



Oifig an Ard-Rúnaí
Office of the Secretary General

Mr Aidan Moore
Standards in Public Office Commission
18 Lower Leeson Street
Dublin 2

21 July, 2018

Re: Code of Conduct for persons carrying on lobbying activities.

Dear Mr Moore

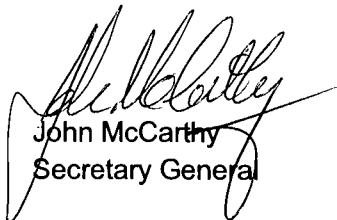
I refer to the Head of Ethics and Lobbying Regulation, Sherry Perreault's letter of 19 June 2018 in connection with a Code of Conduct for persons carrying on lobbying activities.

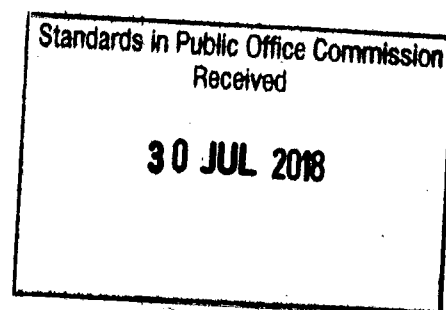
The DPO's in my Department were consulted on the Draft Code and we do not wish to make a submission other than to say we believe the Code, as drafted, will succeed in its aim of providing principles for the conduct of lobbying activities to ensure they are carried out transparently and ethically.

We welcome the introduction of a Code, which we believe will bring an added emphasis on the importance of accurate and complete information on the engagement between lobbyists and government and/or the civil and public service. In particular, the guidance on submitting returns to ensure accuracy is welcome as officials in this Department have previously been identified incorrectly on lobbying.ie as DPO's.

I look forward to the introduction of the Code.

Yours sincerely


John McCarthy
Secretary General



The Secretary General is a Designated Public Official under the Regulation of Lobbying Act, 2015



Draft Code of Conduct for persons carrying on lobbying activities

Introduction

Under section 16 of the Regulation of Lobbying Act 2015 (the Act) the Standards in Public Office Commission (the Standards Commission) may produce a Code of Conduct for persons carrying on lobbying activities “*with a view to promoting high professional standards and good practice*”.

The purpose of this Code is to govern the behaviour of persons carrying on lobbying activities. The Code will provide principles by which persons carrying on lobbying activities may conduct their lobbying activities, in order to ensure that the lobbying activities are carried out transparently and ethically.

Preamble

Lobbying activities are undertaken by many people and organisations in relation to a broad range of matters. Lobbying activities are a legitimate means of access to parliamentary, government and municipal institutions. Lobbying activities contribute to informed decision-making by elected and appointed public officials.

The legitimacy of lobbying is reinforced when lobbying activities are carried out transparently and in an ethical manner. In support of the Act’s objectives to foster transparency and the proper conduct of lobbying activities, this Code of Conduct sets out several principles by which persons carrying on lobbying activities should govern themselves in the course of carrying out lobbying activities, namely:

- 1) Demonstrating respect for public bodies
- 2) Acting with honesty and integrity
- 3) Ensuring accuracy of information
- 4) Disclosure of identity and purpose of lobbying activities
- 5) Disclosure of interests
- 6) Preserving confidentiality
- 7) Avoiding improper influence
- 8) Observing the provisions of the Regulation of Lobbying Act
- 9) Having regard to the Code of Conduct

While the Act governs communications with Designated Public Officials (that is, Ministers, Ministers of State, and ministerial advisors, elected representatives and certain senior public servants), the principles of the Code should apply to all communications with persons in public office, whether prescribed for the purposes of the Act or not.

The Act, together with this Code of Conduct and associated regulations, guidelines and standards of conduct applicable to Office Holders, elected representatives and public

servants, aims to ensure that lobbying activities are conducted in accordance with public expectations of transparency and integrity, and that decisions are made in the public interest.

Code of Conduct

Persons carrying on lobbying activities shall have regard to the following principles:

1) Demonstrating Respect for Public Bodies

Persons carrying on lobbying activities should act in a manner that demonstrates respect for public bodies, including the duty of public officials to serve the public interest. A person carrying on lobbying activities should not act in a manner that shows disrespect for public bodies and should refrain from directly or indirectly exerting undue pressure on an elected or appointed public official.

