "approved list" and could add to the status of "professional lobbyists . It is for this reason that the Register must be attached to a rigorously applied code of conduct and disciplinary procedure. In the Annex to this Report we attach a draft Register and a draft code of conduct. Their precise terms should be framed following consultations with the industry and with other interested parties. An associated disciplinary procedure will also be necessary but its exact form will depend upon the extent to which the industry is prepared to co-operate in implementing our proposals. If the House decided to establish a "Register of Lobbyists " we are in little doubt that " professional lobbyists " would not only register, but would also co-operate in setting up and maintaining the associated code of conduct and disciplinary procedure.

77. It will be noted that, unlike the Canadian Register where the responsibility for registration is placed upon the individual lobbyist, we propose that the obligation to register should be placed on the lobbying firm. This approach is more relevant to the structure of professional lobbying in the United Kingdom. The principals of the majority of " professional lobbying "firms are readily identifiable and it is in their interest, more than in the interest of the staff they employ, to ensure that registration is accurate and up to date. It also places the responsibility for applying the code of conduct to all aspects of the firm's affairs squarely upon those who run lobbying companies and partnerships, irrespective of whether or not they lobby Members in person. This will include the application of the code to any action taken by permanent, or temporary, staff.

78. We do not consider it necessary for each act of lobbying to be registered. This seems to us to be too bureaucratic for a system which relates exclusively to the House of Commons. It is much more important that clients should in all cases be registered. We recognise that this will meet some resistance. While the clients of public relations companies seldom seem to object to publicity, clients of lobbyists may be more reluctant to be publicised. Westminster Strategy was one of several lobbying firms which drew our attention to sensitivity in this area: "organisations do not like to be seen to need advice on such matters": I "certain clients are perfectly happy to have it known that they employ advisers on special relationships, others are not. In those circumstances one has to respect their wishes ". 2 The Chairman of Sallingbury Casey put this point particularly strongly, arguing that " there is an intrinsic difference between the public affairs consultancy who is often giving strategic commercial advice and the public relations firm who, on the whole, would wish to disclose its clients as a publicity exercise for itself". Mr Casey added that much of the advice which his firm gives" concerns the implications of potential

changes, and much of that advice is sensitive and commercially confidential. We often deal with situations where a client has anxieties about a particular area of Government activity which, if widely known, could be prejudicial to that commercial concern". Mr Casey concluded by drawing a parallel between the services his firm provides and the services provided by lawyers, accountants, merchant banks and management consultants, where there were professional rules of confidentiality. In contrast, some other 1 4 professional lobbyists " recognised that clients should be disclosed.4 It is natural for companies to have regard to the interests of their clients. However, we believe that the House will agree with us that there is an overriding public interest that the names of clients should be registered. At this stage we do not consider that it is necessary to go further and insist that the nature of the lobbying carried out for each client should be declared in the Register, though it is explicit in our proposed code of conduct that a lobbyist approaching a Member should declare both the client the lobbyist is representing and that client's interest.

79. One consultancy company encouraged us to require not only the registration of the names of all consultancy staff, whether full-time or part-time, but also details of their background and qualifications. It was suggested that this would lead to more responsive lobbying, more informed choice for clients and would encourage poorer quality firms to employ better staff or withdraw from the market. We agree that there should be a duty to register the names of consultancy staff, but in an area where no recognised professional qualifications exist we are doubtful whether the additional information would be of value. We also suspect that many companies would use the disclosure of the background of staff as the opportunity for advertisement. We also believe that the terms of the Code of Conduct would ensure that proper standards were maintained and we envisage a machinery for complaints which would provide some protection to clients.

80. The form of Register which we propose contains one other provision. The PRCA requires every member company to register in its "Yearbook" the name of any holder of public office associated with that company or its subsidiaries. We consider that this is an excellent provision. Accordingly we propose that the name of any Member employed by a lobbying company should appear in the Register of Lobbyists, although we recognise that in virtually all cases the interest will also be registered in the Members' Register.

Therefore the Committee favoured a regulatory approval to registration, with an accompanying Code of Conduct.

The recommendations were eventually debated in the House on a motion for the adjournment so they were not voted upon.[11] Tony Newton, Leader of the House, was sceptical about the value of such a register:[12]

In fairness to the House, I am a little sceptical about the strength of the case for what is proposed in the report. I make that observation as a personal one, rather than as a great statement of Government policy. Obviously, we will consider what is said tonight.

Perhaps I can best give my reasons for approaching the recommendation in a slightly sceptical way by adverting not only to the two points that my hon. Friend the Member for Wealden (Sir G. Johnson Smith) properly emphasised or rehearsed as reasons,for the reservations expressed by some Members of his Committee that is, the question of the considerable additional bureaucracy that almost certainly would be required to maintain such a register, and the possibility that the establishment of such a register would effectively be seen as giving a seal of approval to specific activities by specific firms in a way that might not be precisely what the House would wish. It may be that one could prevent people from putting "Approved lobbyist to the House of Commons" on their notepaper, but I am not sure that the House would generally regard that outcome with great enthusiasm.

I must confess to having to question whether the real beneficiaries of this proposal would not be such lobbyists by that sort of route, rather than the House in gaining some great improvement in its protection from lobbying, or, indeed, an enhancement of the standards of lobbying. As I said, I shall ask questions, rather than give views that are set in concrete. -Most questions will need considerable examination before the House would wish to go down this route.

I am reinforced in my view by considerable doubt about whether the distinction, which I understood my hon. Friend the Member for Wealden to be seeking to draw, between professional lobbyists and others who are engaged in almost the same fine of business could be sustained for long. It is worth my placing on the record the second half of paragraph 2 of the report, in which the question of definition is approached. The report says:

"We also use the expression 'professional lobbyist', by whom we mean someone who is professionally employed to lobby on behalf of clients or who advises clients on how to lobby on their- own behalf. There is, in addition, another category of paid lobbyist, much larger numerically: those whose job it is to make representations on behalf of their employers or particular interests such as charities, professional bodies, industrial or commercial associations, or other pressure groups. We readily appreciate that some of those to whom we refer as 'lobbyists' or 'professional lobbyists' will not recognise themselves as such, or consider that their actions amount to lobbying. We recognise, too, that apart from political consultants of various kinds, members of some other professions who are most unlikely to consider themselves as 'lobbyists', solicitors or accountants, for example, may act in a representative capacity or give advice the nature of which amounts to 'professional lobbying'."

