

## **Submission to the Standards in Public Office Commission**

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

27 July 2018

#### **Introduction**

The Wheel is Ireland's representative body for Community, Voluntary and Charitable organisations. The Wheel has over 1,300 members and provides support services and representation on behalf of its members relating to matters that reflect their collective interests. The Wheel very much welcomes this opportunity to make a submission to the consultation on the proposed Code of Conduct for Lobbying.

The Wheel very much welcomes the recent acknowledgement by the Charities Regulator (in the Regulator's recent guidance note on lobbying) that it is legitimate for charities to engage in political lobbying activity when that activity is consistent with advancing their charitable purposes. Indeed, a charity's first duty is to do that which is required to advance their charitable purpose, and advocating to advance that cause - often involving political lobbying and campaigning - is a key function performed by charities and community and voluntary organisations in Ireland today.

Additionally, many organisations work as valued partners with statutory agencies and officials and public representative to inform the development of policy. The community, voluntary and charitable sector very much welcomed the introduction of the lobbying register as this has resulted in much greater transparency into the world of lobbying, and many charities now in fact use their entries in the register of lobbying to demonstrate their important work to shape policy to advance their charitable purposes.

In principle The Wheel agrees that a Code of Conduct for Lobbying is a good idea "*to promote high professional standards and good practices*" and that this should take the form of "a set of shared principles and standards which can be applied equally to professional lobbyists and to employers, representative / advocacy bodies and individuals alike". We very much support the principles-based approach proposed rather than a rules based code of conduct, which would be inimical to the nature of lobbying activity.

The Wheel agrees that the Code should aim to provide a template for carrying on lobbying activities according to generally accepted standards, that it should help to address the public's expectation that lobbying activities will be carried out ethically and transparently, and that it should 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 represents and the outcome they are seeking to achieve.

## **What areas might a Code of conduct include?**

### **1) Demonstrating Respect for public bodies**

While The Wheel agrees that 'The Code should require that persons carrying on lobbying activities show respect for public bodies and for elected or appointed public officials, we are not persuaded that the inclusion of a provision that persons carrying on lobbying activity "refrain from directly or indirectly exerting undue pressure on an elected or appointed public official" is consistent with the nature of lobbying, and recommend that the code stay silent on this matter. Interpretations of "undue pressure" could vary a great deal from policy-maker to policymaker and could be applied to deny people's and organisations rights to make their points to policymakers through direct representation or campaigning.

While The Wheel agrees that 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 *if they have previously been a colleague of the elected or appointed public official, or might previously have worked on an elected official's election campaign*", we cannot agree with a blanket provision of the nature proposed, as there may be circumstances when a person, or a group of persons, who may face barriers accessing policymakers, could legitimately require "preferential access" appropriate to their needs. A general restriction on preferential access could also be used to undermine long-established partnership-working processes and structures of participative democracy built up over years.

The Wheel has similar concerns with regard to a code attempting to regulate lobbying relationships between persons carrying on lobbying activities and an elected or appointed public official who have frequent contact and who may have developed good working / personal relationships. While such relationships could conceivably increase the effectiveness of a persons lobbying, who is to determine whether such influence is "undue"? We recommend that the code should stay silent on this issue. We have a similar concern with the proposal that the Code could note that no lobbyist should attempt to place an elected or appointed public official in a conflict of interest situation. How is the lobbyist to know whether an official would be placed in such a situation? – the onus should be on the lobbied official to determine whether such a circumstance exists. We have a similar concern with regard to the proposed provision that 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”. Again, such a provision could provide a very useful shelter for a policymaker who wishes to avoid a lobbying encounter and who consider they “know” a lobbyist, or “share a relationship” with a lobbyist, to avoid a representation being made. These are serious matters which cut to the heart of the right of individuals and organizations to representation and to the opportunity to shape policies which affect them, and The Wheel would strongly urge that very careful consideration be given to our observations in this regard.

## **2) Acting with Honesty & Integrity**

The Wheel agrees that the Code could 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.

The Wheel agrees that “persons carrying on lobbying activities should not obtain or try to obtain information or decisions dishonestly” but again we have concerns about how subjective interpretations of “or by use of undue pressure or inappropriate behaviour” could be used by officials or policymakers to foreclose lobbying. We recommend that the code stay silent on such subjective matters. We have no objection to the Code advising 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**

The Wheel agrees that a code of conduct could address how a person carrying on lobbying activities should present information to public bodies and to elected or appointed public officials, as long as such a provision couldn’t be used by an official or public representative to reject a lobbying encounter on the basis that they have formed a view in advance of a lobbying encounter that the information being provided by the lobbyist is inaccurate, not current or incomplete. We have no objection to the code noting that no lobbyist should “knowingly provide false or misleading information”. We have no objection to there being an expectation that “A person carrying on lobbying activities should take all reasonable (rather than 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 Wheel is aware that 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?

The Wheel agrees that 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, and that 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. The Wheel agrees that 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 Wheel has no issue with the Code discouraging 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. The Wheel has no issue with a code of conduct requiring 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 Wheel has no issue with the Code providing that a person can only represent competing or conflicting interests *where reasonable efforts have been made* to secure the explicit and informed consent of all the parties involved, and *all the parties involved are aware of the reasonable efforts that have been made* and where the member is able to act for each of the clients with the same professionalism and duty of care. If this reasonability qualifier is not included, The Wheel would not support the proposed absolute provision.

#### **6) Preserving Confidentiality**

The Wheel is of the view that a code of conduct should only 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” *when that has been explicitly agreed between the two parties in advance*. The Wheel has no issue with the Code requiring 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.

#### **7) Avoiding Improper Influence**

The Wheel notes that 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. The Wheel notes that there are also rules regarding the acceptance of gifts and/or hospitality.

The Wheel has no issue, in the context of these existing requirements facing policymakers with a code of conduct for persons carrying on lobbying activities requiring a person carrying on lobbying activities *to take reasonable steps* 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 Wheel has no issue with a Code prohibiting 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 Wheel has no issue with a Code of Conduct prohibiting persons carrying on lobbying activities from attempting to influence elected or appointed public officials by any means other than providing evidence, information, arguments and *experiences* that support an intended outcome.

## **8) Observing the provisions of the Regulation of Lobbying Act**

### **A) Registrations and Returns**

The Wheel has no issue with The Code referring to the provisions of the Act in relation to registering and submitting returns of lobbying activities; no issue with The Code recommending 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; no issue with the code recommending that persons follow the Commission's guidance to ensure that returns of lobbying activities are accurate and complete and are submitted on time; no issue with the code recommending 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; and no issue with the head of an organisation ensuring 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**

The Wheel is aware that 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 Wheel has no issue with a Code of Conduct referring to the provisions of section 22 of the Act and requiring 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**

The Wheel is aware that Section 16(5) of the Act provides that a person carrying on lobbying activities shall have regard to this Code of Conduct. The Wheel has no issue with the Code stating 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.

## **Conclusion**

The Wheel wish to state that we encourage the production of a code of lobbying that is consistent with the observations that we have made above. We have structured this submission consistent with the content of the consultation paper for ease of interpretation.

For further information, please contact The Wheel's Director of Public Policy, Ivan Cooper, at [ivan@wheel.ie](mailto:ivan@wheel.ie).

ENDS