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Prime Minister:

Ref. A085/1684

PRIME MINISTER

Conflict of Interests in the House of Commons: Lobbyists

It might be useful to discuss this informally with the LPS, the Lord President, Chief Whip and Chairman before reaching a decision on how to proceed. Agree to circulate at the meeting on Monday week?
Attached

Following discussion at Cabinet of 7 March 1985 (CC(85)8th Conclusions, Minute 1) I was asked to provide material for fuller discussion by Ministers, covering the present position and possible courses of action to constrain 'lobbying' activities by MPs and thereby narrow the scope for conflicts of interest. I attach a note covering this ground.

DF 21/6

2. You envisaged that fuller discussion should be by a small group of Ministers. Unless you want to chair this yourself, I suggest that the Lord Privy Seal should take the chair and that the other members of the Group might be:

- Lord President of the Council
- Home Secretary
- Secretary of State for Trade and Industry
- Chief Whip
- Minister of State, Treasury

3. If you are content, I will make the necessary arrangements.

Will discuss as above
~~Robert Armstrong~~ ml

Approved by
ROBERT ARMSTRONG
and signed in his absence

19 June 1985

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CONFLICT OF INTEREST IN THE HOUSE OF COMMONS: LOBBYISTS

Note by the Secretary of the Cabinet

1. At CC(85)8th meeting, concern was expressed about the increasing number of Members of Parliament who were being retained to represent specific interests there and the potential conflicts of interest to which this gave rise. I was accordingly instructed to prepare material on the present Parliamentary rules and conventions governing Members' conflicts of interest and on the possibilities for action as a basis for discussion by a group of Ministers. A summary of the present Parliamentary rules and conventions in this field, including those relating to the registration of Members' interests, is at Annex A. The remainder of this note considers the problems and possible courses of action.

The Problem

2. An increasing number of Members of Parliament are being paid, directly or indirectly, by companies, trade associations, and other outside bodies, to act as 'consultants'. In the present register of Members' interests some 120 Members list consultancies, an increase of about 50% over last year's figure. Some Members are direct employees of the bodies concerned; others are directors of public relations firms and professional 'Lobbying' organisations. All are likely to be expected to 'lobby', in various degrees and in varying ways within the Parliamentary system, in the interests of their employers or clients. The problem for consideration is how to reduce the risk that the growth of financial relationships of this kind may exercise an improper influence on Members in carrying out their Parliamentary duties, and conflict with their responsibilities to their constituents and the nation.

3. The problem is not new. It was considered by the Select Committee on Members' Interests (Declaration) which reported in 1969 and led to the adoption of a formal resolution on declaration of interest (see Annex, para 7) and eventually to the establishment of the Register of Members Interests in 1975 (see Annex, paras 3 to 6). The 1969 Committee proposed also that paid lobbying should

be expressly forbidden but this fell foul, inter alia, of what are serious difficulties of definition - drawing a line between what should be unacceptable and what should continue to be permitted.

Difficulties of Definition

4. The 1969 Select Committee drew a distinction between advocacy of a cause in Parliament for a fee or retainer and "advancement of an argument by a Member who through a continuing association with an industry, service or concern from which he may obtain some remuneration, is able to draw upon specialist knowledge of the subject under debate." The latter they regarded as acceptable, the former as not. Building on this they defined what was unacceptable as:

"A Member bringing forward by speech or question, or advocating in this House or among his fellow Members any bill, motion, matter or cause for a fee, payment, retainer or reward, direct or indirect, which he has received, is receiving or expects to receive."

It should be noted that this definition would not cover a Member advising for reward an organisation, company, etc. on Parliamentary affairs or tactics provided he does not himself act as an advocate for them. It would also be unlikely to catch Members who, as company directors, members of professions or farmers, may nonetheless be in a position to "lobby" on behalf of particular interests, and in certain circumstances might be expected to do so. It could, on the other hand, be held to cover the activities of "union sponsored" Members and to rule out, for example, the paid representation by Members of the interests of such bodies as the Police Federation, which Ministers might not want action against paid "lobbyists" to cover.