That paragraph gives a pretty clear indication of some of the definitional problems that would arise in a restrictive approach to the register and of the immense practical problems that would arise if a more broadly based definition was adopted. It could easily produce a position in which almost every paid worker of every large voluntary organisation or national charity in the country, together with the public relations managers of many larger :firms and a whole range of other people, extending at the extreme to solicitors or accountants, who are specifically mentioned as undertaking activities that amount to professional lobbying, would be on the register. The difficulties of a register that was as widely drawn as that, if it proved difficult to sustain the narrower definition, as I suspect that it would, would be immense. I make a last point about the questions that the House would need to think through before it went down that path. The Committee, as my hon. Friend the Member for Wealden very fairly acknowledged, said in effect that it would be much better to have a voluntary code of registration by the industry itself rather than a register that was imposed, as is raised as a possibility by the report. I rather share the view that such a voluntary code would be better.

---

[11] HC Deb 28/6/93 c781-796

[12] HC Deb 28/6/93 cc785-786

> As it could be argued that the main beneficiaries of the proposal would be those who wished to engage in this activity rather than those of us who are subject to it, I am inclined to think that the most appropriate course would be to make a further effort, if that were possible, to promote the establishment of a voluntary code by the industry. I recognise the reasons why the Committee shied away from that. However, the House as a whole may wish to consider whether the right next step would not be for the industry to make a further effort, with encouragement from the Select Committee, rather than for the House to go down the path that raises the difficult questions on which I have touched. I conclude where I began: I am listening, although I felt it right to express those causes of scepticism.

The Select Committee decided to look again at the issue of a Register in 1993/94, and began taking evidence in an effort to establish whether the lobbying industry was now able to regulate itself. Although minutes of evidence were published the Select Committee decided not to issue a Report for the present but to review in a year's time progress on regulation by the various groups representing lobbyists.[13]

The Association of Professional Political Consultants (APPC) grew out of five of the largest professional lobbying firms who have claimed in evidence to the Select Committee that they account for the majority of the lobbying consultancy market by turnover. These firms proposed setting up an association to the Committee to regulate professional consultants by a code based on the Committee's recommendations in HC586. The APPC is designed for both companies and individuals, the IPR for individuals. The PRCA represents consultancies rather than individuals and claimed that its members represented half the fee income of the lobbying industry (in excess of £11m).[14] The IPR gave evidence to the Select Committee in December 1993. It said that there were 4,000 full members representing 60% of the total number of individuals in the UK eligible for membership (HC 85-ii). In 1994 The Association of Professional Political Consultants (APPC) and The Institute of Public Relations (IPR) have both set up registers of professional lobbyists and launched new codes of conduct. The Public Relations Consultants Association (PRCA) had already launched its register and code of conduct in 1993. The APPC code does not allow its members to appoint any MP to the board, or to pay any retainer or commission to an MP or person acting on their account. Both these organisations and the Public Relations Consultants Associations, however, told the Select Committee that regulation should ideally be undertaken by Parliament.

---

[13] HC Paper Session 93/34 Minutes of Proceedings 21/6/94

[14] HC85-i para 2

The Nolan Committee

In October 1994 John Major set up the Nolan Committee on Standards in Public Life "to examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of public life".

In its document *Issues and Questions* (December 1994) the Committee posed the following questions on lobbyists:[15]

Regulation of lobbyists

35. Is there evidence that lobbyists have brought pressures which are in principle undesirable? Can the increased pressures arising from modern lobbying techniques and practices be addressed solely by rules governing the actions of MPs and Ministers, or is there a case for regulating lobbying, either through voluntary codes or by statute? Could a way be found to make voluntary codes mandatory?

36. There are many forms of lobbying and lobbyists: professional political lobbyists, who specialise in this field, public relations firms who include lobbying among their activities, legal firms who provide a lobbying service, voluntary and special interest groups who often employ paid lobbyists, commercial firms and trade associations who do the same. Should any distinctions be made among these categories?

37. Is it legitimate for any interest group, commercial or otherwise, to lobby in any way it wants short of committing criminal offences (eg bribery or blackmail)? Can there be any justification for preventing any person or body from seeking to persuade MPs of its case by any legal means?

38. The professional lobbyists claim (Association of Professional Political Consultants) that their Code requires that no payment of any nature should be made to any MP by any member firm. Yet MPs clearly receive retainers from other bodies. Why should there be a difference'.?

39. Is there a case for creating a Code which applies across the board? If there was such a code, should there be any exceptions? And if there was a code, ought it to be statutory? How would such a code, if statutory, be enforced? What sanctions would there be against breaches? Would there be any difference in principle between charities which transgressed the Code and multi-national companies which did so?

---

[15] pp13-14

40. Influence is a subtle matter: hospitality and social contacts even on a small scale can create an atmosphere of goodwill or the potential for undue influence. They can be valuable as a means of exchanging information. The creation of good relationships and personal understanding can be an important way of achieving public goals. To what extent should this approach be encouraged, and to what extent should it be discouraged? Where do the boundaries lie between legitimate influence and improper, but not illegal, influence? And as they are probably different for different individuals, how can common principles be established? How can the value to the recipient of hospitality provided by lobbyists, and the cost to the provider, be assessed? How can genuine personal hospitality based on personal friendship be safeguarded while improper hospitality is constrained?

The Nolan Committee heard oral evidence from representatives of the APPC, the IPR and the PRCA about the registers set up by these respective groupings. The representatives reiterated their preference for statutory regulation rather than self-regulation.

The Nolan Committee Report[16] did not, however, favour a register of lobbyists:

Lobbyists

72. Mention has been made in evidence to us of a proposal for a Register of Lobbyists. We are not attracted by this idea. It is the right of everyone to lobby Parliament and Ministers, and it is for public institutions to develop ways of controlling the reaction to approaches from professional lobbyists in such a way as to give due weight to their case while always taking care to consider the public interest and the interests of the constituents whom Members of Parliament represent. Our approach to the problem of lobbying is therefore based on better regulation of what happens in Parliament.

73. To establish a public register of lobbyists would create the danger of giving the impression, which would no doubt be fostered by lobbyists themselves, that the only way to approach successfully Members or Ministers was by making use of a registered lobbyist. This would set up an undesirable hurdle, real or imagined, in the way of access.

