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Beyond the Code of Conduct: Building ethical competence in public officials

Can Codes of Conduct set realistic ethical standards for officials? Can training in ethics and professional standards make any practical difference in the way public officials behave? Can the notions of 'ethical competence' and 'ethical reliability' help to identify new ways of thinking about ethical performance on the part of public officials?

These and related questions have been the subject of widespread research over the past two decades. Even so, in seeking to establish ethical standards and norms of professionalism, most public sector agencies today have scarcely advanced beyond the mechanism of the traditional rule-based Code of Conduct, often based on the 'core values' of the institution. Such rule-based Codes of Conduct generally aim to prohibit corruption and misconduct, rather than promoting ethical conduct in the exercise of public functions. This U4 Brief outlines the main issues behind these concerns, looks beyond to some of the reasons why traditional methods of managing ethical problems encountered by public officials often fail, and examines how this important deficit might be remedied.



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Introduction

Ethical questions inevitably arise when public officials exercise significant discretionary power. Public officials, broadly defined, are employed by the state to carry out a wide range of functions involving the application of law or public policy, the control of information (both official and private), delivery of

public services, advising Ministers and other officials on policy, and deciding on various types of licences or imposts (such as visas, vehicle licences, taxation assessments, etc.). The discretionary powers exercised by such officials necessarily involve the balancing of multiple competing loyalties: to the state, to the government of the day, to their institution and their colleagues, to themselves, and to the ‘public interest’, however defined.

The decisions and actions of officials can often affect the lives of ordinary citizens in ways that are not subject to accountability or even scrutiny. As it is not feasible to specify rules for every possible situation in a Code of Conduct, no matter how comprehensive it may seek to be, the potential for unethical conduct, and corruption more specifically, remains a concern.

This paper outlines a competency-based approach to teaching and managing professional ethics standards in the public sector, in a cost-effective and sustainable way. It further suggests applications of this approach in a capacity-building programme that can be applied to support public service reform, and to resist corruption and abuse of power by officials.

Conventional approaches to teaching ethics to officials

The ways in which transparency, integrity and accountability have been addressed since they first became a major public policy issue in the early 1990s have mostly ignored the potential contribution of professional ethics. The now-classic Klitgaard formula (which has largely dominated the thinking on the issue

The three primary elements of any ethics code governing the behaviour of public officials can be stated briefly:

- Act responsibly
- Avoid conflicts of interest
- Do no (avoidable) harm

Capacity development must focus on strengthening the ability of public officials to apply these basic concepts to often complex and difficult ethics dilemmas where there is no simple answer.

“If we do not teach Professional Ethics to our public officials, it is unlikely that they will understand their organisation’s Code of Conduct. But if we do, it is unlikely that they will need one”

of corrupt conduct) states the problem of corruption thus: Monopoly power + Discretion – Accountability = Corruption. This formula relies on an assumption that the public official concerned is not making decisions from within any ethical framework at all: at the root of this formula there is a Hobbesian notion that unless exhaustively detailed, comprehensive, and prescriptive regulations and systems of punishment for misconduct are in place, all actors will misuse their discretionary powers for corrupt private gain.

This assumption has led to a great deal of codification of rules and standards, with little reflection on the potential usefulness of

what might be called ‘Professional Ethics’ precepts in assisting public officials to act appropriately, or to enable them to be brought to account for their decisions and conduct. Where they have been considered at all, professional ethics standards and norms have been primarily addressed through abstract expressions of ethical principles, which generally deal with the lawful use of authority, loyalty issues, and the successful navigation of conflicts of interest on the part of public officials.

Such codes can roughly be divided into two types, narrow ‘Justinian’ codes, and much broader ‘Aspirational’ codes. ‘Justinian’ codes attempt to exhaustively systematise ethics standards for all eventualities. They may also include a limited range of examples of ‘standard’ problems and their organisationally-approved resolution. The major problem with such codes, however, is that circumstances alter cases and, no matter how exhaustive, no code can prescribe courses of action for every possible situation. Inflexible rules risk missing the mark, provoking unintended consequences or providing conflicting advice where more than one rule may apply in a given situation.

