



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

Cofnod y Trafodion The Record of Proceedings

[Y Pwyllgor Safonau Ymddygiad](#)

[The Standards of Conduct Committee](#)

21/3/2017

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from the Meeting

Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynnddi yn y pwyllgor. Yn ogystal, cynhwysir trawsgrifiad o'r cyfieithu ar y pryd. Lle mae cyfranwyr wedi darparu cywiriadau i'w tystiolaeth, nodir y rheini yn y trawsgrifiad.

The proceedings are reported in the language in which they were spoken in the committee. In addition, a transcription of the simultaneous interpretation is included. Where contributors have supplied corrections to their evidence, these are noted in the transcript.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Jayne Bryant Llafur (Cadeirydd y Pwyllgor)
[Bywgraffiad](#) | [Biography](#) Labour (Committee Chair)

Paul Davies Ceidwadwyr Cymreig
[Bywgraffiad](#) | [Biography](#) Welsh Conservatives

Llyr Gruffydd Plaid Cymru
[Bywgraffiad](#) | [Biography](#) The Party of Wales

David J. Rowlands UKIP Cymru
[Bywgraffiad](#) | [Biography](#) UKIP Wales

Eraill yn bresennol
Others in attendance

Alastair Ross Cynullydd Cymdeithas Materion Cyhoeddus yr Alban
Convener of the Association for Scottish Public
Affairs

Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol
National Assembly for Wales officials in attendance

Claire Griffiths Dirprwy Clerc
Deputy Clerk

Meriel Singleton Clerc
Clerk

Dechreuodd y cyfarfod am 10:02.
The meeting began at 10:02.

Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datgan Buddiannau
Introductions, Apologies, Substitutions and Declarations of Interest

[1] **Jayne Bryant:** Good morning, bore da, and welcome to Wales, sunny Wales.

Ymchwiliad i Lobïo: Sesiwn Dystiolaeth 1 Inquiry into Lobbying: Evidence Session 1

[2] **Jayne Bryant:** Perhaps if you could give us your name and where you're from and perhaps give us a short outline and presentation.

[3] **Mr Ross:** Diolch. Good morning, and thank you very much for the invitation to come and give evidence to you all today for your inquiry into lobbying. My name is Alastair Ross. I'm the convener, or the chairman, of the Association for Scottish Public Affairs, which is a representative body for those people in Scotland who are working and lobbying on Government relations and public affairs. Our members are people who will tend to be communicating with members of the Scottish Parliament, or Scottish Ministers, or Scottish Government officials, in and around the Parliament and the Government. ASPA was established in 1998, just before the re-establishment of the Scottish Parliament, and we're representing individuals and organisations, and they're from the private sector, the public sector and the third sector. We have around 70 members at the moment in terms of organisations, and we're the largest lobbying representative body in Scotland.

[4] ASPA has given to evidence to the Scottish Parliament in 2001, during its first inquiry into lobbying, and I appeared before Holyrood's Standards, Procedures and Public Appointments Committee at the start of 2015, as they considered their Lobbying (Scotland) Bill. We've also met with Scottish Ministers and Scottish Government officials in that time to discuss how lobbying is conducted in Scotland, how it can be regulated, while, at the same time, maintaining the Scottish Parliament's principles of openness and accountability.

[5] In terms of sharing with you ASPA's experience of lobbying regulation in Scotland, if we go back to 2002—as I mentioned, we'd given evidence previously—the Scottish Parliament's standards committee published a report into lobbying. This was prompted by a newspaper sting in 1999, literally in the first days of the Scottish Parliament, when an undercover journalist posing as a lobbying client recorded claims made by lobbying companies in terms of the access that they could give to Members of the Scottish Parliament and Ministers, when they were pitching for business. The report recognised lobbying as a legitimate component of political engagement, and noted that Members were not being inundated with lobbyists who practiced unscrupulously. The committee recommended that

there should be further guidance for MSPs in their engagement with lobbyists, revising of the code of conduct on lobbying access to MSPs, the introduction of a statutory registration scheme, specifically for commercial lobbyists or consultant lobbyists or party lobbyists, and also a voluntary code of conduct for all lobbyists.

[6] However, the last two recommendations were never implemented by the Scottish Parliament or the Scottish Executive at that time. I think it's worth pointing out that, since 1999 until today, there have been no lobbying scandals, no prosecutions and no complaints raised to ASPA under our code of conduct, and, as far as I'm aware, no complaints raised to the Scottish Parliament or other authorities about the way that lobbying is conducted in the Scottish Parliament.

[7] So, in spring 2012, I first met with Neil Findlay, who is a Labour Member of the Scottish Parliament, to discuss his proposal for a lobbying transparency Bill. This acknowledged again that Scotland had not suffered the perceived problems of the Westminster Parliament in terms of lobbying, but he proposed regulations to futureproof or to protect the integrity, as he set it out, of the Scottish Parliament, particularly with the prospect of further powers being devolved to Holyrood on taxation and other areas.

