

Submission to the Standards in Public Office Commission

on the development of a

Code of Conduct for persons carrying out lobbying activities

from

The Public Relations Consultants Association (PRCA)



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Background to this Submission

The Public Relations Consultants Association Ireland (PRCA)

The PRCA is the representative body promoting the interests of Public Relations and Public Affairs Consultancy firms in Ireland. Founded in 1989, today there are thirty one member firms in the PRCA:

1. AM O’Sullivan PR Ltd.
2. Carr Communications
3. Cullen Communications
4. Drury|Porter Novelli
5. Edelman
6. Elevate
7. FleishmanHilliard
8. FTI Consulting Ireland Limited
9. Gibney Communications
10. Hanover Communications
11. Heneghan PR
12. Jume Brophy
13. Insight Consultants
14. Instinctif Partners (Ireland)
15. Keating & Associates
16. Limelight Communications
17. Mary Crotty Public Relations
18. Mari O’Leary PR
19. MKC Communications
20. Murray
21. O’Leary PR & Marketing
22. Paul Allen & Associates PR
23. Powerscourt Group
24. PSG Communications
25. RD|Communications
26. RPS Project Communications
27. The Reputations Agency
28. Thinkhouse
29. Walsh:PR
30. Weber Shandwick
31. Wilson Hartnell

The concentration of members is in Dublin.

With an estimated combined income of over €50 million, the total number employed by PRCA member firms is more than 500 people.

PRCA member firms provide Public Relations and Public Affairs services to their clients in a broad range of sectors including industry, academia, government, public sector, voluntary / charity sector and professional services. Services include strategic communications planning, public information campaigns, internal communications, media relations, event management, stakeholder engagement programmes and lobbying.

Some members of the PRCA, from time to time, as part of their Public Affairs service to clients make representations to public representatives of all types, whether elected, co-opted, appointed, public servants, those employed in the public service, or those appointed to public bodies.

PRCA Standards, Ethics and Codes

Members of the PRCA must attain the internationally recognised CMS Consultancy Management Standard. In Ireland, this standard is exclusive only to PRCA members and demonstrates that the firm has been independently audited against internationally recognised standards and operates to these high standards.

The PRCA is a member of the International Communications Consultancies Organisation (ICCO). All associations affiliated to ICCO and their member agencies have agreed to conform to the Stockholm Charter. This document was adopted in 2003 and replaced the Rome Charter, originally adopted by ICCO in 1986. The Stockholm Charter lays out a code of professional standards that aim to define the profession. All members of the PRCA subscribe to the International Communications Consultancies Organisation (ICCO) Code of Stockholm. This Code is attached in *Appendix One*.

In 2017, the ICCO board also voted to approve a statement of ethics, called the Helsinki Declaration. Mindful of the considerable and increasing influence and importance of public relations, ICCO launched the Helsinki Declaration, a set of principles aimed at uniting the global PR industry under a single banner of ethical behaviour. This Declaration is attached in *Appendix Two*.

Lobbying Regulation

Professional public affairs practice and lobbying are legitimate and important activities that are essential within any democratic system. These activities ensure an open dialogue between national and local government (including *An Oireachtas*, the entire public service, as well as other bodies funded wholly or mainly from public funds), the institutions of the European Union (EU) and bodies whose activities and interests are governed, regulated, impacted or otherwise influenced by such institutions.

For over twenty years, since lobbying regulation was first proposed in Ireland, the PRCA has sought to play a constructive and positive role in relation to the development of that legislation. In particular, the PRCA has sought to highlight the nature of lobbying in Ireland whereby lobbying activity is carried out by a wide variety of organisations and functions.

Lobbying is carried out by charities, residents' associations, NGOs and not-for-profits, it is carried out by CEOs, lawyers, management consultancies, accountants and others, not just individuals or organisations who describe themselves as public affairs consultants or lobbyists.

Therefore, the PRCA was pleased to note that when the Regulation of Lobbying Bill was originally published that the definition of lobbying activity employed captured all this lobbying activity. The experience of the first few years of the Lobbying Act demonstrates the appropriateness of this wide definition.