Officials will always need well-developed reasoning skills to interpret the code in the circumstances of the case. Or as Cicero said – officials need to be able to calculate where duty lies in each case: rules can be irrelevant, unfair or unreasonable. Indeed, a rules-based approach to codification may even encourage risk-averse or ill-considered conduct by officials, for example when officials simply follow rules and fail to consider either alternative means or consequences, the potential for adverse results is increased. When the model is further restricted to allow for only ‘strict compliance’, or worse, ‘zero-tolerance’, officials can be discouraged from thinking strategically and creatively, and from developing the judgement skills necessary to resolve those complex ethics problems or scenarios that are not covered, or are only partially covered, by a code. Officials who uncritically follow ‘the rules’, irrespective of the consequences – the problem of ‘wilful obedience’ – can do great harm.

On the other hand, so-called ‘aspirational’ codes can only give a broad indication of the fundamental principles and values which might be relevant to the case at hand. This approach to standard-setting involves the use of more generalised statements of ‘core values’, which are necessarily too abstract to be directly applied in specific situations. Again, officials will need competence in reasoning based on values and principles to interpret the code in the circumstances of a specific case. Unless they are trained in this task, managers may prefer to take no action at all rather than risk exposure.

When it comes to enforcement, public sector codes, which are almost always interpreted and enforced by the employer, stand in contrast to the codes of the established professional disciplines, such as medicine, law, or engineering: in these codes questions of professional ethics are peer-regulated to a significant extent. Notions of professionalism in such disciplines imply primarily a duty to preserve the trust of those who rely on their expertise by maintaining high standards of technical competence, as well as by controlling conflicts of interest, and reinforcing the primacy of the best-interests of the client, the wider community, and the profession itself. Public sector codes generally focus on an official’s duty to the employing organisation – usually the State or a state agency – and the government of the day.

While there exist a number of differences in approaches to ethical standard-setting as between public officials and other groups of professionals, there are also important similarities. Both groups are required to manage multiple conflicting interests; both must be competent to recognise ethically problematic situations as and when they occur, and both receive minimal training in the ethical standards of the profession when commencing practice or employment. The competence challenge is further compounded by the fact that the profession’s ‘core values’ can often be found to be in tension: knowledgeable and well-intentioned professionals may legitimately disagree about the application of particular ethical principles in a given case. Further, what is required by ‘the public interest’ is always likely to be open to dispute. Public officials, especially senior officials, need to learn specific tools to deal effectively with such matters.

As guides to proper conduct, there are necessary limitations to ‘Justinian’-style comprehensive codes of rules, broad aspirational principles, and context-specific professional practice standards. Rules can conflict or be silent on a particular situation: general principles require competent interpretation and judgment, in the relevant context. Aspirational standards assume supportive organisations. In each case, skilled judgement by responsible officials is required, and thus criteria for good judgement must be stated and learned: multi-layered ethics training and development is required to improve the reliability of ethical judgment by officials. Merely ‘following the rules’ will often not be enough for a manager to be effective in protecting their organisation from ethical hazard.

Public institutions which encourage their officials to take ethics standards seriously are more likely to sustain a reputation for integrity, reliability, and professionalism, and encourage trust on the part of their clients.

Such institutions are likely to be more productive also, as they will spend less time on correcting bad management decisions, and dealing with complaints

Teaching and assessment for ethical competence

This paper suggests that a competency-based training approach to professional ethics for public officials can provide a relevant framework for building the capacity for ethics and integrity among public officials. Problems relating to the application of ethical standards involve not only compliance, but also the competent identification of ‘the ethics problem’ in a relevant context. In order to exercise administrative discretion effectively and properly, officials need to be able to prioritise relevant ‘core values’ in the context of law, policy, organisational objectives, competing rights and interests, and broad community values. The outcome of the process is almost always contestable. Good judgment, ethically speaking, is essential.