[8] His Bill proposed a number of things: a register of lobbying activity by professional lobbyists, and that would mean both in-house and consultants or commercial lobbyists. It would cover representative bodies, including trade unions, charities, churches, professional bodies, not-for-profit organisations, non-governmental organisations, grass-roots campaigns—so, quite broad in its application—and the disclosure of all contact and communications with MSPs, with Scottish Ministers and with relevant public officials; so, quite broad in all those senses. He proposed that the disclosure of the amounts of money being spent on lobbying activity be recorded. He proposed recording details about lobbyists, including their names and their career histories—where they'd worked previously—the size of their companies, the names of their clients, their lobbying projects and how they communicated with MSPs. He also proposed financial penalties for non-compliance.

[9] Over the course of that next 12 months, Mr Findlay worked very hard and generated support inside and outside of Parliament for his proposals. He got endorsements from trade unions, from voluntary organisations, from academics and the Electoral Reform Society, which I know has contributed to

your inquiry. They worked closely with campaign groups, the Alliance for Lobbying Transparency, and Spinwatch.

[10] His opening gambit was very much, 'You'll only oppose this if you have something to hide'. That's where he came from, and he also got the support of some investigative journalists, who could see that this would create a source of data for stories for them.

[11] There was some scepticism within the Parliament and from the lobbying industry, but Mr Findlay secured cross-party support from the Scottish Parliament for his Bill to be introduced in May 2013. At this point, the Scottish Government announced that it would legislate on the issue and that compelled Mr Findlay to withdraw his Bill.

[12] The Scottish Government promised a Bill in their programmes for Government in the autumn of 2013 and 2014, but they didn't publish one. Instead, they consulted on the issue and they looked at the UK's lobbying regulation regime, but I think their perspective was to use that as an example of what not to do, as opposed to try and co-ordinate with that and complement it.

[13] The Scottish Government's approach was to draft regulations that filled any gaps between what they identified as three pillars, if you like: so you had the ministerial code of conduct, you had the civil service code of conduct, and you had the MSP's code of conduct. So, the Scottish Government was trying to address any gaps between those, as opposed to overlaying regulation on top.

[14] ASPA met regularly with the Scottish Government officials to explain to them how lobbying works, how we go about our business, the code of conduct that ASPA operates by, the potential effects that their proposals may have in terms of how organisations might engage with Government and Parliament in the provision of information to Parliament and Government and the scrutiny of legislation, and I'm happy to expand upon that later, if that would be useful.

[15] Ministers and MSPs, the standards committee, and even transparency campaigners, all said that lobbying was a good thing—there was agreement on that—but that it needed some form of regulation in order to maintain public confidence in the Parliament and its Government. So, in 2014, the Scottish Parliament's Standards, Procedures and Public Appointments

Committee—your equivalent in Holyrood—held its own inquiry into lobbying, in advance of the legislation, to inform itself, much like you're doing now, in advance of the Scottish Government Bill. So, we took part in that and gave evidence to it.

[16] The Scottish Government published its Bill on lobbying in October 2015 and it proposed a number of measures: it proposed a register of lobbyists and a register of face-to-face lobbying activity—face-to-face being defined as 'in person', as I am with you just now, or in some kind of video-conference facility, so that you can see as well as hear the person you're speaking to.

[17] They defined a lobbyist as someone who's paid a salary and, in the course of their job, has face-to-face meetings with a Minister or an MSP about policy, and that would cover everyone from a chief executive of an organisation right down to a junior member of staff who is talking to a Minister when they visit their offices or their place of work. So, again, a very, very broad definition. That legislation proposed sanctions of up to £3,000 or a 12-week custodial sentence for non-compliance, albeit in a very extreme situation.

[18] During its progress through Parliament, the Bill was amended to include special advisers to Ministers, and it has also included exemptions where the MSP initiated a meeting with a lobbyist. So, if an MSP approached a lobbyist, there's no requirement to disclose or register that, or where the matter is a constituency one and it's constituency business. And there's also a review clause in that legislation for it to be reconsidered by a committee in the Parliament two years after implementation.

[19] It's a point worth making that, although the Scottish Government introduced the Bill, it has passed responsibility for implementation to the Scottish Parliament, which is quite unusual in the Scottish context. So, you had a team in the Scottish Government who were responsible for drafting the Bill, bringing it forward, and they did all the engagement on that. You've got an entirely separate team that is now responsible with implementing somebody else's hard labours in terms of putting them into practice. That team is led by the newly-appointed Scottish lobbying registrar, Billy McLaren, and I understand he's going to be giving evidence to the committee next month. And Mr McLaren's been very actively engaging with lobbyists and getting out and talking to people to understand what they do and how they operate. He's spoken at a number of meetings, including our AGM last

December. I think he's a good speaker, and I'm sure you'll find his evidence very useful when he comes to speak to you. We understand that he's preparing to publish some guidance on how he intends to implement the legislation and that we can expect it to come into effect sometime between the autumn of this year and the spring of next year.