74. We commend the efforts of lobbyists to develop their own codes of practice, but we reject the concept of giving them formal status through a statutory register.

---

[16] Cmnd 2850-I

II Members and Ethics: lobbying consultancies

Most commentators accept the value of outside employment for MPs on the basis that it offers experience of the world outside Parliament. Indeed for many years MPs pay reflected this assumption. For further detail see Library Research Paper no 93/88 Members Pay. Many Members continue interests which they had before election which are not directly related to a Members position in the House, or take on work which is complementary, such as journalism or broadcasting. Concern has focused on activities undertaken solely or mainly because the person is a Member of Parliament, which would lapse once the Member left the House. In particular, unease has been caused by the financial connection of MPs with professional lobbying companies. Logically, however, there is often no difference between payments from one of these firms and payments from a company which may have a separate lobbying division. The point at issue is really the activity of the Member rather than the source of the finance. There are concerns that a contract regulating in some way what the Member would do in return for payment as a Member, whether by lobbying or advice or consultancy, may be inappropriate. The cash for questions Privilege Committee Report,[17] Appendix 6 (evidence from the Clerk of the House) has a commentary on existing Parliamentary prohibitions in this area.

The Strauss Committee

The Strauss Committee was set up in 1969 following newspaper revelations that a Labour MP, Gordon Bagier, was working for a public relations firm to improve the image of the Greek government. It considered rules and practices on the declaration of Members interests (HC 57 Session 1969/70), and rejected a register of Members interests in favour of a code of conduct encapsulated in two proposed resolutions:[18]

> CONCLUSION
>
> 114. Your Committee have recommended that the House should adopt two resolutions which together would comprise a code of conduct for Members. These resolutions are:-
>
> (i) That in any debate or proceeding of the House or its Committee., or transactions or communications which a Member may have with other Members or with Ministers or servants of the Crown, he shall disclose any relevant pecuniary interest or benefit of whatever nature. whether direct or indirect, that he may have had, may have or may be expecting to have (paragraph 103).

---

17 HC 351 Session 1994/95

18 para 114

(ii) That it is contrary to the usage and derogatory to the dignity of this House that a Member should bring forward by speech question, or advocate in this House or among his fellow Members any bill, motion. matter or cause for a fee, payment. retainer or reward. direct or indirect, which he has received, is receiving or expects to receive (paragraph 110).

The second resolution was intended to draw on existing resolutions forbidding Members who are barristers from practising as counsel before the House or its committees, or advising as counsel on a private bill or Parliamentary proceedings.

The Strauss Committee considered that there was a clear analogy with Members who acted in professional capacities, such as solicitors, accountants, management consultants, merchant bankers or public relations consultants. It was particularly concerned with public relations:[19]

106. In this connection pulic relations activities are particularly important because their express purpose is to further a client's interest in any relevant sphere including the political one. The Chairman of a public relations consultancy which has chosen to interest itself in the political arena described its function in this way:-

> "In both the commercial and the 'political' spheres of public relations practice, (using the latter term broadly to embrace activities undertaken on behalf of foreign governments) a consultant may be required to advise his client on issues affecting Parliament, Government departments or statutory organisations in Britain. Such issues may include actual or proposed legislation or the ventilation of a matter of public interest in which the client has a case to represent. The advice of a Member of Parliament may be sought on such matters as time-tables, the proper use of parliamentary procedures or the trend of opinion in the House on a topic in which the client is interested " (Appendix XVIII).

107. If the role of a retained Member of Parliament is restricted to advising the public relations consultancy on those specified matters, no problem arises. But as the consultancy is likely to be advising its client on "actual or proposed legislation" or "the ventilation of a matter of public interest in which the client has a case to represent", the temptation to extend the role the retained Member of Parliament from advice to advocacy, must be strong. According to the President of the Institute of Public Relations, one of the general objects of any organisation in making contact with an individual Member was to establish "some kind of link. with Parliament to further their aims . . ." (Q. 292).

108. How far would it be proper for a public relations consultancy to pay a fee to a Member of Parliament for advocacy in Parliament on its behalf and so on behalf of its client? The answers given by witnesses from the Institute of Public Relations were illuminating. Three specific cases were put to them: where a Member was to advocate a specific measure or raise a specific matter in Parliament; where he was to express the views of a client on any matters

---

[19] para 106-111

arising in Parliament which affected that client's interest; and where he carried out general public relations duties on the understanding, express or implied, that he would act as advocate on matters arising in Parliament which affect these general duties. In each case the Institute's witnesses thought it would not be proper to pay a retainer to the Member (Q. 323-336).

109. Your Committee agree with the spirit of those answers. They also believe that the House's own standards in respect of its own Members should not be lower than those set by the Institute of Public Relations. The effect of the three answers given by the Institute's witnesses would be to fobid any form of advocacy by a Member of Parliament who is receiving a retainer. His position would be exactly the same as a barrister who is already forbidden by the House to accept fees for professional services connected with proceedings in Parliament.

110. Your Committee are satisfied that in extending its prohibition on advocacy to all forms of professional and analogous activities the House would not be depriving itself of well informed contributions to debate. Such a prohibition will make it mandatory for Members who belong to the professions and kindred occupations to keep their parliamentary and professional or kindred work absolutely separate especially in cases where an approach to Ministers might be involved. The distinction to be drawn is between advocacy of a cause in Parliament for a fee or retainer and the advancement of an argument by a Member who, through a continuing association with an industry, service or concern from which he may obtain some remuneration, is able to draw upon specialist knowledge of the subject under debate. Your Committee appreciate that the distinction may not always be precise. Nevertheless they consider the establishment of this principle and its general acceptance by the House so important that they recommend the passing of a resolution extending the provisions of that of 1858 in the following way:

> That it is contrary to the usage and derogatory to the dignity of this House that a Member should bring forward by Speech or question, or advocate in this House or among his fellow Members any bill, motion, matter or cause for a fee, payment, retainer or reward, direct or indirect, which he has received, is receceiving or expects to receive.

