

**PUBLIC MANAGEMENT OCCASIONAL PAPERS**

**No. 14**

**ETHICS IN THE PUBLIC SERVICE**

**Current Issues and Practice**

## **FOREWORD**

This report is the product of an inquiry carried out by the OECD Public Management Service on the management of ethics and conduct in the public service in selected Member countries. It is based on an analysis of country reports prepared by Australia, Finland, Mexico, the Netherlands, New Zealand, Norway, Portugal, United Kingdom and United States.

It was prepared by Sally Washington of the Public Management Service and Elia Armstrong, seconded from the Canadian Privy Council Office.

The report has been reviewed by the OECD Public Management Committee and is published on the responsibility of the Secretary-General of the OECD.

## **ACKNOWLEDGEMENTS**

The Secretariat would like to thank the authors of the nine country reports: Mike Jones, Public Service and Merit Protection Commission, Australia; Kirsi Äijälä and Tarja Hyvönen, Ministry of Finance, Finland; José Octavio López Presa, Ministry of the Controllershship and Administrative Development, Mexico; Johan Maas, Ministry of the Interior, the Netherlands; State Services Commission, New Zealand; Odd Bøhagen and Oystein Blymke, Ministry of Government Administration, Norway; Vargas Moniz, Cabinet of the Secretary of State for Public Administration, Portugal; Andrew Whetnall, Cabinet Office, Office of Public Service, United Kingdom; and Stuart Gilman, Office of Government Ethics, United States. Thanks are also extended to Alexandra Mills for her ongoing advice throughout the project.

## TABLE OF CONTENTS

FOREWORD.....	2
ACKNOWLEDGEMENTS.....	2
EXECUTIVE SUMMARY .....	5
I. INTRODUCTION .....	9
II. FORCES IMPACTING ON PUBLIC SERVICE ETHICS AND CONDUCT.....	17
III. AN ETHICS INFRASTRUCTURE: FUNCTIONS AND ELEMENTS.....	25
IV. ACTIONS AND REACTIONS: RECENT INITIATIVES IN ETHICS MANAGEMENT.....	43
V. TRENDS AND APPROACHES: COMMON DIRECTIONS IN ETHICS MANAGEMENT...	51
VI. FROM RULES TO RESULTS: IMPLICATIONS FOR ETHICS MANAGEMENT.....	57
BIBLIOGRAPHY .....	62



## **EXECUTIVE SUMMARY**

OECD countries are concerned about declining confidence in government. This so-called “confidence deficit” has been fuelled by well publicised “scandals”, ranging from inappropriate actions on the part of public officials, to full-scale corruption. Few, if any, Member countries have escaped the taint, if not the reality of wrongdoing. As a result, ethics or standards in public life have become an important public and political issue.

This report examines how nine OECD countries -- Australia, Finland, Mexico, the Netherlands, New Zealand, Norway, Portugal, the United Kingdom and the United States -- are dealing with the management of ethics and conduct in the public service. However, it offers insights that are broadly applicable. The report:

- analyses the forces impacting on ethics and conduct, highlighting those which are driven by changing styles of public management (section II);
- describes the tools and processes used to regulate against undesirable conduct and to provide incentives for good conduct. These have been defined as the “ethics infrastructure” (section III);
- summarises recent ethics-related initiatives in the nine participating countries and suggests trends and differences in approaches and strategies (sections IV and V); and
- concludes with a discussion of the potential tensions between old style public administration and new-style public management which have implications for the management of ethics and conduct (section VI).

### **A Changing Public Management Environment**

Public servants operate in a changed and changing environment. They are subject to greater public scrutiny and increased demands from citizens, yet they are also facing stricter limits on resources. They are having to assume new functions and responsibilities as a result of: devolution and greater managerial discretion; increased commercialisation of the public sector; a changing public/private sector interface; and changing accountability arrangements. In short, they are having to adopt new ways of carrying out the business of government. While public management reforms have realised important returns in terms of efficiency and effectiveness, some of the adjustments may have had unintended impacts on ethics and standards of conduct. This is not to suggest that changes have caused an increase in misconduct or unethical behaviour. But they may place public servants in situations involving conflicts of interest or objectives where there are few guidelines as to how they should act. There may indeed be a growing mismatch between the traditional values and systems governing the behaviour of public servants and the roles they are expected to fulfil in a changing public sector environment.