[20] In terms of what ASPA did, then, just to give some idea of the work that we did on this legislation, between 2012, when we first met Mr Finlay, and the passage of the Bill in 2016, we met with MSPs, as I said before, we met with Scottish Ministers, and, more often, with their officials, to help them understand how our members conduct their lobbying and go about their business. So, we made submissions, written submissions, to Mr Findlay's consultation and the Scottish Parliament's consultation, the Scottish Government's one, and we also met with them, not only to communicate our views, but also to listen to what they were trying to do and trying to achieve, so we could understand where they were coming from, and that helped to develop our own responses. We did find that, while some of these groups and individuals were regular recipients of lobbying, and they were lobbied on a regular basis, they had limited experience or understanding of how lobbying operated, what it's about, and how it's conducted. So, I think that was a useful discussion. We sought to help them understand that, along with how, as lobbying organisations from the private, the public and the third sectors, we can respond to regulation and what we might do in the event that our activity is regulated, depending on how that regulation goes and what direction it takes.

[21] In terms of our position, we made the case for a level playing field so that regulation applies to all lobbyists, without exemptions for different types or different classes of lobbyists. Our central point was: a lobbyist is a lobbyist. If you're employed, if you get paid to do what you do, and, as part of that role, you have to talk to Government or MSPs or Ministers about policy, then you're a lobbyist. The title that you're given isn't actually the important part of that.

[22] We argued successfully against the disclosure of fees or money spent on lobbying activity. We made the case that there should be no fees levied for lobbyists to register or otherwise gain access to the Scottish Parliament. Access for a lobbyist should be on exactly the same basis as anybody else—they shouldn't get any special treatment or preferential treatment, nor should they be disadvantaged compared to others who are seeking to access either the Assembly in this case or the Government.

[23] We oppose the inclusion of all communications between lobbyists and MSPs on the basis it would place a disproportionate burden on those required to register. We work with the Scottish Government and the Scottish Parliament to help them to understand the issue and to inform the shape of the regulation, and we also recognise that the public and the media don't really have a strong grasp of lobbying—or the political process, for that matter—and so, understandably, remain sceptical of them both. We've sought to address that; we've sought to discuss lobbying in public and through the media to explain how it actually works and why it's a good thing that helps to improve legislation and policy.

[24] I'll just finish by saying I have very limited experience of lobbying in Wales, so I've not responded directly to the committee's call for evidence, but I'm happy to have been able to share ASPA's experience, and I'll do my best to answer any questions that you have.

[25] **Jayne Bryant:** Thank you very much, Alistair, that's very comprehensive, very good. Just a couple of questions that strike me, and it's really good to hear your experience, and that's why, obviously, we wanted you to come along today. Did you feel that lobbying was a significant concern to people in Scotland; and was it a problem? Was it a real problem over many years? Do you still feel that it's—?

10:15

[26] **Mr Ross:** I have to say 'no'. As I say, in 1999, there was a very specific incident when a newspaper set up a sting operation for a lobbying company and got them to say some things on the record—claims that they could get access to Ministers. There was a parliamentary inquiry at that point. That didn't find any wrongdoing. I struggle to find any examples since then of, as I say, wrongdoing or complaints that have been raised. I think it's important to bear in mind that people tend to associate the term 'lobbying' with the private sector or corporate entities—things like that. I would observe that, in Scotland—and I think the case would probably be the same in Wales—lobbying activity actually tends to be driven by the responsibilities that the Government has, and their main areas of expenditure. So, in Scotland, actually, I would say there's a lot more lobbying activity from the third sector than there is from the private sector. If you look at the area of health spending, which is a major part of the Scottish Government's budget—and the Welsh Government's budget as well—a lot of organisations have an

interest in that, particularly in terms of charities that are campaigning for more spending to be allocated to their particular area. I would say that that probably outweighs the level of corporate lobbying or Government relations or engagement or whatever you want to call it that goes on.

[27] So, I don't see a problem. I think it's very important that organisations take up their responsibility to help inform the Assembly, the Parliament or the Government of the day. I think what we all want is the highest possible quality of legislation to be going through our Assembly or our Parliament, and that means you've got a responsibility to try and inform that as best you can so that the people like yourselves—the legislators, the policymakers—who are making decisions have the best possible quality of evidence in front of them. So, we've all got a responsibility to do that. I've really not seen any problems. Some people don't like the idea that certain organisations lobby. Mr Findlay had highlighted that it wasn't just the corporate sector he was interested in. He wanted to register the lobbying activity of trade unions and of charities and churches, and right across the board. So, some people might not like certain organisations being involved, but I've honestly not come across any fundamental problems in the 17 years or so that I've been in Scotland working in this area.

[28] **Jayne Bryant:** Thank you. Llyr.

[29] **Llyr Gruffydd:** Yes. Thank you for your opening remarks. Was I right in hearing that the Bill isn't enacted until later on this year?

[30] **Mr Ross:** That's right. The Bill was passed just before the Scottish Parliament elections. So, that would have been in March of 2016. It was anticipated that it would be implemented about 18 to 24 months afterwards. So, we're just waiting on confirmation of that, but we're expecting it now, within the next 12 months.

[31] **Llyr Gruffydd:** Right. Okay. Because in the evidence we've received from Public Affairs Cymru, they say that they

[32] 'are united with ASPA in believing the balance in the legislation is wrong and that it should not be replicated in Wales.'