Persons carrying on lobbying activities should not expect preferential access or treatment from elected or appointed public officials.

A person carrying on lobbying activities should not use a former or existing working relationship with an elected or appointed public official to secure preferential access or treatment.

2) Acting with Honesty and Integrity

Persons carrying on lobbying activities should conduct all relations with public bodies and elected or appointed public officials with honesty and integrity. Persons carrying on lobbying activities should not seek to obtain information or influence decisions dishonestly or by use of undue pressure or inappropriate behaviour. Persons carrying on lobbying activities should make their case without manipulating or presenting information in ways that could be regarded as dishonest or false.

Persons carrying on lobbying activities should avoid any conduct or practices likely to bring discredit upon themselves, the persons they represent or the public bodies they are contacting.

3) Ensuring Accuracy of Information

Persons carrying on lobbying activities should take all reasonable measures to satisfy themselves that the information they are providing to public bodies or to elected or appointed public officials is accurate and factual.

If a person carrying on lobbying activities considers that there is a material change in factual information provided and the person believes that the public body or elected or appointed public official may still be relying on that information, the person should, insofar as is practicable, provide accurate and updated information to the public body or to the elected or appointed public official.

4) Disclosure of Identity and Purpose of Lobbying Activities

A person carrying on lobbying activities should always identify themselves by name and, where applicable, the body or bodies they work for. Where a person is carrying on lobbying activities on behalf of a client or other person the person carrying on the lobbying activities should disclose the identity of the client or other person and the nature of their relationship with that person.

A person carrying on lobbying activities must not conceal or try to conceal the identity of a client, business or organisation whose interests they are representing.

A person carrying on lobbying activities should always inform the elected or appointed public official of their interests, objectives or aims they promote (or those of the client they represent) and the purpose and intended results of the communication.

5) Disclosure of interests

A professional lobbyist or third party carrying on lobbying activities on behalf of other persons should properly inform the client, business or organisation whose interests they are representing about any potential conflicts of interest, or of any competing interests arising from their professional practice or other business, family or social associations. A professional lobbyist or third party should not represent conflicting or competing interests without the informed consent of those whose interests are involved.

Persons carrying on lobbying activities on behalf of a client or other person should not knowingly make misleading, exaggerated or extravagant claims about, or otherwise misrepresent, the nature or extent of their access to elected or appointed public officials.

6) Preserving Confidentiality

A person carrying on lobbying activities should use and disclose information received from a public body or an elected or appointed public official only in the manner consistent with the purpose for which it was shared.

A professional lobbyist or third party carrying on lobbying activities on behalf of other persons should not use, for purposes other than those of their mandate, confidential information obtained in the course of their lobbying activities and should not divulge confidential information relating to their clients unless they have obtained the informed consent of their client, or disclosure is required by law.

7) Avoiding Improper Influence

A person carrying on lobbying activities should inform themselves of the policies of the Government and public bodies they are communicating with in relation to restricting the acceptance of gifts or hospitality by elected or appointed public officials and should not, in the course of their lobbying activities, make any offer of gifts or hospitality which might

cause an elected or appointed public official to breach any law, regulation, rule or standard of conduct applicable to them in relation to the acceptance of gifts or hospitality.

A person carrying on lobbying activities should not place elected or appointed public officials in a conflict of interest situation by proposing any offer, inducement or reward (directly or indirectly) which might cause an elected or appointed public official to breach any law, regulation, rule or standard of conduct applicable to them.

8) Observing the provisions of the Regulation of Lobbying Act

A) Registrations and Returns;

A person carrying on lobbying activities should familiarise themselves with the provisions of the Act and with any relevant guidance material published by the Standards Commission. In particular a person carrying on lobbying activities must:

- 1) Comply with the requirement to register on the Register of Lobbying (the Register) in accordance with section 8 of the Act and provide the information required under section 11 of the Act in the manner and form required by the Standards Commission.
- 2) Comply with the requirement to submit regular returns of lobbying activities to the Register as provided for in section 12 of the Act in the manner and form required by the Standards Commission. This includes "nil" returns where relevant.
- 3) Comply with the requirement under section 13 of the Act to provide additional or corrected information if requested to by the Standards Commission.