## **An “Ethics Infrastructure”**

Countries employ a range of tools and processes to regulate against undesirable behaviour and to provide incentives to good conduct. This report defines an “ethics infrastructure” as having eight key elements -- political commitment; an effective legal framework; efficient accountability mechanisms; workable codes of conduct; professional socialisation mechanisms (including training); supportive public service conditions; the existence of some ethics co-ordinating body; and an active civic society (including a probing media) playing the role of watchdog over the actions of public officials. Ultimately, the relative synergy between the different components of an ethics infrastructure will depend on a country’s cultural and political administrative traditions, its overall approaches to public management, and its historical record in promoting ethical behaviour. Like any other set of management tools, the effectiveness of the ethics infrastructure depends on whether it is operationalised, understood and applied consistently.

## **New Ethics Initiatives**

The nine countries involved in this study reported a wealth of new ethics related initiatives, particularly over the last five years. Those initiatives are summarised in section V. The approaches to reforms have been categorised as falling into three main camps: overall reviews to determine and close gaps in the systems for ethics management (Finland, Netherlands, Norway, the United Kingdom, the United States); refocusing ethics management in relation to overall public management reforms (Australia, New Zealand); and as an aspect of public sector modernisation programmes (Mexico, Portugal). Yet despite differences in impetus and strategies, some common directions in ethics management stand out.

Most of the participating countries have attempted to define the overall values they are trying to encourage in the public service. These are summarised in the box at the beginning of Section V. They show a good deal of homogeneity in terms of the value climate sought in a modern public service. And despite claims that codes of conduct are at odds with a less rules-based public management regime, five of the nine countries have implemented new codes of conduct over the past five years and a sixth is in the process of designing one. This suggests that countries still see the need to define explicitly, although not necessarily in minute detail, the behaviour expected of public servants. Indeed, some countries now have a broad public service-wide code of conduct from which individual agencies design a purpose-built code to reflect their particular objectives and mission. There is also a greater emphasis on transparency of actions through improved whistle-blowing provisions and requirements that public servants disclose their financial and other interests. This emphasis on broad guidance (defining values and broadly based codes of conduct) and greater transparency (whistle-blowing and disclosure), rather than detailed, controls reflects wider trends in public management.

## **Linking Ethics Management to Overall Public Management**

This raises the question of how countries can ensure that their ethics infrastructure is consistent with and reinforces their wider public management reforms. The potential tensions between traditional notions of public administration and new forms of public management are starting to emerge. It is perhaps in the area of ethics that these tensions and contradictions are most evident. For example, reducing rules and controls allows more opportunities for mistakes and impropriety. But too many rules and controls may grind government to a halt: public servants will

respond by avoiding risks (and initiative) for fear of putting a foot wrong. It would be inappropriate to suggest that either the public administration or the managerial paradigm is superior, including for the management of ethics. Countries will draw their own conclusions based on their political and administrative traditions. But it would seem that a country's ethics management regime should be consistent with its approach to public management in general. For example, it would be inconsistent to marry a strict centralised compliance based ethics infrastructure with devolved results-based management systems.

Regardless of where a country falls in the continuum between public administration and managerialism (the nine participating countries are typologised in Section VI), the goals of the "three E's", economy, efficiency and effectiveness, continue to be important. But countries are clearly giving greater priority to a fourth "E": ethics. Proper conduct has always been a prerequisite for good governance. In spite of, or perhaps because of, the changes occurring in the public sector in OECD countries, good and ethical conduct is even more imperative. The success of public management reforms, and indeed overall confidence in government, will depend on it. This requires that an effective ethics infrastructure be firmly in place.