5. If the definition used by the 1969 Select Committee is thought to go too wide, it would be possible to narrow it by for example:-

- (a) excluding "indirect" payments; or
- (b) providing for specific exemptions, such as trade union sponsorship.

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(a) might be too easily exploited and (b) would be difficult, though perhaps not impossible, to justify. Further possibilities would be:

- (c) exempting advocacy based on a continuing association with particular firms, industries, or bodies such as trade unions.

With such an exemption the definition would catch lobbyists who might be advocates for one interest one day, and for another interest the next day, thus dealing with the argument that the main difficulty arises when members cannot be sure who a lobbyist Member is speaking for. Members with a continuing (and by implication well-known) association with a particular body would not be covered. It may, however, be argued that "occasional" lobbying is no more reprehensible than "continuous" lobbying;

- (d) limiting the definition to advocacy where payment is from or on behalf of a "commercial" body (including "commercial" consultancies). This would not catch non-profit making bodies such as trade associations, charities or trade unions. Again this would not be completely defensible but would rest on the assumption that a distinction can be made between those cases where there is a commercial interest at stake (whether of the consultancy itself or of its clients) and those where there is not. The definition would be designed to catch the most recent development of commercial lobbyist consultancies.

6. The acceptability of particular definitions is also likely to depend on what action is proposed. One reason why the 1969 Select Committee definition ran into trouble was undoubtedly because it was proposed effectively to prohibit paid advocacy as defined. With action short of prohibition, the precision of the definition might not matter so much.

Possible Course of Action

7. The main courses of action, in ascending degree of severity are:-

- (a) Codification and restatement, preferably by Resolution, of the existing rules as they apply to Members acting as paid Parliamentary lobbyists. Such restatement might emphasise, for example, that registration of an interest does not absolve a Member from declaring his interest on specific occasions. Regular declarations might deter both Member and employer.
- (b) Extension of the existing rules on declaration and registration. For example, some arrangement for declaring an interest when asking Parliamentary Questions might be envisaged. The rules for registration of lobbyist interest might be extended to cover declaration of amounts received, and clarified as regards the registration of clients. Improved arrangements for policing and enforcing the rules might also be considered.
- (c) A bar on Members receiving payments as Parliamentary lobbyists could be implemented by a Resolution.

8. These possibilities are not, of course, mutually exclusive. For example, the most severe course of action (7(c)) could be restricted to a fairly narrow definition of lobbyist (eg. that at 5(d)) and combined with less severe action (such as 7(a)) for lobbyists more widely defined (eg. the definition in paragraph 4 without amendments). Other combinations would be possible.

9. Clearly the problem of finding an acceptable definition of lobbyist will be greater the more severe the action proposed. Moreover bearing in mind the questions raised by Mr Powell M.P. and others over the authority of the Resolution relating to the Register of Members Interests, whatever was done might prove extremely difficult to enforce.

HANDLING

10. If Ministers conclude that it is worth trying to secure some change in this area, they will wish to consider how best to carry matters forward. The issue is likely to be seen by Members as very much a "House matter". The alternatives, therefore, seem to be:

- (i) to raise the matter through the usual channels, to see whether there might be action on the basis of all-party agreement. This seems unlikely, and might, in any case, be unacceptable to the House.
- (ii) to put Government proposals to the Select Committee on Members' Interests.

The Committee has recently issued a report (First Report from the Select Committee on Members' Interests 1984-85) on parliamentary lobbying, but its recommendations are confined to proposals requiring the registration of details of the ex-House employment of various categories of non-Members (eg. lobby journalists and Members' research assistants) having privilege access to Parliament. The report does not propose any new restrictions on Members.

It does, however, appear to offer some potential scope for the clarification of the existing rules with regard to the registration of clients by Members engaged in paid 'lobbying'.

If Ministers, possibly in the light of reactions expressed by Members in a debate on this Report, concluded that these recommendations were inadequate, it would be open to the Government to propose that the matter be referred back to the Committee on a broader basis.

