

## **Public Relations and Communications Association (PRCA) response to the Office of the Registrar of Consultant Lobbyists (ORCL) Consultation on Codes of Conduct**

### **Executive summary**

- We welcome this consultation from the Office of the Registrar of Consultant Lobbyists (ORCL): the outcome of previous consultations have gone some way to providing our industry with clarity and further details about the Register going forward.
- The response also establishes the standard for relevancy. Codes must contain a specific reference to public affairs; they must be applicable to more than one organisation; they must have disciplinary and expulsion mechanisms which are independent of the organisation; they must be regularly reviewed; they must be publicly accessible; and they cannot contain provisions inconsistent with the main codes.
- We see no need for any other specific codes to be added to the Register.
- We would also like to reiterate our continued working relationship with the Registrar and Office; specifically relevant to this consultation, we are grateful that there exists a mechanism by which the Office checks any member declaring the PRCA Code of Conduct with us before the entry is published.

### **Introduction**

- The PRCA is the professional body representing PR, communications, public affairs, and lobbying practitioners. Our membership includes consultancies (including around 75% of the “PR Week Top 150”), in-house teams (including banks, charities, and the entire Government Communications Service), and also individual practitioners. We represent around 380 consultancies and 280 in-house teams. We are the largest association of our type in Europe.
- Of the 20,000 individuals who are members of the PRCA, around 1,500 are lobbyists.
- There are currently 103 members on the PRCA Public Affairs and Lobbying Register. This includes the largest consultancies such as MHP Communications, Weber Shandwick, H+K Strategies, and Edelman, alongside smaller organisations. We also represent in-house teams for organisations as diverse as the NSPCC, John Lewis, AXA, Visa, and the Local Government Association.

1. At present, the Register provides the facility to subscribe either to a code of conduct (APPC, CIPR, ICAEW, PRCA, The Solicitors' Code of Conduct, Other), or None. Should further specific codes be added to this list (e.g. The European Public Affairs Consultancies' Association), or any removed (e.g. Other)?

The PRCA campaigned during the Bill process for a Statutory Register of Lobbyists which rightly recognised the existence of industry codes of conduct (our own included). As Lord Lansley – and Lord Wallace before him – recently noted, there are existing structures of ethics in the industry and as the body which regulates more public affairs and lobbying practitioners than anyone else, we take our commitment to ethical standards seriously. The PRCA Code of Conduct provides the ethical framework necessary for the high quality of work which is carried out and holds our members to the highest ethical standards.

The PRCA Code of Conduct not only has a dedicated PRCA Public Affairs and Lobbying Code of Conduct – covering everything from not overstating influence through to strict rules concerning policymakers – but our ethical regime also requires members to submit their details (quarterly and retrospectively) to the PRCA Public Affairs and Lobbying Register. This disclosure offers the end-user information about offices where public affairs and lobbying work is taking place, which employees are conducting public affairs and lobbying, and, in the case of consultancies, the clients for whom these services are being provided.

Of the 20,000 individuals we represent, around 1,500 are public affairs and lobbying practitioners. Whilst noting that many organisations are members of multiple professional bodies, the other associations also add to this representation of our industry on the Statutory Register of Lobbyists.

Since its inception, we have reiterated our calls for law firms and accountancies to be properly registered and regulated given the work they do: with this in mind, and again welcoming the outreach work done by the Registrar, in our response to Q3 of this consultation we set out a standard for relevant codes of conduct.

Given the above, we can see no need for any other specific codes to be added to the list. We believe in a risk-based and consequentialist approach to the regulation of public affairs and lobbying: if it were the case that multiple alternative codes were currently in use through the “Other” option, and they could be proven to not lower the bar compared to the codes already featured, then there could be merit in their inclusion. As it stands, we can see no genuine reason to widen the scope unless the current number of options; registrants – by and large – are served fully by the main codes.

2. If the category of “Other” were to be retained, what would be the reasons for this?

Please refer to Q3 of this consultation response. To summarise: it serves, under strict and rigorous circumstances, to recognise specialists codes that a very small number of organisations might feel more accurately summarises their work and business to the end-user. This response also provides a clear standard which eliminated concerns, anxieties, and issues that arise from the continued use of the “Other” category.

3. Assuming that the category of “Other” were to be retained as an option, are there specific features of “Other” codes of conduct that would preclude their inclusion in this category? For example:

- a. specific reference to public affairs activity;
- b. applicability to more than one organisation;
- c. inclusion of disciplinary mechanisms;
- d. independent arbitration;
- e. frequency of review;
- f. inclusion of provisions inconsistent with those of other codes;
- g. inclusion of errors or out of date provisions;
- h. anything else?

Please state as many of the above features which you feel preclude inclusion and give reasons for each feature you include.

Each of the above features can be addressed in turn. An “Other” category could be retained if the codes it were to cover in practice demonstrably meet the criteria set out below.

A code of conduct should contain a “specific reference to public affairs activity”. Public affairs and lobbying itself can be properly defined as “influencing government or advising others how to influence government”. Arguments against being able to define this rest on the fallacy that any definition would have to be so specific as to ignore a great deal of public affairs and lobbying which actually happens. The clear counterargument is that the work can therefore be broadly defined. There are a number of ways to influence government or advise others how to do this, yet all would effectively fall under this broad definition. Our own definition coexists with that of ORCL and – whilst we believe in breadth – it is noteworthy that actions the Registrar would consider lobbying also fall under our own definition. A relevant code of conduct should therefore include a reference to public affairs: it would be difficult to deem a code relevant if it entirely avoided referencing the profession that the Register of Consultant Lobbyists regulates.