[33] That is, the Bill in Scotland. Now, if it hasn't been enacted, how can you come to that conclusion; and what are the main issues in terms of the balance?

[34] **Mr Ross:** I'll defer to PAC. I think they might be slightly ahead of themselves. As you say, the legislation hasn't been enacted, but we have the legislation on the statute book, so we can see what it proposes. What we want to see now is the detail of implementation, and we're still waiting on that. So, I appreciate the point that you make there.

[35] There are a number of potential concerns. One is that it might actually deter some organisations from getting involved in the democratic process. If they perceive that there's some kind of barrier to this—that you've got to register; you've got to put a whole load of information on there—that might deter some organisations, large or small. There are some concerns about the impact that this could have on smaller organisations, particularly the voluntary sector and what that might mean for them. So, there's a particular risk of that. As I said earlier, I think we want our legislators, in particular, to have the best possible quality of information in front of them. So, if people are holding back from engaging—whether that's giving evidence to a committee or whether that's going in and briefing an MSP or an Assembly Member on something—there's an obvious concern there.

[36] There's a compliance issue. Because if you're going to be setting out rules and regulations, you need to give organisations the time and the space to actually work out how they're going to observe these, particularly with regard to the Scottish register. We're still waiting to understand what specific information will be required, and what that will look like. As soon as we've got that, then various organisations will have to work out, 'Right, what do I need to do internally to capture that information for my entire organisation?' What you'll tend to find is that, if you're in a public affairs team or a corporate communications team, you'll have a fair good idea of what you do, and you'll probably have a decent idea of what your immediate colleagues do. Are you aware, for example, if you're working for a charity that's based in Cardiff, what colleagues in the Aberystwyth office are doing and what contact they're having with Assembly Members up there? So, for any implementation, we need to afford some time so that we can actually understand what's involved in this. Are you going to have one single person in your organisation that's going to be responsible for collecting all of this evidence and then providing it to the Parliament? Do people just take responsibility for their own information and upload it on an ad hoc basis? So, there are concerns about that. Those would be the main issues at this point in time. ASPA was sceptical about the merits of lobbying legislation, however the legislation has been passed and it's going to be coming into effect and

we're absolutely committed to working with the lobbying registrar, Billy McLaren, to implement that and make sure that it goes successfully. But, there are still concerns I've outlined around the burden that it places, and also the possible deterrent effect.

[37] **Jayne Bryant:** Sorry, Llyr—Paul, did you want to come in on that point?

[38] **Paul Davies:** Can I just come in on that? Obviously, you mentioned that as an organisation you were sceptical about this legislation. Given that, from the outset of your remarks, I think you mentioned that there haven't been any lobbying scandals in Scotland to date, do you believe, therefore, that this legislation was necessary in the first place?

[39] **Mr Ross:** I don't think the case had been made that it was absolutely necessary, but there was a will amongst the Parliament. As I say, Neil Findlay gathered cross-part support from right across the Parliament and the Scottish Government committed to doing something on this. As I say, it feels at times as if this is a solution looking for a problem to which it can be attached.

[40] **Jayne Bryant:** Llyr, did you want to—?

[41] **Llyr Gruffydd:** Sorry, I just wanted to pick up again—. And it's gone—no, it's okay. So, it's going to be a good two years until we're able to look at what the practical effect of this legislation is in Scotland, for us to decide as to whether we think it's something we'd like to emulate or not, or parts of, maybe.

[42] **Mr Ross:** If, for argument's sake, the Scottish legislation comes into effect on 1 January next year, then we would have two calendar years until we can evaluate it in Scotland. I would expect it would take a number of weeks, if not some months, for the committee to consider that and publish the recommendations. So, you might not be seeing that until, perhaps, the latter stages of 2020 or the early stages on 2021, which I appreciate is a long time away from now.

[43] **David J. Rowlands:** You were saying, obviously, that lobbyists are there to change policy—that's basically what they would do—or maybe not change policy, but steer policy in a particular direction. Then you also mentioned the fact that there could be a number of organisations involved in trying to change that policy, so there is a balance there, isn't there? And I would agree

with that. So, would you agree that—and I think you must agree with me on this—we'd have to be very, very careful about the sort of legislation we bring in to make sure that we don't impact on the desire of lobbyists to actually try to change that policy? So, it would restrict lobbyists, as such.

[44] **Mr Ross:** I can understand your point. I would actually disagree with it slightly, if I may, because you're talking about changing policy or steering policy. Another term I saw when I was looking at the evidence submissions—the written submissions—for this inquiry was 'influence'. I have to be brutally honest, I see my role as informing Assembly Members or MSPs—

[45] **David J. Rowlands:** Well, actually, can I—? I made a note that those are the words you used about affecting policy. Those are the words you used. That's why I picked up on that.