## I. INTRODUCTION

Many OECD countries are experiencing an apparent decline in confidence in government. Citizens seem to be losing trust in decision makers<sup>1</sup> with corresponding negative implications for the legitimacy of government and its institutions. This so-called confidence deficit is fuelled by well-publicised “scandals”, stemming from what could be seen as “inappropriate actions” on the part of public officials to full-scale corruption. Few, if any, Member countries have escaped the taint, if not the reality, of wrongdoing.

But are overall standards falling or are misdemeanours or even just mistakes more visible? Is the problem really bad behaviour or a lack of signals and guidance as to what is good behaviour? Or is there simply a growing mismatch between traditional values and systems governing the behaviour of public servants and the modern roles they are expected to fulfil?

Regardless of their perspective on the causes or the extent of the problem, it is clear that OECD governments are feeling a need to respond to it. Ethics or standards in public life have become an important public issue in OECD countries. This interest is reflected in a variety of attempts to “clean up” public life, including reviews of the systems for managing the ethics and conduct of public officials.

### **PUMA Work**

To respond to this interest, the OECD Public Management Service initiated a limited study of self-selected OECD countries to examine how ethics and conduct are managed and maintained in the public service. The main objectives of the study were to describe the tools and processes for managing public service ethics and how they are functioning, as well as some qualitative information about underlying contextual factors, including the changing roles of public servants in relation to public management reform and the values climate sought in the public service in OECD countries today.

Nine countries volunteered to produce reports on their experience: Australia, Finland, Mexico, Netherlands, New Zealand, Norway, Portugal, the United Kingdom and the United States. While these nine countries do not cover the entire range of political administrative systems in the OECD membership -- the sample is biased toward Westminster and Nordic systems -- they do offer an important snapshot of the similarities and differences in approaches to ethics and conduct. This is an important beginning.

---

1. See for example, “The Pulse of Europe; A Survey of Political and Social Values and Attitudes”, *Times Mirror Centre of the People and the Press*, 1991.

Perhaps one of the most useful outputs from this initial work was the development of the ethics infrastructure as a simple but useful tool for examining how ethics and conduct is managed. We argue that standards in the public service are defined and maintained through a set of functions and elements, that is, the ethics infrastructure. These are the rules, controls, conditions and actors that set boundaries on behaviour and provide incentives for high standards of conduct. The concept and its components are described below in Section III.

This report attempts to do the following:

- identify the forces or changes in the public sector environment that appear to be affecting the ethics and conduct of public servants (Section II);
- describe the elements of the ethics infrastructure, how they function, and how they interact to create the conditions for ethical conduct (Section III);
- describe new initiatives in the management of ethics in the public service in the OECD countries participating in the study (Section IV);
- uncover similarities, differences and any discernible trends in those new initiatives (Section V);
- highlight some of the contradictions or tensions in the area of ethics and conduct stemming from the move from rules-based to results-based public management (Section VI).

The 1997 PUMA programme of work proposes to build on this work. Using the concepts and findings used in this study, a checklist and a set of guidelines will be developed for defining, promulgating and monitoring standards of ethics and conduct for the public sector.

### **Scope, Definitions and Boundaries**

Having said what the report covers, it is also important to state its limits and to give some working definitions.

#### ***The Political Administrative Interface***

This report focuses on the ethics and conduct of public servants, rather than elected officials. However, in practice, the political administrative interface is difficult to define. In the public's eye, public servants and elected officials tend to be seen as one and the same. As Gilman (United States) notes:

*“The dilemma is determining the target of the public's ire. For example, when referring to the Federal government, most Americans do not distinguish between the executive and legislative branches; or within the executive branch between the political and career civil servants.....it is easy to see why the entire government is often broad-brushed as corrupt.”*

This broad-brushed phenomenon holds true for various administrative systems, not just those with a significant proportion of politically appointed officials, as in the United States. As a result, many of the attempts to deal with so-called lapses in ethics and conduct target all types of government officials. For example, in the United Kingdom, the Committee on Standards in Public Life (the Nolan Committee) -- while making a distinction between civil servants and politicians -- had a mandate to review standards at all levels of government activity.