Modern forms of reward

111. Your Committee have already rehearsed, in the context of a proposed register of foreign journeys by Memebers, the advantages which the House derives from frequent and extensive travel overseas by its Members. They believe that the danger to the reputation of Members and so of the House lies in the journeys made by Members and paid for by governments or organisations overseas as part of a deliberate campaign to influence opinion in Parliament. The choice of visits to be made Overseas is primarily a political one and must therefore be a matter for the judgment of each Member in the first instance. It is not, in Your Committee's opinion, desirable to bring these journeys within the ambit of their proposed resolution in Paragraph 110 relating to advocacy. But Your Committee emphasises again the need to make known in the relevant context all such journeys. The resolution which they proposed in paragraph 103 to govern declaration of a pecuniary interest contains the words "or benefit of whatever nature", which are expressly intended to cover journeys abroad and associated benefits.

However, the Strauss Report was not received favourably, was never debated, and instead a Register of Members interests was set up in 1975 without the Strauss code of conduct. (For further details see Research Paper 95/62 Aspects of Nolan - Members' Financial Interests).

The 1991/92 Select Committee report on Registration and Declaration of Members' Interests (HC 326), which examined the issues afresh following the John Browne affair re-examined the Strauss recommendations with some interest:

> 88. An alternative approach is to suggest that the long-standing practice and resolutions of the House concerning misconduct by its Members (outlined in paragraph 86 above) should be restated to apply in explicit terms to modern circumstances. The Select Committee on Members' Interests of 1969, chaired by Mr George Strauss,' proposed a resolution with that intention; at the same time it rejected the concept of a Register. The proposed resolution was never put to the House because, as Mr William Whitelaw (then Leader of the House) told the House in 1971, it was considered that it would be too restrictive. The idea of a more detailed code, defining what types of conduct and activity are unacceptable for a Member of Parliament, raises comparable difficulties. Our recommendations in relation to conflict of interest as it applies to the Chairmen and Members of Select Committees' represent a small step in that direction; and we await the House's reactions to those recommendations with interest. Those proposals are aimed at a specific aspect of a Member's parliamentary activities, and one which is readily amenable to control by the House, because of the House's power to nominate and replace the members of Select Committees. To attempt to define, on a much wider and hypothetical basis, the types of conduct which the House might in particular circumstances judge to be contempts, would be a far more hazardous enterprise and one doomed to almost certain failure. As we have already indicated,' we believe that if such a code were eventually to be considered essential, it would have to take a statutory form and that such a step would be regrettable. We hope that the measures which we have proposed in this report to make the rules of registration and declaration clearer and more explicit will sharpen Members' perceptions of these issues and make such a development still more unlikely.

Lord Nolan in questioning of Sir Geoffrey Johnson Smith, Chairman of the Members Interests Select Committee, drew a distinction between Members general outside interests and paid lobbying or advocacy as follows:[20]

> LORD NOLAN: Sir Geoffrey, may I take you back to an earlier point? In 1947 the House passed a resolution to the effect that it was inconsistent with the dignity of the House for Members to enter into contracts which, to put it shortly, covered their role as Members of Parliament and what they could do as MPs. Now, the later resolution setting up the Register of Members' Interests in effect amends that, does it not, by recognising that such contracts may indeed be made, as long as they are registered? You have said this morning, as have a number of our witnesses, that you can see objections to Members acting as paid advocates, of being employed to be paid advocates. Is there anything that a Member can properly be employed to do by an

[20] Q666 Cm 2850-II

outside body which does not interfere with his independence as a Member of Parliament?

GEOFFREY JOHNSON-SMITH: Yes, I do, and I think in the end it has to come to a Member's respect for his duty as a Member of Parliament. That involves him in exercising self-discipline. It also involves him - and I am indebted to an American lobbyist for reminding me of this -

> "In the end the electorate must depend upon the basic honour and integrity and compliance with fundamental principles that are part of human nature as the shield against undue influence of lobbyists."

Or, shall we say, undue influence brought to bear on him as a result of some outside activity. I don't know how you can deal with that problem unless you decide to forbid any form of paid outside activity... there are many Members I know who have been extremely busy and highly respected both when they carried out their duties as Ministers and as backbenchers, who also had outside interests. It did not at any time seem to undermine their integrity nor, indeed, their commitment to their duties. There are some very distinguished Members who came to the House before I did - Sir Winston Churchill was one of them - who spent a great deal of his time on outside activities.

LORD NOLAN: I may not have made myself clear. I was not suggesting that the objection was to Members being farmers, journalists, teachers, directors of brewing companies, perhaps, with some sectional interest, and openly appearing and speaking in the House, everyone knowing that that was their personal interest. The question was directed to a contract regulating in some way what the Member would do in return for payment as a Member, whether by way of lobbying or advocacy or, for that matter, advice and consultancy.

The 1947 resolution noted by Lord Nolan was discussed briefly by the Strauss Committee.

The full resolution is as follows:[21]

"it is inconsistent with the dignity of the House, with the duty of a Member to his constituents, and with the maintenance of the privilege of freedom of speech, for any Member of this House to enter into any contractual agreement with an outside body, controlling or limiting the Member's complete independence and freedom of action in Parliament or stipulating that he shall act in any way as the representative of such outside body in regard to any matters to be transacted in Parliament ; the duty of a Member being to his constituents and to the country as a whole, rather than to any particular section thereof".

---

[21] para 17 of Strauss HC 57 Session 1969/70

Sebastian Berry[22] has noted that the reality of the relationship between MP and commercial lobbyists rarely amounts to advocacy by the MP:[23]

> The reality is often more mundane. The relationship between the commercial lobbyist and the Member of Parliament is generally less sinister and corrupting than writers such as Alan Doig and Mark Hollingworth have tended to assume. On one level, the relationship is clearly about making money. MPs retained as consultants by lobbying companies are likely to receive annual payments of around £5,000 to £10,000. Some MPs are clearly in the business of maximising their income from various outside consultancies and actively tout for business. For most MPs, however, the offer of a consultancy brings with it the prospect of a considerable fee in return for very little work. One leading lobbying company gets no more from its retained MP than one monthly briefing session and general advice about forthcoming legislation. It does not expect or receive any preferential consideration for its clients in return for the annual fee. The question this raises, therefore, is to what extent is this typical of the lobbyist/MP relationship? If the example above is in any sense representative, then we might reasonably ask why lobbying companies persist in maintaining financial links with ordinary backbench MPs. In fact, not all lobbyists make direct payments, since there are many companies in the lobbying industry who believe that such a practice is ultimately counter-productive and even potentially damaging. They argue that it is possible to gain access to the individual MPs. However, at least 29 PR and lobbying companies make direct payments to MPs in some form or another.