[46] **Mr Ross:** I beg your pardon. In that case, what I would like to make is a distinction that I feel is important—that people talk about influencing decisions or influencing Assembly Members and about having access to something; buying influence, buying access. To be honest, that's not been the case in my experience. My experience tends to be you'll go in and you'll meet Assembly Members or you'll meet MPs or MSPs, you'll set out your case to them, and they will ask you some questions about that. I see that as an informing process. I'm sure this committee will be absolutely the same, but all the parliamentarians I've encountered have been pretty independent of mind and haven't been, I would say, terribly easy to influence. What we want to do is to set out our position to them and inform them so they can then make decisions on the back of that. The idea of influence, I think, is perhaps overstated.

[47] **Jayne Bryant:** Llyr.

[48] **Llyr Gruffydd:** I'm just interested, as well, in hearing, maybe, a little bit about how the Bill in Scotland looks at—. Clearly, there's a definition of what a lobbyist is, but you mentioned as well, I think, that it grapples a bit with what lobbying is, because, clearly, recognising lobbying and recognising a lobbyist are two different things. I'm just wondering how the legislation grapples with that.

[49] **Mr Ross:** My understanding of what we're going to have in this register is it'll be a register of two parts, essentially. So, you'll have a register of lobbyists—so people like me will be invited to sign to say, 'Alastair Ross,

lobbyist' and my contact details, and then you'll have a register of lobbying, and these will be all the instances of face-to-face lobbying, whether that's in person or through video-conference, as I mentioned earlier. The definitions are quite broad. Essentially, it comes down to, as I said earlier, if you are paid and, as part of your job, you come into contact with designated individuals and you're talking to them about policy—and policy is there on the face of the Bill, so it's a very broad definition of what lobbying is and who does it. That, potentially, is going to capture an awful lot of people. So, you'll get people like myself—in my day job, I am the head of public policy for Scotland, Wales and Northern Ireland for the Association of British Insurers, so I work in their lobbying activity—but I have other colleagues who are working in particular policy areas. So, if they came and met with AMs, MSPs or anybody else, under the Scottish definition, that would will be captured. As I said earlier, it can range from your chief executive coming in and having a specific conversation to a junior member of staff talking to an Assembly Member when they're visiting their workplace.

[50] The example I usually use in Scotland is: in the shipyards, they have an annual photo call where a senior Minister will come and meet all the new apprentices. If the apprentices are talking to these Ministers about their jobs, what their prospects are and what they think is important, does that fall within the definition of lobbying? Arguably, in the Scottish context, it does, so I think any legislation that comes forward would need to just consider the definitions very carefully. Do you run the risk of capturing an unfeasible amount of information that might not necessarily be useful for the public in terms of understanding how the Assembly works, how Government works and how lobbying works and actually getting the information that you require?

[51] **Llyr Gruffydd:** That's interesting, because I was hoping to get to that, really—where the threshold is. Because we've touched previously on, if it's an informal situation, does that need to be captured, and I think you've address that, really, or partially addressed it. But the onus is on who, then, to register those kinds of situations? What's the balance in terms of putting an onus on an MSP, a Government Minister or the lobbying partner?

[52] **Mr Ross:** I'll defer, if I may, to Billy McLaren, because he's the one who's drafting this, and so he will be able to say definitively. My understanding is that it would lie with the lobbyist, and that then opens up another avenue, because you may find that lobbyists then register every single conversation they have in order to demonstrate either to colleagues or

to clients, whoever it may be, that they are actually incredibly active and very, very busy.

[53] **Llyr Gruffydd:** Is that an issue for you, then, or is that not good transparency?

[54] **Mr Ross:** I just come back to the question that has persisted in my mind around the Scottish legislation and what you're looking at here in terms of—I can see what the lobbying proposals would achieve in terms of the disclosure of information, but then what measures are being put in place to help people analyse, interpret and understand that information? Does a series of meetings in any way show that an AM is more likely to vote a certain way on an issue or to support a certain policy, or is there a fundamental disagreement, and, after several meetings, the lobbyist and the Assembly Member are still very, very far apart? I think it would be really important—this is where the Scottish Parliament has still to act, and that may become clearer in the months ahead—but in addition to putting all this information out in the public domain, how do you help people to understand that, so that they can improve their confidence and their trust in the institutions, which seems to be the overarching aim? Certainly from Mr McEvoy's evidence and from others, that seems to be the overriding aim here. So, how do we actually achieve that, beyond just doing a big disclosure of information?

[55] **Jayne Bryant:** Llyr.

[56] **Llyr Gruffydd:** Sorry, yes, just one other question, if I may. We've had in our evidence as well reference to the fact that lobbying doesn't just happen one way—that Government, actually, can disagree with the standpoint of a number of charities. There may be instances—PAC, I think, say that around half of their members have experienced reverse lobbying, if you like, from Government down to them. Is there anything in the proposed legislation in Scotland that might guard against that?