This report, therefore, does not ignore the role of elected officials, either as “leaders” or as targets of questions and concerns about falling standards. However, they are referred to more in the context of their relationships with public servants, rather than as a focus of enquiry in themselves. Areas relating almost exclusively to the political domain -- such as the financing of political parties or political campaigns -- which have been the source of much disquiet in some Member countries, have been deemed beyond the scope of this enquiry. Officials working in non-core public sector roles are also included where appropriate.

### ***Illegal, Unethical and Inappropriate Acts***

In examining conduct, it is useful to make a distinction between behaviours: illegal, i.e. against the law which covers criminal offences to misdemeanours; unethical, i.e. against ethical guidelines, principles, or values; and inappropriate, i.e. against normal convention or practice. Corruption may fall under any of these three headings. Its defining characteristics are the misuse of public office, roles or resources, for private benefits (material or otherwise)<sup>2</sup>. While the boundaries between these categories, in particular the latter two, may be fuzzy, they will be used for the purposes of this report to denote degrees of wrongdoing.

The above distinctions have implications for how various problems are addressed. When wrongdoing involves an illegal act by an individual -- for instance, fraud -- the responses are less problematic than when they fall into the grey area of “unethical” or “inappropriate” conduct. The former case can be labelled an aberration and dealt with usually through the judicial system (assuming this functions well and the relevant laws governing actions by public officials are clear). However, where the case is one of inappropriate conduct -- perhaps signalling a simple lack of judgement -- the responses are less self-evident. As Blymke and Bøhagen (Norway) state:

*“The majority of cases....do not however so much concern criminal acts as allegations of manipulation of power, injustices and common practices of bending rules in some political and administrative institutions.”*

By definition, the management of ethics and conduct is not just about monitoring and policing behaviour. It is also about promoting integrity and good conduct. It is about seeking some consensus on what is good behaviour and giving public servants some guidance as to how they should act, make decisions, and use discretion in their everyday work. Therefore, while not ignoring the problem of corruption and other forms of illegal activity, this report strives to reach a balance between the means of encouraging good conduct and strategies for policing behaviour.

---

2. For a discussion of the concept of corruption, see Dionysios Spinellis, “The Phenomenon of Corruption and the Challenge of Good Governance”, paper prepared for the OECD Symposium on Corruption and Good Governance, March 1995.

## ***Ethos, Values, Ethics and Conduct***

Despite the lack of consensus on what ethos, values, ethics and conduct actually mean -- they are often used interchangeably -- we will attempt working definitions. For the purposes of this report the following apply in the context of public service ethics:

- ethos*: the sum of ideals which define an overall culture in the public service;
- values*: the individual principles or standards that guide judgement about what is good and proper;
- ethics*: the rules that translate characteristic ideals or ethos into everyday practice, and
- conduct*: the actual actions and behaviour of public servants.

As ethos becomes translated into conduct, there is a move from the abstract to the concrete. However, the relationship between those concepts is complex and overlapping. Several commentators have tried to explain them. For example, "The critical link between ethics and values is that ethical standards and principles can be applied to the resolution of value conflicts or dilemmas" (Kernaghan in Chapman, 1993, p. 16). In addition, the concepts have been difficult to apply to the day-to-day operations of public servants, because:

*"public administrators are still striving to develop an understanding of the ethics of their profession, not because it is so new, but because the understanding of the profession and its role in government has changed dramatically over the years."*

(Denhardt, 1989, p. 187)

Just how those roles have changed and are changing, along with their implications for ethics and conduct, is dealt with in Section II.

## **On Cultural Differences**

Because public service ethics is applied ethics, it inevitably touches on values which are deemed culturally specific. This may explain the reluctance to attempt any cross country examination of ethics and conduct. For example, what is seen in some countries as nepotism and a violation of the merit principle is seen as "helping your own" in others. Giving and accepting gifts in one context is a normal way of doing business; in others it is highly problematic. In addition, differences among countries also result from other factors such as level of economic development and democratic maturity.