Since the Regulation of Lobbying Act 2015 was signed into law, the PRCA has put a significant proportion of its resources into promoting compliance and understanding of the Act among its members. The PRCA has issued guidelines on compliance to its members and has held a number of information meetings. In addition, through the PRCA's membership on the Advisory Group on the Implementation of Regulation of Lobbying Act, the PRCA acted as conduit between the Standards Commission and the profession on concerns and challenges as they arose.

The results of these efforts are demonstrated in the returns published on www.lobbying.ie.

Indeed, a survey carried out in 2016 among PRCA member companies found 100% compliance with the legislation.

The PRCA supports the Regulation of Lobbying Act fundamental goal of letting the public know who is lobbying whom and about what. The wide definition of lobbying activity within the Act goes a significant way to achieving that aim. However, challenges remain despite in general, a very positive first three years of the Act's operation. It is in the spirit of addressing those challenges and improving the Act, that this submission on the SIPOC Code of Conduct for Persons carrying out lobbying activities.

The experience of the PRCA of engagement with the lobbying regulator, the Standards Commission, over the past three years has been a positive one. The Commission has proven open and willing to engage with stakeholders and has produced a high standard of guidance and information. The website, www.lobbying.ie, is well designed and user-friendly. The Advisory Group established to support the Standards Commission's work as regulator, on which the PRCA was represented, was a useful forum to ensure that the perspectives of shareholders on the Act's implementation are shared.

These first years of the Act's implementation have been successful. During 2017 almost 10,000 returns were submitted to the online Register of Lobbying and at the end of that year there were 1,648 persons registered on the Register of Lobbying. The lobbying regulator, the Standards Commission, engaged in this new area of legislation in a positive fashion, communicating with stakeholders including outreach programmes to increase compliance in under-represented sectors and regions outside Dublin. The PRCA submit that this outreach be resourced and broadened to reach as many sectors, professions and geographical regions as possible.

The Report of the First Review of the Regulation of Lobbying Act made by the Minister for Public Expenditure and Reform, based on the experience it had acquired over the first year, was published in 2017. While the Report did not recommend any amendments be made to the Act the PRCA note that The Commission has identified some further areas where legislative provisions might be clarified or strengthened and the next review, scheduled for 2019, provides further opportunity to explore those issues. The PRCA would welcome to opportunity to make constructive submissions to that review based on our members engagement with the legislation and register.

Taking the above into consideration and having invited contributions from its Association members over the past month, find below following the requested template format, the submission of the PRCA.

What should be included in the SIPOC Code of Conduct

Inclusivity

The PRCA submit that the proposed SIPOC Code of Practice for those engaged in lobbying presents an opportunity to re-emphasise the reach of the Regulation of Lobbying legislation and Code across all professions and sectors regardless of size, form, or geographic location, and including both those lobbying and those being lobbied.

While the public relations and communications sector has demonstrated strong compliance with the Regulation of Lobbying legislation, other professions and sectors have not.

The Regulation of Lobbying Act applies to all those engaged in lobbying activity in return for payment and no profession or sector is or should be exempted from reporting lobbying activity. The Standards Commission and the Minister for Public Expenditure and Reform must satisfy themselves that there is a compliance culture across all professions and sectors.

The Regulation of Lobbying Act 2015 is a major advance on legislation in other countries, as it clearly aims to capture all remunerated lobbying activity irrespective of whether those activities were carried out by lawyers, public relations or public affairs professionals, accountants, CEOs, etc. It is imperative that this advance in transparency is not undermined by any sector or profession not engaging fully with this legislation.

The *Regulation of Lobbying in 2017* Annual Report records that, during 2017, over 900 registrants identified as “other” when selecting their main business activity on their application to register. The Report of the First Review of the Regulation of Lobbying Act made by the Minister for Public Expenditure and Reform in 2016 contained a recommendation that the Commission seek to reduce the numbers categorised under “other”. The Commission has now expanded the options available to registrants for selecting their main business activity and has removed “other” as an option. The PRCA commend the Commission for this action and submit that the range of options available remain under review to capture and reflect the wide range of individuals, bodies, professions, organisations that can and do engage in lobbying.