Capacity-development must focus on strengthening the ability of public officials to apply these basic concepts to often complex and difficult ethics problems. The key elements of this competence include the following:

- Subject-matter knowledge: the substantive institutional ethics standards, both de facto and de jure, together with the legal, institutional, political, and cultural justifications for those standards;
- Reasoning skills: the diagnostic and analytic skills needed to identify (‘construct’) an ethically problematic situation, and the skills of values-clarification (broadly speaking, values-based reasoning) needed to apply relevant standards appropriately;
- Problem-solving skills: the skills needed to resolve an issue where demands of ethical or moral principle, the law, the organisation’s policy, standards, and guidelines, ‘the public interest’, and particular interests, all have to be considered. This requires a structured and systematic (or ‘Systems Thinking’) approach to the recognition of the various long-term consequences of a proposed solution of the issue;

- **Advocacy skills:** the ability to advocate effectively a principled view of a proposed or actual decision. This activity will often be required to be undertaken with different audiences, such as Ministers, media, civil servants, review tribunals, and the public at large: it therefore relies on specific conceptual, language, and argumentation skills. Getting the terminology right is critical to avoid misunderstanding.
- **Self-awareness and consensus-building skills:** ‘Doing Ethics’ is fundamentally a social activity, involving the legitimate rights and interest of others, (including the State and its organisations). Officials need to develop skills in recognising the merits of the principled positions which may be taken by others, so as to be in a position to build consensus on possible courses of action, and public trust in the responsiveness of the organisation.
- **Attitude and commitment:** perhaps the most challenging area of intervention involves developing pro-ethics attitudes or commitments needed for ensuring reliable application of standards.

Application and adaptability

From the mid-1990s a number of scholars have suggested that case-scenarios on video may prove effective in ethics training for the professions, especially medicine. Based on this initial research, a suite of video-based resources specific to the public sector was developed and tested in Australia and New Zealand, where it was found that a typical group of participants – usually senior officials – identified correctly less than half the twenty ethics issues depicted in each scenario. The methodology is now being applied to professional ethics training for officials in various countries in the EU, Africa, and the MENA Region.

It has been demonstrated through this process that the use of locally-specific scenarios encourages participants in training sessions to focus effectively on generic ethics and anti-corruption issues. The specifically non-didactic case-scenario methodology has also been shown to provide an appropriate vehicle for raising ethics, integrity, and corruption issues for discussion, at arm’s length, in particular where references to recent actual cases may cause defensiveness and compromise the quality of discussion. Document-based case studies cannot provide the required information relating to a case without identifying the issues and the solutions to the case: documents can only describe a problematic situation, whereas video can depict the same facts without the use of identifying terminology,

requiring the trainees to ‘construct’ the issue from their background knowledge.

The responses of participants to the situations portrayed in video scenarios can also be used diagnostically to inform the analyses of training needs, and the adequacy and relevance of existing ethics policy and practice in an organisation.

In all cases, competently-moderated extended dialogue among peers from different functional backgrounds can expose participants to a range of possible interpretations and decision options, and may be used to prompt the structured and critical use of authorities such as law and policy. The methodology also allows for the evaluation of proposed solutions against criteria based on the proper ‘role’ of the employee and the competing claims of legal and professional duty, justice, fairness, equity and utility.

Culturally-relevant local values and practices can thus be incorporated into the dialogue by the participants themselves, to the extent that they find it relevant to do so. The consequences of adherence (and non-adherence) to such values are thus open to analysis in extended dialogue by participants, who may well decide that the promulgated standards of the organisation are unhelpful or irrelevant. Case studies rendered on video can act as surrogate examples of deep organisational experience, and can enable ‘arm’s length’ discussion of problematic or ‘undiscussable’ issues without identifying specific individuals or cases.

Finally, ethics capacity-building is a two-way street: public officials who have relevant knowledge and skills and a focus on integrity which goes beyond narrow rule-based compliance, are in principle equipped to make better-informed and properly considered decisions, and provide good advice. Institutions that encourage their officials to take a constructively critical stance towards ethics-related norms, culture, and actual practice, should be more likely – other things being equal – to sustain a reputation for coherence, integrity and professionalism, and thereby be both more effective, and more productive. ■

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