Despite the differences amongst countries -- both cultural and in terms of political and administrative systems -- there appears to be a growing convergence in what is seen as "good and proper" behaviour. As Gilman and Lewis suggest in a forthcoming article,

*"...there are fundamental values...that are closely associated with democracy, market economy, and professional bureaucracy, ... political values of freedom and justice and the administrative values of efficiency, effectiveness, and responsiveness ..."*

This conclusion appears to be borne out by this study's sample. In Section IV, we attempt to identify some of those common values. But what is especially important for this study and for

international exchange, is not so much what those values are, but how they are operationalised into the day-to-day work of public servants.

### **Why is Ethics Important?**

“The integrity of politicians and public servants is a critical ingredient in democratic society.”

*Alice Rivlin, Director of the Office of Management and Budget, United States;  
Chair of the OECD/PUMA Ministerial Symposium on the Future of Public Services*

Public servants exercise discretionary power in their everyday work in several ways; in their stewardship of public resources, at the interface with citizens, and in the context of their policy making functions. Ethics is one of the important checks and balances against the arbitrary use of that public power. It is a vital factor in creating and maintaining confidence in government and its institutions. It also provides a basis to test practices, conventions and conduct generally, against which the public can be assured that its interests are being served and that due process is being observed. As such, it is a key factor in the quality of governance.

But public sector ethics is an activity, not a status. Encouraging ethical behaviour is not just about establishing a list of rules to be kept or a status to be attained. It is an ongoing management process that underpins the work of government; it is crucial to the functioning and the evolution of governance:

*“Ethics may be only instrumental, it may only be a means to an end, but it is a necessary means to an end. Government ethics provides the preconditions for the making of good public policy. In this sense, it is more important than any single policy, because all policies depend on it.”*

(Thomson, 1992, p. 255)

And, like housework, the absence of ethics is more noticeable than its presence.

*“When ethics are in disorder, when citizens reasonably believe they are, one should not be surprised that disputes about ethics drive out discussions about policies. Ethics makes democracy safe for debate on the substance of public policy. That is why it is so important. That is the sense in which it is more important than any other single issue”.*

(Thomson, 1992, p. 256)

So, what is the state of ethics in the participating OECD countries?

### **Are Standards Falling?**

It is difficult to say whether standards are actually falling. There are few objective measures of the ethical state of the public sector, apart from rates of discovered corruption and fraud or publicised scandals. Yet these may represent increased efficiency in policing and punishing

wrongdoing, or just that such cases are more often brought into the public domain, often by the media. Indeed, despite a public perception of falling standards (see Box 1), there appears to be internal confidence in government that things continue to function ethically (see Box 2). In that context, misdemeanours are seen as exceptions; they highlight the extent to which good conduct is the norm.

It is important, therefore, to avoid knee-jerk reactions to scandal. Instead, governments need to ask whether there are gaps in the systems which guide the behaviour of public servants and, if so, how they can be plugged. Part of the answer to that question is to investigate whether there are forces impacting on the public service environment that are undermining the management of ethics and conduct and/or rendering traditional systems either inadequate or obsolete. The following section attempts to uncover some of these forces and their implications.

***Box 1: Are Standards Falling?***

“For the majority of people and in the general European debate about values, it may seem that we are approaching a ‘moral crisis’. More than a crisis of confidence in political authority, it is also a crisis of confidence in the representativeness and legitimacy of democratic systems -- a crisis with serious repercussions for the public service and one that is reflected in a loss of respect for institutions and a lack of ethical and judicial role models.” (*Blymke and Bøhagen, Norway*)

“There is a public perception of a decline..” (*Whetnall, the United Kingdom*)

“The past few years have witnessed a marked increase in concern about integrity in public administration in the Netherlands.” (*Maas, the Netherlands*)

“...there is a broad consensus about the negative state of public confidence in the Federal government and its institutions.” (*Gilman, United States*)