While communications professionals, including PRCA members, have engaged proactively with the legislation and registration, it appears that other sectors have not engaged to the same extent. Anecdotal reports suggest that there is significant lobbying activity carried out, for example, by legal firms and management consultancies. This does not appear to be reflected in the returns made on www.lobbying.ie nor in the proposed SIPOC Code of Conduct.

While the Standards Commission has undertaken a major body of work promoting awareness of the Act, it is important that this work continues and addresses the Act, the Register, the Enforcement Provisions and now, the Code of Conduct.

Furthermore, continuous education is needed with Designated Public Officials (DPOs), so that they are aware of the implications of the Act and the Code and that they provide appropriate information to those engaged in lobbying activity.

While there is awareness of the Act among DPOs in the Civil Service, some PRCA members have encountered varying levels of knowledge and awareness among elected officials at local and national government level.

Communication Campaign

Notably, the first principle of the SIPOC Code reads as follows:

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.

This is the only reference in the SIPOC Code to those who are lobbied yet this is a significant body of those persons engaged in lobbying activities.

The PRCA submit that ongoing communication and training on the terms of the Act and, in time, this Code of Conduct, with DPOs is required to develop understanding that any means of communication falls under the scope of the Act (even if not all means fall under Freedom of Information provisions).

In addition, DPOs should be discouraged from using the Act or SIPOC Code of Conduct to refuse engagement. It is proposed that a regular programme of DPO education, with appropriate resources so that all DPOs are aware of the Act and can support the compliance of those individuals engaged in lobbying activity, is put in place. The Code of Conduct presents new and fresh material around which such training can be promoted.

Section 5.5. of the Regulation of Lobbying Act provides an exemption for communications between body corporates in which a Minister has a share-holding when the matter relates to the “ordinary course of activities” of the body corporate. The PRCA has taken the view in its interpretation of the legislation that the “ordinary course of activities” would relate to standard corporate governance matters, but where an organisation engaged in lobbying activity as defined by the legislation, that would fall under the requirement to Register. The question remains, if a commercial body without a state shareholding was undertaking this activity, would it be categorised as lobbying? If the answer is yes, then it must register and report and adhere to the SIPOC Code of Conduct. This approach has been followed by many State Agencies. However, there have been examples of some bodies using this provision to avoid reporting activity that would otherwise require to be reported. The PRCA does not believe that this provision requires legislative amendment. It is proposed, however, that in addition to the Department of Public Expenditure and Reform issuing guidelines to all State Agencies, and other bodies with State shareholdings, advising them of how this provision should be utilised, this clarification could also be communicated in the SIPOC Code of Conduct.

Compliance Culture across the EU

The PRCA has submitted previously that the legislation itself needs to be strengthened so that it clearly applies to all lobbying activity of Irish public officials irrespective of where in the EU it is carried out. This can be addressed in the Code of Conduct.

Currently confusion exists regarding the application of the Lobbying Act to activity that takes place overseas. In advance of the review of the Act in 2019, the publication of the SIPOC Code of Conduct could be used to communicate the importance and value of a compliance culture across the EU states.

There is ambiguity as to whether lobbying activity that occurs outside of the State or is carried out by organisations based outside of the State, is required to be reported. This ambiguity results in a loophole that is open to exploitation by the unscrupulous.

It is the PRCA position that neither the location of the lobbying activity or the location of the firm doing the lobbying should impact on the requirement to make a return. The current confusion creates an incentive for the unscrupulous to either carry out lobbying activity outside of the State, or alternatively, to hire lobbyists based abroad. The purpose of the 2015 Act is to ensure that the public know who is lobbying whom, and about what. That aim is being undermined by this confusion.

In advance of the review of the Act in 2019, the publication of the SIPOC Code of Conduct could be used to communicate the importance and value of a compliance culture across all EU states.

Responsibilities of DPOs

Under the Act, and now in the draft Code, there are few, if any, obligations placed on Designated Public Officials (DPOs), yet all the power in a lobbying relationship rests with the person being lobbied, not the person carrying out the lobbying activity.