A person carrying on lobbying activities should follow the Commission's guidance on submitting returns of lobbying activities to ensure that returns of lobbying activities are accurate and complete and submitted on time.

A person carrying on lobbying activities on behalf of a client or other person shall inform the client, business or organisation whose interests they are representing of their own requirements and the client's or other person's requirements under the Act.

The head of an organisation should ensure that employees or other persons who carry out lobbying activities on the organisation's behalf are aware of the organisation's requirements under the Act and are made aware of the requirements of this Code of Conduct.

B) "Cooling off" period

Section 22 of the Act provides that "relevant Designated Public Officials (DPOs)" (Ministers and Ministers of State, Special Advisers and Senior Public Servants) are subject to a one-year cooling-off period. During this period relevant DPOs cannot engage in lobbying activities in specific circumstances, or be employed by, or provide services to, a person carrying on lobbying activities in specific circumstances, namely.

The making of communications comprising the carrying on of lobbying activities (as defined in section 5 of the Act) which:

1. Involves any public service body with which the relevant DPO was connected, that is, employed or held an office or other position in the year prior to their leaving, or
2. Is to a person who was also a DPO who was employed or held an office or other position with that public service body in the year prior to the person's leaving.

A person subject to the one-year cooling-off period may apply to the Standards Commission for consent to undertake such activities or be employed by a person who is undertaking such activities. The Standards Commission may decide to give consent unconditionally or to give consent with conditions attached. The Standards Commission may also decide to refuse the application for all or part of the one-year "cooling off" period.

A person should not employ or engage a person who may be subject to the provisions of section 22 of the Act to carry on lobbying activities without first establishing whether the person must comply with section 22 of the Act and, if required to comply with section 22, has sought and received the consent of the Standards Commission to carry on such lobbying activities.

9) Having regard for the Code of Conduct

Section 16(5) of the Act provides that a person carrying on lobbying activities shall have regard to this Code of Conduct. When engaging in lobbying activities, therefore, a person should, in addition to meeting their statutory obligations under the Act, seek to meet the standards set out in the principles and rules of this Code and should conform fully to the letter and spirit of this Code of Conduct.



Developing a Code of Conduct for Lobbying for persons carrying on lobbying activities – A Public Consultation Paper.

Standards in Public Office Commission

January 2018.

Introduction

Interest groups, representative bodies, industry and civil society organisations, NGOs, charities and third party professional lobbyists all communicate regularly with elected and appointed public officials to seek to influence policy, program or funding decisions. These communications provide important input and feedback to public officials regarding the views and concerns of the public. They also ensure that the policy-making process is informed by a range of views.

Lobbying plays an important role, therefore, in promoting effective public decision making. It helps ensure that policy formulation and development is fully informed and that all individuals, groups and interests in society have an opportunity to contribute to it.

Effective public decision-making can, however, be compromised whenever elected or appointed public officials hear from only a single perspective on issues or allow personal relationships or private interests to have undue influence over the process and outcomes in ways that may be contrary to the public interest. It is important, therefore, that all parties and interests have fair and equitable opportunities to communicate their ideas and concerns and that there are appropriate safeguards to minimize the opportunities for individual parties and interests to exert undue influence on elected or appointed public officials. The Regulation of Lobbying Act (the Act) seeks to achieve this by making the lobbying process more transparent and allowing the public to know who is seeking to influence whom in respect of what in relation to public policy.

While the Act makes the lobbying itself transparent, it does not address the manner in which lobbying activities are conducted. To ensure that lobbying is carried out in an ethical manner that reinforces the objectives of the Act, a Code of Conduct is proposed.

Why have a Code of Conduct?

Requirements of section 16(1) of the Act

Section 16(1) of the Act provides that the Standards in Public Office Commission (the Standards Commission) may produce a Code of Conduct for persons carrying on lobbying activities “*with a view to promoting high professional standards and good practices*”.

The Standards Commission considered it prudent to defer development of a Code of Conduct until such time as all provisions of the Act had been commenced and were working effectively. It was also considered prudent to wait until the first review of the Act had been completed in case any proposed changes to the Act contained in the report of the review might impact on the development of the code. As the Act is fully commenced and the review has been completed without any new legislative proposals it is now considered timely to produce a Code of Conduct.