10:30

[57] **Mr Ross:** No. One of our criticisms of the Scottish legislation is that it is very asymmetrical, so it puts the responsibility on the lobbyist. There were opportunities to put some of the responsibility on Members of the Scottish Parliament. You could argue, actually, that one very simple and cost-effective way of addressing this issue would be actually just to publish Assembly Members' diaries—redacted to remove personal information or the

information on individual constituents—but actually to put that out there with some supporting material that explains, ‘This is what an Assembly Member does during the week and this is who they’re meeting’. That would be an alternative way of doing this, but at the moment—

[58] **Llyr Gruffydd:** But that’s not proposed in—

[59] **Mr Ross:** —that’s not proposed in Scotland. We also suggested that the MSPs’ code of conduct be tightened up, because, at the moment, I think I’m right in saying that the MSPs are only under a duty to consider meeting with a lobbyist. So, say for argument’s sake an MSP met with a number of different lobbyists all campaigning for the same issue, they would be under an obligation to consider meeting a lobbyist who had the counter position, but they wouldn’t necessarily need to do that—they need to think about it, but they don’t need to do it.

[60] **Llyr Gruffydd:** Is the onus on the organisation or the—? Whoever instigates the meeting, let’s say, is it still the lobbying body that needs to register that?

[61] **Mr Ross:** Again, you’ve found another loophole there. It’s not exactly clear, and we’re hoping Mr McLaren will be able to address this when he publishes his guidance. You could arguably have a situation where a lobbyist could phone an MSP and say, ‘Can I talk to you about this very complex issue that is very difficult to explain over the phone?’, and the MSP may well say, ‘Well, if it’s too complex to explain over the phone, why don’t you come in and talk to me?’ So, if the MSP has issued an invitation, as I mentioned earlier, there’s no need to then disclose that meeting. That’s one loophole—or a grey area rather than a loophole—that it would be good to bottom out. But there is a lack of clarity, and, yes, lobbyists do get approached by Members of the Parliament looking for information, and we do get approached by Government looking for specialist knowledge and advice. There’s no need to declare that at all—that’s actually exempted under the Act.

[62] **Llyr Gruffydd:** Okay, thank you.

[63] **Jayne Bryant:** Paul.

[64] **Paul Davies:** Just to clarify, then: is it your view that, instead of a register, you would prefer just MSPs’ diaries being published?

[65] **Mr Ross:** I think that was an option—well, it was an option that we proposed and put forward. There was a lack of appetite for that from the Parliament, and that was disappointing, because, as I say, it would have been a very cost-effective measure and you wouldn't have needed legislation—you could just change the Standing Orders of the Parliament, I think, or certainly the MSPs' code of conduct. It's not a terribly difficult thing to do in terms of the technology. I know a number of MSPs that actually do it on their own websites already—they just upload their diary. It's very easy to co-ordinate electronic diaries, as you know, with technology—you can just put it up there for public inspection, so it would have been very straightforward to do.

[66] I think we are where we are in terms of Scotland. We've had the Act passed—it's now to be implemented. I would still like to see the publication of MSPs' diaries, because I think that would be a useful exercise, not just in terms of lobbying but in helping, actually, the public to understand what an MSP's day looks like. I'm sure Assembly Members are the same—you're not just working nine to five and you're not just working Monday to Friday—you're very, very active. That would be useful in helping people to understand what it is that you do.

[67] **Jayne Bryant:** Do you think the other point would be about unintended consequences of certain things—perhaps people looking at a diary, depending on what is published? As you said—. You'd surely have to have more information, rather than just organisations; for example, it could cause problems, because a lot of that would, I presume, be redacted—constituency meetings—so, it perhaps wouldn't give a true record of Members' activities.

[68] **Mr Ross:** No, I suppose you might need some kind of narrative. Again, I know a lot of MSPs, and, I'm sure, a lot of Assembly Members, write columns for their weekly local newspaper, saying, 'What I've been doing this week'. So, you can just extend that a bit further.

[69] **Jayne Bryant:** There's also Twitter and Facebook for those of us who use social media. If you meet an organisation or meet somebody, lots of us are keen to tell everyone what we're doing. That's another way of having transparency. Are there any other questions? Sorry—Paul then Llyr.

[70] **Paul Davies:** Just one final question: given that, obviously, this register is going to be produced in Scotland, how, ideally, would you like to see it operating?

[71] **Mr Ross:** I think we've got a reasonably proportionate balance, so it's going to operate on a six-monthly basis. What I understand is that you'll be able to upload details of your lobbying engagements on an ad hoc basis, and then they'll get published and downloaded. It looks like we're going to have a good dialogue with the Parliament, so, if there are any issues, or if there are records of lobby meetings that are submitted that maybe don't comply or are lacking in detail, we'll be able to amend that before it goes up and is published.

[72] As I said earlier, what I would welcome would be some additional advice to help people to analyse and understand this. It's not just a case that if you were to look and see a trend in terms of meetings, with a very general description of what those meetings were about, you could extrapolate that out and say, 'Well, this Government policy comes as a result of those meetings' or 'This piece of legislation comes about because this organisation has seen all these different MSPs and campaigned for it'. I think we need to provide support to people who want to analyse and understand this, rather than just disclosing a big set of data.