A code of conduct needs to be applicable “to more than one organisation” for it to be relevant. The risk otherwise is that the code applies only to the organisation which authored it. This omits some of the fundamental qualities of a code of conduct: namely, that it functions as a gold-standard of ethics that multiple players in an industry aspire to and achieve. A code of conduct applicable to only one organisation cannot be seen as governing conduct but simply represents the intentions of one organisation. If they breached their own code of conduct, there is practically no way in which an organisation could expel itself from its personal regulatory regime.

A code of conduct – to that accord – should include “disciplinary mechanisms”. For a code to be relevant, there must be a way in which it can be enforced. More importantly, there must be a way in which an organisation acting unethically and contrary to the code can be excluded. The outcome would otherwise be that an organisation claims to follow a code of conduct, does not achieve the standards it sets out, breaches major stipulations of the code, and yet continues to “adhere” to it.

Without disciplinary mechanisms, the code of conduct in this instance can simply be seen as loose guidance with no repercussions for infringement.

Put simply, arbitration should be independent of the organisation involved and led by those with industry expertise of the ethical complaint at hand. It should also be as independent as it can be from any trade association (or other third parties) whose code of conduct is at play. Whilst the Secretary of the Association (currently the Head of Public Affairs, Policy, and Research) provides secretarial support and coordination, it is the Professional Practices Committee who consider the evidence and reach a conclusion. The alternative to independent arbitration is either arbitration conducted by the organisation which has potentially breached the code of conduct or no arbitration at all: both would create perverse and dysfunctional outcomes.

In terms of “frequency of review”, one of the significant arguments put forward during the Bill process was that industry codes, rather than statutory codes, could be significantly more flexible and had a long and measurable history of changing to reflect evolving public affairs and lobbying. With that in mind, we would expect any code that features under the “Other” category of relevance to have undergone some review in recent years. Whilst it is a matter for the Registrar to consider further, we would expect a major and open review at least every five years but it is not unreasonable for us to expect that the code be reviewed twice in that period. The PRCA Public Affairs and Lobbying Code was last reviewed in September 2016 (a notable inclusion was a reference to the Lobbying Act 2014 itself).

Finally, the “inclusion of provisions inconsistent with those of other codes” and “inclusion of errors or out of date provisions” can be dealt with together. We do not believe that any of the codes included under the “Other” category should be at odds with codes already featured on the Register; there is value and merit in difference, but directly contradicting major areas of public affairs and lobbying ethics would render such a code at odds with the Register of Consultant Lobbyists’ aim. Similarly, we do not believe that the end-user, or the wider industry, is helped by codes appearing on the Register which undermine the integrity and usefulness of codes already featured.

We would add that a code should be publically available and in no way represent “gated content”: that is, an instruction requesting the end-user email or contract another source should have no place on the Register. It needs to be consultable at any time for the end-user to have any faith in such a code.

Ultimately, we believe our industry is well represented by the PRCA Code of Conduct and the other associations’ own codes. We believe that outreach and ensuring everyone who needs to be on the Register is on there should be the focus of the Office’s work.

4. The Registrar has reviewed the various codes of conduct currently referenced in the Register, and has noted many differences between them in scope and content. Those differences are more pronounced if the code has been drawn up by an organisation whose primary purpose is something other than public affairs. The Registrar has no powers under the Act to impose either a statutory code or penalties for breach of any code declared. Is there merit therefore in relevant representative bodies designing a voluntary code for registrants, and if so, who should compile and arbitrate that code?

We do not see any merit whatsoever in the creation of a new code of conduct. As well as there already being a clear proliferation of codes in our industry, we believe that the focus of the Registrar and the Office should be to ensure every single organisation carrying out lobbying as defined by the Lobbying Act 2014 should be on the Register. Consequentially we do not believe that the creation of a new code would further that aim: given that organisations are compelled to appear on the Register, a new code is neither-here-nor-there.

The creation of a new code also raises a number of issues. As noted in this consultation, the Registrar has no powers under the Lobbying Act 2014 to impose a code nor see that any breaches are penalised. Question therefore arise around how this would function in practice, whether or not the Office directing organisations (as a result of a consultation) to create a new code represented some form of “mission creep”, what could be done to ensure existing codes would not be undermined, and how this could lead to industries with organisations who are required to register not updating their codes to accordingly reflect this part of their membership. We believe this should be reflected by a review of their own code rather than the creation of a situational or single-purpose code for the purpose of the Register.

To add to this: the argument still stands that the end-user, whether the public or politicians themselves, ought to be able to judge those who conduct lobbying according to the Lobbying Act 2014 on how they conduct themselves. As a free and open marketplace, we ought to be able to judge those who are committed to ethics and good practice (such as those subscribing to the PRCA Code of Conduct) against those who decide not to subject themselves to these high standards. As such, this proposed code would undermine the situation.

5. Are there any other issues in regard to codes of conduct which you feel the Registrar needs to consider?

Declaring a code of conduct on the Register of Consultant Lobbyists should mean declaring the right code of conduct: we very much welcome the fact that the Office has a mechanism in place to check any organisations declaring the PRCA Code of Conduct against our membership each quarter. This ensures any mistakes are quickly corrected and the end-user is not under any false impression.