Benefits of a Code of Conduct

Codes of conduct are common in many professions and occupations and provide guidance to individuals on responsible and ethical professional practices. Generally they define rules of

behavior based on core principles and ethical standards for members of a profession or occupation.

In many jurisdictions persons carrying on lobbying activities are guided by codes of conduct on either a voluntary or a mandatory basis. In preparing this consultation paper and draft code of conduct the Standards Commission has had regard to a number of such codes and consultation processes. The following in particular have been referenced:

- Developing a Code of Conduct for Lobbying in British Columbia; A Public Consultation Paper;
- Lobbyists Code of Conduct – Office of the Commissioner of Lobbying of Canada;
- EU Transparency Register – Code of Conduct;
- Draft Code of Conduct for Persons Lobbying MSPS – Scottish Parliament;
- Lobbyists Code of Conduct – Queensland;
- Lobbyists Code of Conduct – Newfoundland;
- Lobbyists Code of Conduct – Article VI of the Toronto Municipal Code;
- Code of Conduct for Lobbyists– Quebec;
- All American League of Lobbyists – Code of Ethics
- Government Relations Institute of Canada – Code of Professional Conduct
- Public Relations Institute of Ireland – Code of Professional Practice for Public Affairs and Lobbying

Codes of Conduct for elected or appointed public officials

In Ireland the conduct of elected or appointed public officials is regulated by a mix of legislation, guidelines and / or Codes associated with their terms of employment.

- The Code of Conduct for Office Holders has been drawn up by the Government in accordance with Section 10(2) of the Standards in Public Office Act 2001. The Code seeks to ensure that Office Holders must at all times observe, and be seen to observe, the highest standards of ethical behavior in the carrying out of the functions of their office. There are also separate Codes of Conduct for Members of Dáil Éireann and Seanad Éireann who are not Office Holders.
- A Code of Standards and Behavior for the Irish Civil Service was introduced in accordance with section 10(3) of the Standards in Public Office Act 2001. The Code applies to all civil servants of the Government as well as civil servants of the State and sets out the standards required of civil servants in the discharge of their duties.
- The Local Government Act 2001 provides for the issuing of a Code of Conduct for Local Authority Members and a Code of Conduct for Local Authority Employees.
- The Code for Local Authority Members is issued in accordance with the Local Government Act to promote the principles of acting in good faith and with fairness and impartiality for the common good and to promote the public interest and uphold public confidence. Members must abide by the Code in carrying out their role as a Member of a Local Authority.

- The Code of Conduct for Local Authority employees is also issued in accordance with the Local Government Act. The Code has been designed to promote the core values of honesty, impartiality, integrity and serving the common good. The Code provides a framework so that all employees can be seen to act solely in the public interest and within the law; and thus help uphold public confidence in local government. A Local Authority employee must have regard to and be guided by the Code in performing his or her duties

While there are codes of conduct above that set out the standards of behavior required of elected or appointed public officials in the carrying out their functions, there is no equivalent statutory mechanism regulating the manner in which persons carry on lobbying activities with elected or appointed public officials.

What type of code would be most suitable?

Section 16(3) of the Act provides that the Code may contain different provisions in relation to different descriptions of persons carrying on lobbying activities. The diversity and range of persons who may be captured by the scope of the Act presents a challenge in terms of defining a set of shared standards on which a code of conduct might be based. The provisions of the Act can apply to employers; to representative or advocacy bodies; to professional lobbyists or third parties who are being paid to communicate on behalf of a client or other person; and significantly, to **any person** communicating about the development or zoning of land. The Standards Commission is of the view, however, that it should be possible to develop a set of shared principles and standards which can be applied equally to professional lobbyists and to employers, representative / advocacy bodies and individuals alike.

Given the broad scope of persons to whom the Act may apply it is considered that a principles based code of conduct rather than a rules based code of conduct would be more suitable. The Code will, however, refer to the requirements of the Act in relation to registering and submitting returns of lobbying activities and to the post-employment restrictions which apply to certain elected and appointed public officials.

It is intended that the code of conduct will complement the provisions of the Act and the effective operation of the online register. In preparing this consultation paper and draft code of conduct the Standards Commission has drawn upon its experience to date of administering the Act and supervising the operation of the online register.