[73] The experience I draw upon sometimes is the publication of Members of the Scottish Parliament's expenses claims, which is done on a quarterly basis and is just put out there as a data set. Journalists and members of the public just go through it and see who's claimed the most and who's claimed the least, what's the least expensive item they've claimed for, what's the most expensive—you know, are there particular issues. One MSP was subject to some media coverage because he had decided to claim expenses for, and got a receipt for, a fish supper. I think the situation was that he'd been working late and had gone on his way home to get a meal there, rather than actually going to a restaurant to sit down. He had got a receipt for that and put that in as an expense claim. That kind of information doesn't necessarily put the Parliament in a good light, but it's just put out there with no guidance. So, I think helping people to understand what this information means and perhaps what conclusions they can and cannot draw from it would be useful.

[74] **Jayne Bryant:** Llyr, did you want to—?

[75] **Llyr Gruffydd:** Again, some of the evidence we've received, I think in this instance from Unlock Democracy and Spinwatch, points to the fact that there's very little regulation around activities for Assembly Members post-

public employment. The ministerial code in Wales is quite clear that there's a two-year period before Ministers can actually lobby, for example. They suggest that a lobbying register would require lobbyists to disclose any public office held in the past 10 years. I'm just wondering whether the legislation in Scotland has something to say around that.

[76] **Mr Ross:** No. No, there's no proposal for that in the Scottish legislation that I can recall—I'm fairly certain that's the case, but Mr McLaren will be able to advise you on that. It seems a disproportionate response when, as we've said earlier, there certainly was no overwhelming evidence of a problem in Scotland. I've not picked up any evidence of a particular problem in Wales. I know that, obviously, some people don't like the idea of lobbying conducted as it is now, but there don't seem to be any actual problems either reported to the Assembly or to the Public Accounts Committee, as far as I'm aware, or to the police. So, to have to disclose 10 years' worth of a career would seem to me to be disproportionate—that a job that you held 10 years ago would be still relevant in your employment now.

[77] **Llyr Gruffydd:** Okay. Lastly from me, you mentioned in your opening remarks the three pillars of the Government, the civil service, and MSPs in terms of the legislation. How important is it that any proposals encompass the three? Because, clearly, we have no jurisdiction over the ministerial code as Assembly Members here, which is an issue for us. But, then again, there we are—that's the nature of the situation that we face. So, do we need to look at the three in tandem for us to be able to be as effective as we can, or do you think that we can actually take them piecemeal?

[78] **Mr Ross:** I think that would be a sensible approach. There's a similar situation in Scotland where the Scottish Parliament has responsibility for the ministerial code. Now, in that situation, as I alluded to earlier, the Scottish Government announced that it would legislate, but it did so in partnership with the Parliament, and specifically with the standards committee of the Scottish Parliament. So, you had quite an unusual situation where it wasn't a hybrid Bill, in terms of the technical definition of that, but it was the Parliament working with the Government to bring forward a piece of legislation. Again, that was something that had not been done before, so that again slowed down the process because they wanted to take it very slowly and make sure that they were doing things in accordance with the rules, and that they weren't setting any precedents or anything like that. So, yes, I can absolutely understand that.

[79] The principle of integrating or of filling any gaps—sorry to use hand gestures—in those three pillars I think is probably quite a sound one, because the alternative would be to create a piece of legislation or a piece of regulation that cuts across or sits on an overarching basis above those. You then run into issues around compliance—are you in line with the ministerial code but not the overall regulation code? Where does all of that sit? So, I think the philosophy behind the Scottish legislation was quite sound.

[80] **Llyr Gruffydd:** So, your message to us, basically, is: if we were to look at legislating or developing stronger regulation in this field, then that kind of joint approach between the Government and the Assembly would be preferable.

[81] **Mr Ross:** I think that would be a very sensible way to proceed. It's not really the role of the Government to set the rules for the Assembly, and, as you say, the Assembly doesn't have authority over the ministerial code. So, a partnership approach would seem to be logical.

[82] **Llyr Gruffydd:** Thank you.

[83] **Jayne Bryant:** David.

[84] **David J. Rowlands:** I might be very naive about lobbying—no, I am very naive about lobbying—but what worries me is the definition of a lobbyist, the definition of who is being lobbied and the definition of 'Are you being lobbied at any particular time?' If I can give you a slight scenario, so that perhaps you can give me your ideas on what it is, the other day I visited the Newport port. The M4 motorway is going to go through the port. I asked to see the chief-executive chap there, and he took me around and he gave me his ideas of how it's going to impact on the port, et cetera. That gives me a great deal of information and I may vote on which way that motorway should go given that information that I've been given. Was I being lobbied? Was I actively asking to be lobbied? Where would that fall within the definitions that we're talking about? It really worries me, that side of things.

[85] **Mr Ross:** I think you make a very good point about who initiates the meeting, who approached who and how you may use that information. I think, in that scenario that you've outlined, two points strike me. One: even though you've initiated the meeting, it's an opportunity for Newport port to lobby you and to inform you, and, from what you've said, I would assume they would have taken advantage of that. I'm sure that you would also go out

to look for other aspects or other views on the proposal, so you wouldn't just be listening to what Newport port thinks—you would also be seeking other views, whether that's from the local community, or from transport groups, or from road hauliers or others, so that you have all the perspectives and you've not just got one argument for and one argument against—you're actually trying to understand the holistic view of the issue. I'm sure you would also do that.