Under Section 6.4 of the Act, there is an obligation on public bodies that employ DPOs to publish on their websites listings showing “(a) the name and (where relevant) grade, and (b) brief details of the role or responsibilities”. This is the only requirement in the Act placed on public officials, and it is crucial to helping organisations comply with the Lobbying Act. Unfortunately, despite it being a straightforward task, compliance with this provision has been weak.

The relevant information is not displayed in a uniform fashion across government and public sector bodies or updated at similar intervals. This makes compliance challenging for organisations.

Considering that each Department knows who its staff are, there is little excuse for slow updates. Furthermore, when a Department’s list of DPOs has not been updated for a considerable period it can be difficult to know if that is because there have been no changes, or merely no one updated the listing.

The PRCA proposes that the SIPOC Code references frequent and timely updating by each Department and that all DPOs and not just public servants are listed i.e. include Ministers and Special Advisers. PRCA propose updates are made every four months and that each government and public sector website homepage has a dedicated DPO ‘tab’ for the list.

The SIPOC Code could also direct DPOs to make reasonable efforts to inform lobbyists of their status as DPOs.

This obligation would not apply to Ministers, TDs, Senators and local authority members as it can be reasonably assumed that people engaging with them would be aware of their status. However, knowing which public servants are or are not covered by the Act can be challenging particularly if the person does not identify their grade, or has an unusual job title. It is acknowledged that there have been good efforts in terms of encouraging such DPOs to identify themselves, but the PRCA is concerned that this may diminish over time as it is based entirely on the goodwill of the persons involved.

Registration of own professional codes

PRCA submit that the register on lobbying.ie allow organisations to declare membership of trade associations, professional bodies and the professional Codes of Conduct to which they adhere which, for PRCA members, includes the aforementioned ICCO Stockholm Code and Helsinki Declaration.

A useful aspect of the European Transparency Register is that it allows for organisations to state on their returns if they subscribe to a code of conduct or are members of any professional body or trade association. This could be usefully implemented as part of, or in connection with, the implementation of the SIPOC Code of Conduct for people carrying out lobbying.

This provides an additional layer of accountability, as it brings into sharp relief if a body subscribes to codes that demand behaviour beyond the legal minimum. The inclusion of such information would be optional and therefore it should not require any legislative change to achieve this.

Compliance Penalty

The 2015 Act states that a “person carrying on lobbying activities shall have regard to the code of conduct”. In the absence of any penalty for persons carrying out lobbying activities, compliance with the Code of Conduct relies solely on goodwill.

What should be altered/not included in the SIPOC Code of Conduct

From the draft SIPOC Code (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”.

These two paragraphs refer to two different situations. In the first paragraph, disclosure is the issue at hand. In the second paragraph, mis-representation of the facts is the issue at hand. The PRCA suggest these be numbered, treated, and thereby highlighted separately.

In the first instance - disclosure - the issue is one between the professional lobbyist or third party carrying on lobbying and their client/employer and, as such, is a matter for those individuals. In the case of a PRCA member for example such conflict of interest situations are covered in the professional ICCO Stockholm Code submit to (see Appendix One).

The PRCA submit that this is not relevant or appropriate content for a SIPOC Code of Conduct which should be directed at communications between DPOs and those engaged in lobbying.

In addition, reference is made in the first paragraph to “business, family or social associations”. The term and concept ‘family’ has many interpretations - and increasingly so in Irish and European society. The Lobbying.ie website predominantly refers to parents and spouses, less so to siblings. Similarly, more clarity or definition would be useful for the terms ‘business’ and ‘social associations’ in this context.

From the SIPOC Code (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.

This element in the SIPOC Code is vague and open to interpretation and appears to place the responsibility on all parties other than the DPO to know what would result in the public official being in apparent breach of his/her obligations under ethics legislation or statutory codes of conduct.

The PRCA suggest this is re-written to place the onus equally on both parties not to breach any law, regulation, rule or standard of conduct. Alternatively, prohibit the bestowal of gifts or hospitality to public officials where there is a registrable relationship.

From the SIPOC Code (8):

"Cooling off" Period Communications

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.

The Annual Report 2017 records that The Commission received five applications for consent under section 22 of the Act in 2017. In four of the five cases, the Commission granted its consent subject to conditions. In the fifth case the Commission did not grant its consent for a reduction or waiver of the cooling-off period. This information, while useful and indicative of the purpose of section 22, is published - at a minimum - six months after the relevant year-end and as such does not help to allay concerns in the public relations profession that section 22 is not being adhered to and/or not being adhered to consistently.