J M Lee, however,[24] notes how the new market for information has transformed the value of backbench MPs:[25]

> What is new in the customs of political consultants is the sheer professionalism of backbench life. This transformation is part of 'the explosion of information'. The application of the technology of microelectronics to the printing and distribution of leaflets and hand-outs has expanded what an MP receives in his post-bag. The libraries of the House of Commons and the House of Lords were designed as collections of classics and reference works to be within a few yards of each chamber in the style of a great country house. While the country house or club with drawing room style has been retained, the library organisations of the two houses devote themselves to making information available on request through the latest technology. POLIS, for example, is a computer database which circumvents the necessity of searching through the indexes of

---

22 *Parliamentary Affairs* 1992 "Lobbyists and their techniques"

23 p.225-6

24 "Westminster and Professional Lobbying" *Legislative studies* Summer 1991

25 p.12

Hansard. What has been said on the record, and by whom on what dates, is readily available on a printout. The Library of the House of Commons through its research division also prepares background briefing papers on major subjects, and at the request of an individual MP puts together the information available on a particular topic. During the past 20 years the back-bench MP has found that simply by enjoying that status, he or she has direct access without charge to a whole corpus of information. Pressure groups and foreign governments supply briefing material for speakers; parliamentary and party staff supply analysis of given issues on request. The rise of political consultancy firms and of MPs private consultancies has been in response to the imperatives of survival in the bewildering complexity of multiple dependencies between domestic and foreign policies. MPs have been drawn systematically into the realms of public relations and corporate entertainment.

What is new in Parliament is that access to information can command a known price, ". . . there is money to be made by MPs". Private firms are prepared to pay MPs to be go-betweens. A political consultancy firm can make the introductions between its client and the most appropriate MPs, or the MPs simply sell their services directly by asking for a retaining fee or some kind of directorship and loose association with a firm or foreign agency.

Lee considers that the House of Commons has not collectively found a way of determining whether limitations should be placed on the extent to which public funds and public buildings are replaced at the service of professional lobbyists and consultants.

The Select Committee report into lobbying of 1990/91 did not cover connections of Members with lobbying companies:

Connections of Members with Lobbying Companies

8. We have deliberately excluded one aspect of parliamentary lobbying from this Report. Some Members are consultants to lobbying companies: many more have consultancies with companies and organisations which lobby. Some Members have even helped to found consultancy companies and two such Members gave evidence to your Committee. We do not underestimate the importance of this matter. Clearly a lobbying company which is able to call directly upon the services of Members, particularly perhaps, in arranging meetings and other contacts with fellow Members, or with Ministers or civil servants, has a perceived advantage over its competitors. This matter is, however, a complex one. Members may have a close association with a particular consultant, which may, occasionally, involve some pecuniary reward, but which arises out of a political or a constituency interest rather than a personal one. A Member's consultancy may involve work for one client, or several, or work for a consultancy organisation where the Member may have no direct relationship with its clients. Many consultancies do not involve the Member in lobbying in any way but the Member may obtain information or advice or provide hospitality within the Palace of Westminster. Other consultancies may involve organisations, such as professional associations, charities and pressure groups of various kinds which are wholly uncommercial in character, but which lobby. In particular cases it is often impossible for anyone other than the individual Member to know when a consultancy involves an element of lobbying and when it does not.

9. If the House were to decide that there should be a " Register of Lobbyists " we would envisage that both the rules relating to that Register and any accompanying'-' code of practice " would apply to those Members who are connected with " professional lobbying ". However, there is another dimension. The interests described above are registrable in the Register of Members' Interests, and may be declared, when relevant, in debate. We are therefore considering the position of Members more fully in our current inquiry into the registration and declaration of interests. On a related matter; we were concerned by the evidence we received that some Members have received fees for the introduction of new clients to lobbying companies and we propose to consider this issue in the same Report.

However, in evidence to the Select Committee report in the following session on Members' Interests[26], Professor Philip Norton recommended more explicit registration by Members retained as consultants. Michael Rush recommended that the Register of Members Interests draw a clear line between consultancies relating to outside interests, and those related to professional lobbying companies.

In the event the Select Committee concluded that a Member should register clients of a consultancy with whom he has a personal interest. This was agreed by the House as part of a package of changes designed to make the rules on registration and declaration of interests clearer.[27] The guide for MPs prepared by the Registry of Members Interests (Rules on the Registration and Declaration of Financial Interests October 1993) spells out the new requirement in detail:

Clients (Category 3)

22. If any director-ship or employment registered under categories 1 or 2 involves the provision to clients of services which depend essentially upon or arise out of membership of the House, the Member is required to disclose the names of the clients and the nature of their business in as section of the Register. For example, if a Member is employed as a parliamentary adviser by a firm which is itself a consultancy and therefore is providing such advice and services to its clients, the Member should disclose those of the consultancy's clients with whom he has a personal connection or who benefit, directly or indirectly, from his advice and services. The same requirement applies where a Member, on his or her own account, accepts payment or material benefits for providing such services, but not on such a regular basis as to warrant registration as employment under section 2 of the Register. Where a company is named as a client, the nature of the company's business should be indicated briefly; this requirement applies throughout the registration form.

---

[26] HC326 1991/92

[27] HC Deb 28/6/93 c757-780

23. The types of services which are intended to be covered by "this category of the Register include action connected with any parliamentary proceeding, sponsoring meetings or functions in the parliamentary buildings, making representations to Ministers, fellow Members or public servants, accompanying delegations to Ministers, and the provision of advice on parliamentary or public affairs. A Member who has clients in a non-parliamentary professional capacity (for example as a doctor, solicitor or accountant) is not required to register the clients, provided it is clear beyond doubt that the services which are being provided do not arise out of or relate in any manner to the Member's membership of the House.

The Nolan Committee took evidence from the APPC on the question of whether MPs should be paid by lobbying firms. The APPC have decided not to pay MPs for any work because of potential conflicts of interests (oral evidence from Andrew Gifford). In contrast, the PRCA have adopted a disclosure approach, asking their members to make clear the activities of individual MPs (oral evidence from Leigh Mendelsohn). A considerable amount of the oral evidence was devoted to distinctions between acceptable involvement of MPs with lobbying and lobbying firms. A frequent theme was the difference between advocacy and advice. A number of witnesses concluded that this was a difficult line to draw.

