



Does law and PR mix? A small band of law firms think so, and are helping clients by engaging in public advocacy. **Dominic Carman** looks at the world of public affairs, media profiles and City law firms

# UNDER THE INFLUENCE

Among the various disputed origins for the word lobbying, the 18th President of the United States Ulysses S Grant claims the most noteworthy. He apparently coined the term at Washington DC's Willard Hotel, using it to describe the machinations of political hustlers who frequented the hotel's lobby, where Grant habitually enjoyed a cigar and brandy, to gain an audience with the him.

Big money is now commonplace in day-to-day lobbying in Washington DC, and few are more successful than those major law firms that have a substantial presence within the shadow of Capitol Hill. As the 50 highest-grossing lobbying practices in the US were recently reported to have passed \$1bn (£505m) in annual revenues for 2007 — a new landmark — the specialist lobby shops in the top 50 were notably outpaced by Washington DC law firms. Akin Gump Strauss Hauer & Feld ranked number one on the list with \$89.8m (£45.3m) in lobbying income, just ahead of Patton Boggs with \$89.3m (£45.1m).

Although such dedicated practices are still rare among English law firms, the impetus towards public advocacy — our preferred euphemism for lobbying — has seen some lawyers spilling out from their conventional boxes and moving towards a broader, more developed role as advocates and *de facto* media advisers for their clients.

### Public advocacy defined

Simon Holmes, head of SJ Berwin's competition group, co-ordinates the firm's public affairs work. He says: "A lot of firms do this sort of work but they may not put it in this box because they do not conceive of it as public affairs." Do they really not conceive of it as public affairs, or is lobbying still a dirty word among the UK's lawyers?

To understand what public advocacy means for lawyers, one need look

no further than the erudite Anthony Julius, senior consultant at Mishcon de Reya. "There is a narrow definition and a broader definition," he explains. "The narrow definition is that it is litigation in non-conventional legal fora, which involves representation in a contentious context outside of the ordinary judicial legal parameters. The broader definition is formulation and advocacy of policy goals for commercial, public and voluntary sector clients."

In practice, argues Julius, it is more focused on implementation than think-tank-type work, but is not as narrow as pure litigation strategy. Mishcon's developed a close relationship with US law firm Patton Boggs, one of the foremost integrated public affairs and legal practices. Julius claims of Mishcon's approach: "There is no-one else — we are the first in the field."

But is his claim to be unique entirely valid? How do other legal players in London position themselves as lobbyists in the public space? What is their *modus operandi* and where does the practice fit within their firm?

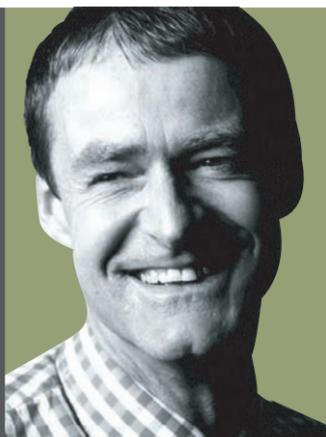
Lord Clement-Jones, co-chairman of global government relations (GGR) at DLA Piper and former chairman of the Liberal Party, is widely regarded as a key player in the field. He launched DLA Upstream in 1999, emulating the approach of top-notch US lobbyists: regarding law and PR as a good mixture.

"We were trying to get a joined-up regulatory practice," he says. "We had all the elements: lawyers, communications guys in the lobbying field for strategic communication and media management. When we merged in 2005 we found we had our own Washington DC practice in the middle of Piper Rudnick."

This included former US Senator George Mitchell, now chairman of the merged firm. Today, DLA Upstream's

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combined GGR unit has more than 70 fee earners: 25 in Brussels, London and Edinburgh, 45 in the US and two in Beijing — with more to follow.

According to Clement-Jones, policy development is highly strategic for corporates: "It is crucial for most boards of directors that they know what is coming, what kind of government policy — whether it is European Union (EU), World Trade Organisation, US, China or whatever — is going to impact on their business. They need to know how to minimise the exposure they may have to new policy development."

DLA Upstream sells their service to

clients as part of a full spectrum covering the business risk cycle. "We start with monitoring," explains Clement-Jones, "to see what exposure new policy development gives you, then we look at the lobbying/influencing process where, before law becomes black-letter law, you ask what exposure do we have from this: for example, how can we make sure that the decision is going to be made or the legislation that is coming through, is changed? You then get black-letter law and compliance issues. Next, we have colleagues who deal with what Americans call corporate defence, what we call white-collar crime. This is when it

because it is Slaughters,” says one informed observer. “But they should be because international M&A is becoming highly political.”

Other large firms such as Eversheds, which recently acquired three of the 14 accredited parliamentary agents when they took over Rees & Freres in January, has to date rejected a broader path. “We have looked several times at the possibility of a corporate public affairs practice and always decided against it,” says Eversheds partner Cornelius Medvei.

Last year, Russell Jones & Walker set up a parliamentary and legal affairs department, hiring Louise Revell, a public affairs campaign professional, to manage the operation. She summarises the objective from a PR perspective: “A lawyer’s job is to advise their clients on what the law means for them — it is a only a small step to say they can be advising on what the law should be and we can then lobby on a client’s behalf for that change.” She argues that this approach will give her firm a competitive edge.

The only magic circle firm to be a real public advocacy player is Clifford Chance (CC), where Michael Smyth, head of public policy, runs a team of six dedicated lawyers. CC was the first international law firm to establish an international public policy practice in 1993. “The opportunity to be able to provide a differentiated product offering in a commoditised world surprises me,” says Smyth.