[86] **David J. Rowlands:** So, where would it lie if he had actually approached me? Would he be a lobbyist at that point?

[87] **Mr Ross:** I think, probably, as I mentioned earlier, everyone's a lobbyist to some extent, if they're not—

[88] **David J. Rowlands:** That's precisely what I'm getting at.

[89] **Mr Ross:** Yes. If they're talking to you, in your capacity as an Assembly Member, and they're looking to inform you, then there is an element of lobbying going on, arguably. As you say, you highlight an important point that if you're to restrict the definition then obviously you'll narrow some things out. If you specify it on the basis that they approach you rather than you approach them, that's going to exclude some activity as well—the example I mentioned earlier in terms of the grey area around phone calls that lead to meetings. All of these things need to be considered and taken into account.

[90] **David J. Rowlands:** Absolutely.

[91] **Mr Ross:** To return to the point I made earlier, the criticism I have of the Scottish legislation is that it's asymmetrical—that all of the responsibility is loaded on the lobbyists' side. I think everybody who's involved in this needs to take an element of responsibility. If you're an Assembly Member—I was reading the Assembly's code of conduct particularly in relation to this, and I absolutely agree with it—and you're approached by anybody, whether it's a letter, whether it's a phone call or whether it's an in-person conversation, if, at the start of that dialogue, you ask them 'Who are you? Who do you represent? What do you want to talk me about and what do you expect, or what do you hope, I will do as a result of that?'—if you ask those four questions and you don't get satisfactory answers, then, really, there's a responsibility on you to think, 'Should I take this conversation any further?' That's not captured in the Scottish legislation that's been drawn up

specifically for this case. I would suggest that's one worth considering for the committee going forward.

[92] **David J. Rowlands:** But, earlier on, you mentioned the fact that you see your role as being an informative role, as much as a lobbying role. So, we would have to look at that and say, 'Well, I'm going to get some serious information from this person who's going to help me in my decision making'. Do I then look at you as a lobbyist at that particular point? Where is this—? It worries me particularly that we could be involved in breaking rules or regulations with regard to our position simply because the definitions are not exactly correct.

[93] **Mr Ross:** Yes, I agree with you—it's very important to get the definition right to avoid what you might call 'accidental lobbying' or 'unintentional lobbying'. I'm also conscious that some people will have more than one relationship with an Assembly Member or with a Minister. So, you might be talking to them in one capacity, but they're actually having a conversation with you in another. You might be talking to them as a friend, or you might be listening in a professional capacity or vice versa.

10:45

[94] **Jayne Bryant:** I was actually going to say that, because if you were trying to avoid, perhaps, putting these things in writing, there could be people who say, 'Well, I'm your constituent'—you know, if you had lobbyists who were your constituents, and then they could say, 'Well, actually, I'm talking to you as a constituent.' If there are people who want to get around these situations—I suppose you have to be careful again of these unintended consequences.

[95] **Mr Ross:** We spent some time talking in Scotland about the implications for voluntary organisations, where they may have a central team that does the lobbying for them, but they also have charity shops all over the country in constituencies, where MSPs may go to visit for photo calls, to express support or to learn about the work of the charity. The conversations that are happening in those shops—is that technically lobbying? Or is lobbying just something that's carried out by a set number of people in head office?

[96] You're absolutely right: the definition is really important to get right. We have a very broad definition in Scotland. If you look at the UK register of

consultant lobbyists, that's a much narrower definition. Arguably, it's much deeper in terms of the type of material and the type of disclosure that's required, but that has the position of excluding the large number of lobbyists, whether they're in-house or trade bodies or wherever they may be. As I said, the Scottish Government and the Scottish Parliament's approach was to look at the UK system as an example of what not to do rather than something to be followed.

[97] **Jayne Bryant:** Brilliant. Well, I think you've answered all of our questions very comprehensively today. Thank you so much for coming in and I thank Members as well for their questions. You will be sent a transcript of the event today, just to check over and check that everything is correct before it's finalised. But once again, thank you very much and safe journey home.

[98] **Mr Ross:** Thank you and thank you very much for having me.

10:47

**Cynnig o dan Reol Sefydlog 17.42 i Benderfynu Gwahardd y Cyhoedd
o'r Cyfarfod
Motion under Standing Order 17.42 to Resolve to Exclude the Public
from the Meeting**

Cynnig:

Motion:

bod y pwyllgor yn penderfynu that the committee resolves to gwahardd y cyhoedd o eitem 4 y exclude the public from item 4 of the cyfarfod yn unol â Rheol Sefydlog meeting in accordance with Standing 17.42(vi).

Order 17.42(vi).

Cynigiwyd y cynnig.

Motion moved.

[99] **Jayne Bryant:** I propose now, in accordance with Standing Order 17.42, that the committee resolves to meet in private for item 4 of today's meeting. All agreed? Thank you.

Derbyniwyd y cynnig.

Motion agreed.

21/3/2017

Daeth rhan gyhoeddus y cyfarfod i ben am 10:47.
The public part of the meeting ended at 10:47.