Little evidence was presented to Nolan on the levels of payment of MPs. Dame Angela Rumbold's evidence revealed that her fee had risen to £12,000 for her work for Decision Makers Ltd. Unison had made small payments of under £4,000 a year to MPs used as Parliamentary consultants, Jack Straw received £1,250 rising to £1,500 a year from the Association of University Teachers for his office fund.

The Nolan Committee Report examined the "enormous" growth in paid consultancy (para. 47) and argued that there had been a radical change in the nature of MPs outside employment. Until recently MPs had typically pursued occupations largely unconnected with Parliament but now there had been a significant growth in the number of Members who had entered into consultancies. Almost 30% of eligible MPs held consultancy arrangements according to an analysis of the 1995 Register.[28] 26 of these MPs held consultancy agreements with public relations or lobbying firms.

---

[28] para. 13, Cm 2850

III The Nolan recommendations

The Nolan Committee found that the declared purpose behind the requirement on Members to register clients "for whom they provide services which depend essentially upon, or arise out of, Membership of the House", (see above p.22) contrasted with the 1947 Resolution prohibiting contracts which limit the Member's freedom of action in the House. It considered that the contrast was "totally unsatisfactory" and confusing to Members (para. 44).

Nolan considered that the 1947 Resolution needed to be re-affirmed:[29]

> 50. We would consider it thoroughly unsatisfactory, possibly to the extent of being a contempt of Parliament, if a Member of Parliament, even if not strictly bound by an agreement with a client to pursue a particular interest in Parliament, was to pursue that interest solely or principally because payment, in cash or kind, was being made. A Member who believes in a cause should be prepared to promote it without payment; equally a Member ought not to pursue a cause more forcefully than might otherwise have been the case as a result of a financial interest. We believe that such action would breach the spirit if not the letter of the 1947 resolution, and we cannot be confident that all Members are as scrupulous in this respect as some have claimed to be.

However, the report decided against an immediate and total ban on all forms of advocacy in the House by Members pursuing the interests of those with whom they hold consultancy or sponsorship arrangements preferring an urgent examination of the issue by Parliament:[30]

> 52. We have concluded, however, that an immediate ban in that particular form, would be impracticable. It would involve asking three-fifths of the Members of the House and their clients or sponsors to amend with immediate effect arrangements which have been made perfectly lawfully and are often of very long standing. Because so many Members have such interests, and so would be excluded from particular pieces of business, there would be a short term disruption of the business of the House. The impact on the income of many Members would have implications which could not be ignored. And the issues it would raise for the equilibrium of party political funding could only be addressed by a fundamental re-examination of that issue.
>
> 53. We have also concluded that further thought is needed before a firm decision can be taken on whether such a ban would be appropriate and on what the consequences would be of a decision to introduce such a ban. Parliament itself needs to debate further what it considers the Law of Parliament should be in this area. Parliament also needs to consider the implications for matters such as loss of income and party funding which are outside our terms of reference. Above all it needs to establish the facts. In this context, our recommendations below that agreements and remuneration in relation to Parliamentary consultancies should be disclosed in full are crucial. There is not sufficient information at present to enable a sound judgement to be made on whether the undoubted benefits of having well-informed and remunerated Members are outweighed by the risk of wealthy clients buying undue influence in Parliament.

---

[29] Chapter 2, para. 50
[30] Chapter 2, para. 52-54

> 54. While the further consideration suggested will need to be undertaken in some depth, and changes could take time to implement, the need to set the action in hand is urgent. The House may therefore think it right to hold an early debate with a view to commissioning the further work we propose. We Ourselves will return to the subject in a year's time to review the position. In the meantime, individual Members may wish to consider whether in undertaking Parliamentary consultancies they may not have unwittingly put themselves under an obligation to advocate specific causes in Parliament in a manner contrary to the spirit, if not necessarily the letter, of the 1947 Resolution.

The Committee did recommend that the House act immediately to outlaw "agreements which commit Members to giving Parliamentary advice for payments to multi-client lobbying organisations or to the clients of such organisations".[31] A further prohibition was recommended for Members "maintaining direct or active connections with firms, or those parts of firms, which provide paid Parliamentary services to multiple clients".[32]

Finally, Nolan recommended a series of measures to clarify how Members with outside interests should behave in order to avoid conflicts of interest. The measures are:

1. Greater disclosure, requiring Members to deposit contracts to the provision of services in their capacity as Members, and to give details of their annual remuneration from such agreements, in bands of income.

2. An expansion of the guidance on avoiding conflicts of interest to include, in particular, its application to Standing Committees.

3. A new Code of Conduct for MPs to provide a frame-work against which acceptable conduct could be judged.

4. A new Parliamentary Commissioner for Standards who would take over responsibility for maintaining the Register of Members Interests, advising on the code of conduct and deciding on cases to investigate which would then be supervised by a sub-Committee of the Privileges Committee.

Further detail on these more general recommendations is given in Library Research Paper no. 95/62 Aspects of Nolan - Members' Financial Interests.

---

[31] Chapter 2, para. 55

[32] Chapter 2, para. 55

Reactions to the recommendations

The Nolan Committee therefore backed away from banning advocacy by Members in all its forms, fearing the practical disruption which it would cause the Commons and because it would involve consideration of larger issues about the level of renumeration for Members, and effect on party funding which were outside its present terms of reference. Instead, it has asked the Commons,

presumably through the Privileges Committee, to examine the implications of prohibiting advocacy, with the proposal that the Nolan Committee will return to the subject in a year's time.

The distinction between advocacy and advice was discussed in some detail in the Nolan Committee hearings, and a number of witnesses felt that the distinction could not be clearly maintained. The Nolan Committee report emphasised that the public could easily gain an impression that not only advice but advocacy had been bought by a client from an MP, commenting "it is one of the most potent sources of public suspicion about the true motivation of Members of Parliament" (para. 49).

Jeff Rooker MP argued in his evidence that MPs should not be allowed to undertake any 'Parliamentary activity' for payment, a definition which appeared to be wider than advocacy. He said "if one is elected Member of Parliament one operates as a Member of Parliament; because of that one should not sell one's knowledge, experience and expertise in the House, but use it in the House of Commons..... if outside companies want professional and legal advice on the way Parliament works there is a whole body of qualified Parliamentary agents outside who are more than happy to sell that advice.[33] Roy Hattersley said "it is intolerable that MPs arrange introductions in return for payment".[34] The 1969 Strauss Committee admitted that the distinction between advocacy of a cause in Parliament and advancement of an argument by a Member was not precise (see above p.17 para 110).