He defines his role as “looking around corners on behalf of clients” to see what the future parameters of the law may be. CC’s clients include national governments, non-governmental organisations, industry associations and major corporates. The firm has acted for several clients in front of the Treasury Select Committee. Smyth likens the preparation to what a litigation lawyer would do in terms of preparing a client for court.

Contacts and market intelligence, he suggests, are paramount: “It is a question of being out there and ensuring that you know the key players: the administrative elite — senior civil servants at target ministries. It is important to know who runs which desk at the Department for Business, Enterprise and Regulatory Reform (BERR) or the Treasury.”

Such departments have well laid out programmes of corporate engagement.

“Provided you go about it coherently, it is not that difficult,” says Smyth. “You need to make the right contacts with the political class in Whitehall and Westminster.” He highlights knowledge of the landscape in terms of think tanks as a useful way of aligning yourself with clients because clients are often members of strategic think tanks. “The synergies are obvious,” he adds.

Smyth also heads up CC’s pro bono function. A good measure of the public-facing activity of any firm is pro bono. In addition to working for charitable clients, Smyth also uses public advocacy on behalf of the firm, championing such



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causes as allowing foreign law firms to open in India — promoting the case to the Indian Trade Ministry.

As an assiduous commentator on public consultation exercises, particularly those issued by the Ministry of Justice and BERR, Smyth believes that Whitehall wants to hear from firms like CC. “We are a significant business in our own right,” he says. “Our clients are impressed and gratified that we are vocal public commentators. Firms like mine have a genuine leading edge as thought leaders — there is no point keeping quiet about that. If you show stakeholders lots of clever stuff, you may benefit by increased instructions.”

In terms of the pro bono work done by Mishcons — which includes advising the international coalition of athletes, Team Darfur, on their freedom of expression rights in the upcoming Olympic Games in China — Julius argues that it helps in raising its profile but can hinder because “everyone comes with the expectation that you will do it for nothing.”

Simon Witney, private equity partner at SJ Berwin, takes a different view. “We do a lot of our work pro bono because we are keen to be at the forefront of developments — we see it as an investment in intellectual capital, our know-how and in getting closer to the market we are operating in,” he says. SJ Berwin has partners sitting on legal and tax committees of the British Venture Capital Association, for example. Witney argues that they are able to shape the legal, regulatory and tax environment. “Because of the problems our clients are facing,” he adds, “we understand the technical solutions that governments can implement to solve those problems. Governments look to us for help with drafting.”

### Fee structures

The quality and national reputation of a lawyer as distinguished as Julius allows Mishcons to charge a premium rate for his public advocacy services. “I have the academic and forensic skills — a combination that works particularly well,” says Julius.

DLA Upstream charges a full commercial rate to their clients. “When we are pitching, some of our competitors are the major PR firms rather than law

firms. Very rarely is another law firm going to be our major competitor,” says Clement-Jones. “I am always chasing instructions from big clients which can be charged at the full CC rate,” says Smyth. The parliamentary lobbyists who sit with the planning team at Eversheds also bill at the same hourly rate as other fee-earning partners.

DLA Upstream is at the forefront of using their public policy practice in China — for Chinese companies in Washington DC and Brussels and for Western small and medium-sized enterprises finding their way around China. “They need their hand holding,” says Clement-Jones. “Contacts with decision makers in emerging markets can sound hard-edged. When you sell yourself in the US, you talk about your influences, your big dogs, people you have had in government, former senators and so on, who operate on your behalf. It is less about building relationships and more about getting a result at the end of the day. In an emerging market, particularly China, it takes a long period of time for them to have confidence in you. But what you must be able to do is understand what the power structures are like and strategically what messages are important.”

When it comes to individual areas of practice, public advocacy helps in many ways. You can not be a top competition lawyer in Brussels without knowing your way round the Commission and the relevant directorates. There are an estimated 20,000 lobbyists working in Brussels, compared to double that number who are registered in Washington DC. “Advocating your client’s cause before the Competition Commission goes to the heart of what a lawyer does,” suggests Holmes. “Much better to have someone advocating a case who really understands it rather than a freelance lobbyist.”

So are lawyers really better than PR specialists at advocating change in the public sphere? “Not all lawyers are good at communicating in a PR-friendly way,” says Restell. DLA Piper uses a mixture of lawyers and PR people in Europe whereas, in the States, they are almost entirely lawyers. “We have got lawyers in-house in every relevant legal sector who can collaborate,” says Clement-Jones. “We do not have to borrow anybody’s watch to tell them the time of day.”

Will there be a greater shift towards public advocacy by UK law firms? “I see things changing more in Brussels than in London as there are more lobbyists there,” says Holmes. Smyth admits to puzzlement at the continued absence of competition from other magic circle firms: “I am surprised now — I would be baffled and amazed if the major players did not recognise that they need to do this within a few years,” he says. “It is easier to claim you have a unique selling point if there are fewer practitioners. If others came on board, it might suggest we had been getting something right.” ■

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*Anthony Julius, Mishcon de Reya*



all goes pear-shaped and you need crisis management, media relations and so on.”

### Participating firms

It is not a model that the magic circle have yet adopted *en masse*. One or two people have tried but have not been able to recruit the right people. This includes Guy Beringer, who recently retired as the senior partner of Allen & Overy and was himself very active in the public space. Freshfields Bruckhaus Deringer has a sizeable EU regulatory and public affairs group in both Belgium and Germany, but make less impact in London. “Slaughter and May is not interested