Members of Parliament

Outside Interests and Conflicts of Interest

1. With certain exceptions (such as those provided for in the House of Commons Disqualification Act 1975) a Member of Parliament is free to take up outside paid employment. It is, however, incumbent on a Member of the House accepting any form of benefit from an outside source to ensure that in so doing he does not enter into any commitment which conflicts with his overriding constitutional duty to Parliament and to his constituents as a whole. If any outside body from whom a Member receives a financial benefit seeks to influence a Member improperly - by insisting, for example, that he votes in a particular way - they would be guilty of a serious breach of Parliamentary privilege, and could be charged with contempt of the House.

2. In exercising their judgement of what constitutes acceptable conduct in matters of this kind Members are assisted by formal rules of the House relating to -

- (a) The Registration of Interests;
- (b) The Declaration of Interests in debating; and
- (c) Voting on matters in which they have a pecuniary interest.

The rules relating to these matters are summarised below.

A. THE REGISTER OF MINISTERS' INTERESTS

3. Since 1975, following a report by a Select Committee on Members' Interests (Declaration) (Session 1974-75), Members have been required, under the authority of Resolutions of the House, to register nine specific categories of interest. These are as follows:

- (1) remunerated directorships of companies, public or private
- (2) remunerated employments or offices - Ministerial office and membership of the European Parliament, Council of Europe, Western European Union and the North Atlantic Assembly do not need to be registered.
- (3) remunerated trades, professions or vocations.
- (4) the names of clients when the interests referred to above include personal services by the Member which arise out of or are related in any manner to his membership of the House.
- (5) financial sponsorships, (a) as a parliamentary candidate where to the knowledge of the Member the sponsorship in any case exceeds 25 per cent of the candidate's election expenses, or (b) as a Member of Parliament, by any person or organisation, stating whether any such sponsorship includes any payment to the Member or any material benefit or advantage direct or indirect. This subsection includes gifts in relation to a Member's parliamentary duties, other than those received from abroad to which category 7 applies. It is, however, not necessary for a Member to register the fact that he is supported by his local constituency party.
- (6) overseas visits relating to or arising out of membership of the House where the cost of any such visit has not been wholly borne by the Member or by public funds - overseas visits undertaken on behalf of the Inter

Parliamentary Union, the Commonwealth Parliamentary Association, the Council of Europe, the Western European Union and the North Atlantic Assembly, or by any institution of the European Economic Communities need not be registered.

- (7) any payments or any material benefits or advantages received from or on behalf of foreign Governments, organisations or persons.
- (8) land and property of substantial value or from which a substantial income is derived. A Member's home need not be declared, unless he also receives an income from it.
- (9) the names of companies or other bodies in which the Member has, to his knowledge, either himself or with or on behalf of his spouse or infant children, a beneficial interest in shareholdings of a nominal value greater than one hundredth of the issued share capital.

The purpose of this public register is defined as being 'to provide information of any pecuniary interest or other material benefit which a Member of Parliament may receive which might be thought to affect his conduct as a Member of Parliament or influence his actions, speeches or vote in Parliament.'

4. A Member is only required to enter the source of his remuneration or benefit and not the amount received, although beneficial interests in shareholdings only have to be declared if they constitute a material value more than one hundredth of the issued share capital.

5. A Select Committee, under the chairmanship of Sir G Johnson-Smith, monitors the compilation and operation of the register. The Registrar is one of the Clerks of the House.

6. The receipt of payment as a 'lobbyist' is not separately identified as a registrable interest, although clearly within the

general scope of the register under one or other of these nine hearings.

B. DECLARATION OF INTERESTS IN DEBATE

7. It is a rule of the House, applying to almost all proceedings that a Member speaking in debate must declare any relevant pecuniary interest or pecuniary benefit of whatever nature, whether direct or indirect, that he may have had, may have or may be expecting to have.

C. VOTING ON MATTERS AFFECTED BY PECUNIARY INTEREST

8. 'No Member who has a direct (personal) pecuniary interest in a question is allowed to vote on it', (Erskine May, 20th Edition, page 411). Whilst, Members have no doubt often voluntarily refrained from voting on these grounds, cases of a Member being formally debarred for this reason from voting on a public matter are extremely rare.

Cabinet Office
23 April 1985