The PRCA submit that applications for consent under section 22 and the outcome should be posted at more regular intervals, such as every four months, on lobbying.ie.

A further paragraph in the draft Code (no.8) reads:

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.

This appears to place the responsibility on the prospective employer. PRCA would argue that the responsibility in this instance must rest with the current or former DPO and that this paragraph be removed or amended as follows:

A person who is subject to section 22 of the Act should not seek employment or engagement to carry on lobbying activities without advising the prospective employer and, if required to comply with section 22, that they have sought and received, or will seek to receive, the consent of the Standards Commission to carry on such lobbying activities.

Should the SIPOC Code contain different provisions for different persons carrying on lobbying?

Lobbying requires engagement and communication between at least two individuals or bodies.

The SIPOC Code should reflect the different standpoints of those engaged in lobbying. As it stands the SIPOC Code refers in only one instance to those being lobbied.

The SIPOC Code should be seen clearly to apply and be relevant to all those engaged in lobbying and the PRCA would contend that DPOs are engaged in the process of lobbying and as such also have ethical obligations that should be reflected in the proposed Code.

While it can never be an exhaustive list it would be useful for the SIPOC Code to list and make explicit the kinds of individuals, professions, organisations, sectors etc. that may, from time to time, be engaged in lobbying and therefore need to be aware of the legislation, the register and now, the Code of Conduct.

The Regulation of Lobbying Act is relevant to all persons and parties engaged in Lobbying, the proposed Code of Conduct should clearly be too.

APPENDIX One: The ICCO Stockholm Charter

Public Relations consultancies are professional service firms who help clients influence opinions, attitudes and behaviour. Along with this influence comes responsibility to clients, staff, our profession and society at large.

Objective Counsel and Advocacy

Public relations consultancies may not have interests that might compromise their role as an independent consultant. They should approach their clients with objectivity, in order to help the client adopt the optimum communications strategy and behaviour.

Society

An open society, freedom of speech and a free press create the context for the profession of public relations. Consultants operate within the scope of this open society, comply with its rules, and work with clients that share the same approach.

Confidentiality

Trust is at the heart of the relationship between a client and a public relations consultancy. Information that has been provided in confidence by a client and that is not publicly known should not be shared with other parties without the consent of the client.

Integrity of Information

Public relations consultancies should not knowingly mislead an audience about factual information, or about the interests a client represents. Consultancies must make their best efforts to strive for accuracy.

Delivering Promises

Consultancies must work with clients to establish clear expectations in advance about the output of their efforts. They must define specific goals for communications actions and then work to deliver on their promises. Consultancies must not offer guarantees which are not supportable, or which compromise the integrity of the channels of communication.

Conflicts

Consultancies may represent clients with conflicting interests. Work may not commence for a new and conflicting interest without the current client first being offered the opportunity to exercise the rights under any contract between the client and consultancy.

Representation

Consultancies may refuse or accept an assignment based on the personal opinions of the firm's management or the organisation's focus.

Governance and Business Practices

Public relations consultancies are committed to ethical behaviour and implementation of best business practices in dealing with all audiences.

APPENDIX Two: The Helsinki Declaration

- To work ethically and in accordance with applicable laws;
- To observe the highest professional standards in the practice of public relations and communications;
- To respect the truth, dealing honestly and transparently with employees, colleagues, clients, the media, government and the public;
- To protect the privacy rights of clients, organisations, and individuals by safeguarding confidential information;
- To be mindful of their duty to uphold the reputation of the industry;
- To be forthcoming about sponsors of causes and interests and never engage in misleading practices such as “astroturfing”;
- To be aware of the power of social media, and use it responsibly;
- To never engage in the creation of or knowingly circulate fake news;
- To adhere to their Association’s Code of Conduct, be mindful of the Codes of Conduct of other countries, and show professional respect at all times;
- To take care that their professional duties are conducted without causing offence on the grounds of gender, ethnicity, origin, religion, disability or any other form of discrimination