The Code will aim to provide a template for carrying on lobbying activities according to generally accepted standards. It will help to address the public's expectation that lobbying activities will be carried out ethically and transparently. Finally, it will help to ensure that elected or appointed public officials who are approached by persons carrying on lobbying activities are able to readily establish whose interests the person represent and the outcome they are seeking to achieve.

What areas might a Code of conduct include?

1) Demonstrating Respect for public bodies

The Code should require that persons carrying on lobbying activities show respect for public bodies and for elected or appointed public officials and to refrain from directly or indirectly exerting undue pressure on an elected or appointed public official.

The Code should state that persons carrying on lobbying activities should not expect preferential access or treatment from public bodies or from elected or appointed public officials. This might particularly apply in situations where the person carrying on the lobbying activities might previously have been a colleague of the elected or appointed public official or might previously have worked on an elected official's election campaign.

Similarly persons carrying on lobbying activities and an elected or appointed public official who have frequent contact with each other might develop good working / personal relationships. Such relationships can give the person carrying on the lobbying activities undue influence or place the elected or appointed public official in a conflict of interest situation. The Code might encourage persons not to carry on lobbying activities with an elected or appointed public official with whom they share a relationship which could reasonably be seen to create a sense of obligation.

2) Acting with Honesty & Integrity

The Code should require persons carrying on lobbying activities to act at all times with honesty and integrity and to avoid any conduct or practices which might bring discredit upon themselves, the persons they represent or the public bodies or elected or appointed public officials they are contacting.

Persons carrying on lobbying activities should not obtain or try to obtain information or decisions dishonestly or by use of undue pressure or inappropriate behaviour. The Code might advise that a person carrying on lobbying activities should make their case without manipulating or presenting information in ways that could be regarded as dishonest or false.

3) Ensuring Accuracy of information

A code of conduct can also govern how a person carrying on lobbying activities should present information to public bodies and to elected or appointed public officials. A person carrying on lobbying activities should provide accurate, current and complete information to a public body or an elected or appointed public official and should not knowingly provide false or misleading information. A person carrying on lobbying activities should take all possible steps to ensure that inaccurate information is not provided to their clients, to public bodies, to elected or appointed public officials or to the general public.

4) Disclosure of Identity and purpose of lobbying activities

The Register of Lobbying provides that persons carrying on lobbying activities must register and provide details concerning:

- Who is carrying on the lobbying activities?

- On whose behalf are the lobbying activities being carried out?
- What are the issues involved in the lobbying activities?
- What is the intended result of the lobbying activities?
- Who is being lobbied?

This information means that members of the public can see who is lobbying whom about what.

Elected or appointed public officials who are approached by persons carrying on lobbying activities may not be immediately aware that the lobbying activity is being carried out on behalf of a third party. A code of conduct can address this gap by requiring persons carrying on lobbying activities to be transparent from the outset about their intentions when approaching elected or appointed public officials and to state the identity of the client or employer for whom they are working; the nature of their relationship with that person; and the purpose and intended results of the lobbying activities. A person carrying on lobbying activities must not conceal or try to conceal the identity of a client, business or organisation whose interests they are representing.

5) Disclosure of Interests

The Code can also discourage professional lobbyists or third parties from carrying on lobbying activities on behalf of a client which conflicts with the lobbyists own interests or with the interests of other clients. A code of conduct may require professional lobbyists or third parties to properly inform clients about any potential conflicts of interest or competing interests they may have arising from any other business or from family or social connections. The Code can provide that a person can only represent competing or conflicting interests where the explicit and informed consent of all the parties involved has been obtained and where the member is able to act for each of the clients with the same professionalism and duty of care.

6) Preserving Confidentiality

A code of conduct can require persons carrying on lobbying activities to use and disclose information received from a public body or from an elected or appointed public official only in the manner consistent with the purpose for which it was shared. The Code can also require professional lobbyists or third parties carrying on lobbying activities on behalf of a client to observe confidentiality in how they acquire and use confidential client information. The PRII Code of Conduct for example refers to “a positive duty in all their professional dealings to maintain full and proper client confidentiality”.)