It is arguable that information-giving to clients could begin to tend towards advocacy unless some consistent and specific guidance is available. The Nolan Committee definition of advocacy is based on the 1947 Resolution (see p.19) which appears to leave a Member free to enter into an agreement to act as an adviser or consultant about Parliamentary matters, and does not offer a comprehensive guide to what is meant by advocacy. Presumably it includes

---

[33] Q1266 oral evidence Cm 2850-II

[34] oral evidence p.18 Cm 2850-II

speaking, voting, in the House or its Committees, tabling Parliamentary questions[35] or EDMs and other means of pressing a particular point of view for an outside body within the House. Advice presumably constitutes offering information on Parliament and its proceedings. But other activity such as assistance in booking Commons rooms and private dining rooms, would seem to fit into neither category.[36] Nor is it clear whether a ban on advocacy would extend to making representations outside the House to Ministers or Civil Servants in return for a fee, an important aspect of the work of professional lobbyists. One of the Nolan members, Antony King defined all these types of activity as "facilitation", which Nigel Forman MP thought fell between advice and advocacy.[37] See also Q41 where UNISON representatives discuss the facilitation given to the union by MPs; such as approaches to Ministers or Members.

Both Berry and Lee[38] highlight the value of informational activities by MPs for lobbying companies, and it would be a mistake to underplay this aspect of MPs' links with outside interests. The evidence of Maureen Tomison of Decision Makers about the rule of Dame Angela Rumbold emphasised that her value to the company was in her Governmental experience and expertise not her influence.[39]

In an interview with Lord Nolan[40] he was reported as saying "It would only be natural that [an MPs] advice, honestly given in accordance with his beliefs, will be reflected in what he says in the House. But then it may look as if he's also being paid for his advocacy."

Some would argue that the distinction between advice and advocacy is not the crux of the matter at all. The fact that MPs would be obliged under the Nolan proposals to deposit in full for public inspection their contracts relating to provision of services in their capacity as Members may tend to inhibit advice type consultancies in any case. If a Member is seen to have an arrangement to provide information inevitably there will be suspicions that advice will extend into advocacy;[41] Members will be concerned not to give an appearance of conflict of interest and so might decline consultancies which would involve them in such controversy. Maureen Tomison of Decision Makers thought that a ban on links with lobbying might drive activities underground[42] and transparency was a better option.

---

35 although Tony Newton doubted whether tabling of Questions amounted to advocacy (Q878 oral evidence Cm 2850-II

36 for new procedures on booking catering facilities - see HC Deb 1/2/95 c670-671W

37 Q376 Cmnd 2850

38 above pp19-21

39 oral evidence p.26 Cm 2850-II

40 *Observer* (14/5/95 "Nolan : MPs must learn right from wrong")

41 see Q 795 to Keith Henshaw of Institute of Public Relations from Clifford Boulton

42 oral evidence Q 158 Cm 2850-II

The conundrum posed by Tony Newton[43] can be described as follows:- If an MP provides advice on a consultancy basis and thereby gains knowledge of a particular industry would it be sensible to ban him from speaking in debates where he could use his specialist knowledge to benefit the House? Adam Raphael response was to maintain that an MP could still represent those interests but not for payment.[44] The conceptual and practical difficulties of banning advocacy are likely to be the subject of further debate in the coming months.

The proposal to ban MPs from holding consultancies with public affairs or lobbying firms with multiple clients, or even from giving Parliament advice for payment to such firms is likely to be popular, but not universally accepted. Leigh Mendelsohn of the PRCA wrote to the *Guardian* (13/5/95) saying that the employment of MPs by PR consultancies had been a dying trend for some time, and a ban would have little effect. In contrast, in-house parliamentary consultants and lawyers and accountants increasingly offering such services were to be left unregulated. However, Nolan does propose a ban on MPs maintaining active connection with firms providing paid Parliamentary services to multiple clients, presumably including law and accountancy firms. In his evidence to Nolan John McGregor MP rather doubted that one could distinguish between an MP acting for the Police Federation and a firm which acts for them as well as others.[45]

There was some critical reaction to the recommendation that full terms of consultancy and sponsorship agreements relating to the provision of services in their capacity as Members be made publicly available, especially as Nolan intends the amount of the remuneration to be registered (possibly in bands of income).

Sir Geoffrey Johnson Smith, chairman of the Select Committee on Members Interests, was reported as saying[46] that the requirement to disclose such outside earnings would be seen by many MPs as excessively intrusive. He was quoted as saying "my fear is that it will create a climate again in which MPs will seek to avoid co-operation with the disclosure regime. Many feel that their earnings are a private matter for themselves and the taxman".

Patrick Dunleavy and Stuart Weir[47] however, point out that the results form the Rowntree Reform Trust's survey, the State of the Nation, indicate that 77% of voters surveyed wanted to ban MPs from receiving fees from any private company in return for lobbying on their

---

43 oral evidence Q873 Cm 2850-II
44 oral evidence Q 940 Cm 2850-II
45 oral evidence p.80 Cmnd 2850
46 *Guardian* 13/5/95 "Tory veteran balks at Nolan disclosure"
47 *The Observer* 14/5/95 "Public wants the law set on MPs"

behalf at Westminster. This may illustrate the gap in perception between Members and the general public about the appropriate nature and extent of outside interests.

IV Select Bibliography

These texts give material of general relevance to the topic of this paper.

Select Committee on Members Interests 3rd Report : Parliamentary Lobbying (HC 586 Session 1990/91).

Gerald Carney A Conflict of Interest : A Commonwealth Study of Members of Parliament (1992 Commonwealth Secretariat).

Sebastian Berry "Lobbyists : techniques of the political insiders" in *Parliamentary Affairs* 1992.

Cliff Grantham "Parliament and Political Consultants" in *Parliamentary Affairs* 1989.

Michael Rush ed Parliament and Pressure Politics (1990).

Michael Rush "Registering the Lobbyists : Lessons from Canada" in *Political Studies* December 1994.

Grant Jordan ed The Commercial Lobbyists (1991).

Office of the Assistant Deputy Registrar of Canada. Conflict of Interest in Canada : a federal, provincial and territoral perspective.

Appendix

Regulation of Lobbying - the overseas experience

The country with most experience with the regulation of lobbyists is the United States, which enacted the federal Regulation of Lobbying Act in 1946. The scope of that Act was substantially narrowed by a 1954 Supreme Court decision [US v Harris' 347 US 612 (1954)] so that it covers only the direct lobbying of congressmen or women and excludes lobbying of their staff or of the executive or "grass roots" lobbying, ie. largescale promotional campaigns. Lobbyists who undertake direct communications must keep accounts of their expenditure and must register with Congress, giving details of the lobbying activities. The details are regularly printed in the *Congressional Record.*

The Act's deficiencies have received much publicity under the Clinton administration. There have been a number of attempts to tighten the regulation requirements. Lobbying is protected under the American constitution by virtue of the first amendment which guarantees the rights of free speech, assembly and petition of government for the redress of grievances. However, many commentators believe that lobbyists and the groups they represent exercise influence counter to what is perceived as the public interest, and that there is insufficient public scrutiny of their activities. The powers of Congress under the US constitution combined with the loose coalition of political interests which make up both the Democratic and Republican parties mean that individual members of Congress have far more power to influence legislation than their colleagues at Westminster. Lobbyists have always been prominent within the US, but their number increased substantially in the last 25 years. In 1991 there were about 6,000 registered individuals or organisations representing about 11,000 clients, but the actual number of lobbyists is reckoned to be 3 or 4 times greater.[48]

A particular aspect of concern in the United States is lobbying by "foreign agents" ie. lobbyists representing foreign interests. The Foreign Agents Registration Act of 1934 requires individuals and organisations which lobby or conduct 'propaganda' activities on behalf of foreign interests to register with the Department of Justice and make periodic reports. It was originally aimed at disclosing the activities of Nazi propagandists, but was refocused in 1966 to disclose foreign commercial and corporate activities. Again the Act has been attacked for vague and confusing disclosure requirements and for the wide exemptions.

---

[48] Congressional Research Service Report for Congress Lobbying in the United States 23/10/91

At the end of 1994 there were a number of bills before Congress intended to require stricter registration of lobbyists so that lobbying of Congressional staff and of significant areas of the executive, and aspects of grass roots lobbying were covered. Stricter regulation of the acceptance of gifts from lobbyists by members of Congress was also planned. At present members may accept any number of gifts from any person, not just a lobbyist, as long as each gift has a value of less than 100 dollars. Gifts worth more than 100 dollars are allowed up to a total of 250 dollars a year from a single source.[49] Bills provided for semi-annual reporting by lobbyists, but allowances for late filing would have meant that information about a lobbyists activities could be filed up to seven months after they occurred. The Bills seemed unlikely to resolve all the difficulties of making lobbying transparent and were lost when Congress was dissolved for the November 1994 elections. However, the new Congress is likely to return to the issues of lobbying and gift disclosure later in 1995.

The Select Committee on Members' Interests inquiry into lobbying was impressed by the experience of Canada.[50] The register was introduced following a series of scandals.[51] In 1989 the Canadian Lobbyists Registration Act was passed. It defines a lobbyist as anyone who receives payment to represent a third party in discussions with public office holders, thus covering lobbying of the executive. However, indirect lobbying activity, such as mass mailings are not covered. The Canadian register distinguishes between 'professional lobbyists' and lobbyists who are employed within corporations and interest groups - a two tier system. Professional lobbyists must register their names, and the names of their clients, the subject matter of proposed meetings or communications with public officials within 10 days of undertaking the representation. Registration is administered by the Ministry of Consumer and Corporate Affairs. Employees of interest groups or organisations who spend a significant part of their job representing their employer to government need only register their name and name and address of their employer. This differentiation has been identified as a flaw. The Canadian Parliament reviewed the operation of the Act in 1993 and recommended that the two tier system be abolished, so that all lobbyists meet the requirements laid upon professional lobbyists.

The overall recommendations were accepted by the Government and proposed amendments were published in June 1994. All lobbyists will be required to name the specific policy which is the subject of lobbying, and an Ethics Counsellor will be appointed who will be responsible for drawing up a code of conduct for lobbyists and who will be responsible for drawing up a code of conduct for lobbyists and who will have powers to investigate activities allegedly breaching the code. Thus registration is therefore evolving from a source of information to a regulatory function.

---

[49] Congressional Research Service Issue brief Regulating Interest Groups and Lobbyists: 103rd Congress Proposals 18/8/94

[50] HC 586 Session 1990/91 paras 54-58 and Appendix 3

[51] Detailed in "The Rise of the Lobbying Issue in Canada" in *The Commercial Lobbyist* (1991) ed Grant Jordan

Profession Michael Rush has analysed the impact of the Act[52] and found that the principal users of the rights were professional lobbyists checking on the work of their rivals. Apart from specialist 'watchdog' publications there is little interest among the general public. Because "information gatherers" are not required to register, Rush considers that the Act leaves a major area of lobbying work unmonitored. He concludes that there is no evidence that informational schemes of lobbying registration have any significant impact on lobbying unless the information exposes abuses.

Australia also has a system of registration for lobbyists who represent clients in dealings with the Commonwealth Government ministers and officials. It dates from 1984. Two registers are kept, one of lobbyists whose clients are foreign governments, and the general register which covers other lobbyists. Lobbyists have to provide details of a particular client and a brief description of the activity. Both registers are confidential, and are not published. They are maintained by the Department of Administrative Services. Finally, Germany has required registration of lobbyists who lobby Parliament from 1981.

In none of the countries which have attempted to regulate lobbying has there been a fall in the activities of lobbyists as a result. Each piece of legislation has been criticised for not significantly adding to the transparency of the lobbying process.

---

[52] (*Political Studies)* December 1994 "Registering the Lobbyists: Lessons from (Canada)

Related Research Papers include

Government & Parliament

95/62	Aspects of Nolan - Members' Financial Interests	16.05.95
95/61	Parliamentary Pay and Allowances: The Current Rates	16.05.95
95/23	Referendum	21.02.95
95/19	Confidence Motions	07.02.95
95/6	Implementing Jopling : The 1994-95 Sittings Reforms	17.01.95
94/132	Northern Ireland - The Downing Street Declaration One Year On	19.12.94
94/130	By-elections since the 1992 general election	16.12.94
94/116	Parliamentary scrutiny of deregulation orders	22.11.94