7) Avoiding Improper Influence

As stated above there is legislation, guidelines and codes of conduct governing the conduct or behaviour of elected or appointed public officials which requires them to take certain steps where a conflict of interest arises in the performance of their duties and in certain cases not to carry out the particular function or duty. There are also rules regarding the acceptance of gifts and/or hospitality.

A code of conduct for persons carrying on lobbying activities should require a person carrying on lobbying activities to be aware of such legislation, guidelines and codes and not to act in any way which could place elected or appointed public officials in a real or potential conflict of interest. The Code could also prohibit the person carrying on lobbying activities from making any offer, inducement, reward (direct or in-direct) that would result in the elected or appointed public official breaching his/her obligations under legislation, guidelines or codes governing their conduct or behaviour or the acceptance of gifts and/or hospitality.

The Code of Conduct might prohibit persons carrying on lobbying activities from attempting to influence elected or appointed public officials by any means other than providing evidence, information and arguments in support of an intended outcome.

8) Observing the provisions of the Regulation of Lobbying Act

A) Registrations and Returns

The Code will refer to the provisions of the Act in relation to registering and submitting returns of lobbying activities. The Code will recommend that persons carrying on lobbying activities familiarise themselves with the provisions of the Act in this regard and with the Commission's guidance in relation to best practices when submitting returns to the Register. It will recommend that persons follow the Commission's guidance to ensure that returns of lobbying activities are accurate and complete and are submitted on time.

The Code will also recommend that a person carrying on lobbying activities on behalf of a client or other person shall inform the client or other person of their own requirements and the client's / other person's requirements under the Act.

The Code will also recommend that the head of an organisation should ensure that employees or other persons who carry out lobbying activities on the organisation's behalf are aware of the organisation's requirements under the Act and under the Code of Conduct.

B) Post-employment restrictions

Section 22 of the Act provides that certain former elected or appointed public officials may not carry on lobbying activities or be employed by a person carrying on lobbying activities with their former (public) employer or colleagues, unless with the consent of the Standards Commission. The Code of Conduct will refer to the provisions of section 22 of the Act and require persons carrying on lobbying activities to have regard to these provisions when engaging or employing someone who is a former elected or appointed public official.

9) Having regard for the Code of Conduct

Section 16(5) of the Act provides that a person carrying on lobbying activities shall have regard to this Code of Conduct. The Code shall state, therefore, that persons carrying on lobbying activities should, in addition to meeting their statutory obligations under the Act, seek to meet the standards set out in the principles and rules of this Code.

Making a submission:

The Standards Commission would welcome comments and views on the development of a code of conduct for persons carrying on lobbying activities. In particular the Standards Commission would welcome views as to what should or should not be included in the Code. To assist the process a draft Code of Conduct is attached. The draft Code is for consideration only and does not reflect what may or may not be included in the published Code of Conduct.

Submissions are requested by XX. Submissions may be e-mailed to info@lobbying.ie and should be marked "Code of Conduct". A template submission document is attached for convenience. Please remember to include in your submission any examples from your own experience of a code of conduct which might or might not be suitable in a code of conduct for persons carrying on lobbying activities and, if possible provide evidence / data / examples to support your position.

Publication of Submissions received

To promote transparency in this process the Standards Commission intends to publish details of persons who made a submission and a summary of their submission. You should state if you wish to keep your identity confidential. The Standards Commission will also accept anonymous submissions. It should be noted, however, that any submissions received will be subject to the provisions of the FOI Acts.

Comments contained in a submission which make allegations of any kind against a named or otherwise identifiable person or organisation may be viewed as defamatory by the subject of the comments. Those making submissions may be sued directly for any defamatory allegations in a submission and should avoid making such allegations.

If you have any questions regarding the proposed Code of Conduct or the consultation process, please e-mail the Standards Commission at info@lobbying.ie or telephone 01-6395722.

Appendix 1 – Draft Code of Conduct

Appendix 2 -Template submission response.

Name (Organisation name or name of individual)	
Address	
Phone	
Email Address	

What do you consider should be included in a Code of Conduct for persons carrying on lobbying activities?

What do you consider should not be included in a Code of Conduct for persons

carrying on lobbying activities??

Do you think the Code of Conduct should contain different provisions in relation to different descriptions of persons carrying on lobbying activities?

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Any other comments, views or suggestions?

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