### ***Box 2: Internal Confidence In Government***

“This (is) not to say that the APS (Australian Public Service) has been free of mistakes and misdemeanours. But we do appear to have been free from the widespread corruption and maladministration ... “ (*Jones, Australia*)

“In general, ... the Norwegian public shows a broad confidence in the public service ... It is a type of confidence that is rooted in the basic values of our welfare state, such as security under the law and equality before the law, in relation to both criminal and civil as well as administrative law” (*Blymke and Bøhagen, Norway*)

“Public confidence in the impartiality and objectivity of the government and its institutions still remains strong in Finland.” (*Äijälä and Hyvönen, Finland*)

“Apart from one or two exceptions, the public service bears scrutiny very well, suggesting that attention to its stewardship and guardianship roles has been sustained or increased ...” (*State Services Commission, New Zealand*)

“By most objective measures of performance, the federal civil service today is more effective, productive and professional than at any time in its history.” (*Gilman, USA*)

“... the great majority of people in public life meet those high standards. But there are weaknesses in the procedures for maintaining and enforcing those standards. As a result, people in public life are not always as clear as they should be about where the boundaries of acceptable conduct lie. This we regard as the principal reason for public disquiet.” (*Lord Nolan, quoted in Whetnall, the United Kingdom*)



## II. FORCES IMPACTING ON PUBLIC SERVICE ETHICS AND CONDUCT

The countries involved in this study have all undergone or are undergoing significant public sector management reforms. Some could be described as front-runners in the move from a rules-based public administration to a results-based and performance-based public management. The forces described in this section perhaps reflect the pressures or contradictions developing more in these countries than in the OECD membership generally. In spite of, or perhaps because of this, they provide an important signal to other countries embarking on similar reform strategies.

### Working with Limited Resources

All OECD governments face significant pressure to reduce public expenditure. This has resulted in a range of measures aimed at improving the efficiency and effectiveness of public sector activities, including *inter alia* restrictions on budgets and reductions in the size of the public sector workforce (OECD, 1995). Clearly, reductions or limits on budgets for individual agencies mean that public servants in general are being asked to carry out the same level of work, if not more, with fewer resources. Moreover, in some countries, significant downsizing of the public sector workforce has occurred. Freezes or strict limits on recruitment, promotion and increases in remuneration have been imposed. These have had a range of effects on the environment in which public servants operate. As Gilman (United States) notes:

*“Downsizing creates insecurity to the extent that Federal employees view their positions as being at risk. Reduced resources may create greater work demands. Tighter agency budgets may mean delayed promotions or compensation levels that fall behind those of the private sector. All of this may have an adverse effect on employee morale.”*

The jury is still out on whether issues of pay and constant changes have a negative impact on ethics and conduct or, worse still, increase the temptation to corruption. Clearly, if pay levels are so low that public servants are forced to take outside employment or succumb to bribes, then there are problems. But this case is rarely to be found in OECD countries. However, if people feel underpaid and insecure, in short, when morale is low, then they may be less willing to give that little bit extra. Moreover, when resources are limited, there may be pressure to cut corners or to bypass due process. It seems that most countries are aware of the possible risks of these factors and acknowledge that the conditions under which public servants work are important in ensuring a climate conducive to ethical conduct. (This issue is dealt with further in Section III on Conditions of Public Service).

Perhaps a more direct impact of reduced resources is that when cost cutting is in order, training is often the first thing to go, including induction and ongoing ethics training. As Gilman (United States) notes, “...there is a risk that agencies may not devote adequate resources to their ethics programs as they are forced to make hard budget choices.”

Downsizing raises other issues related to post-employment restrictions and potential conflicts of interest. Is it fair to impose conflict-of-interest post-employment restrictions on employees who have lost their jobs in the process of downsizing? What happens if groups of employees leaving the public sector -- a real probability in cases where governments have decided to privatise or contract out whole service areas or functions -- decide to set up as a company and compete for public sector contracts? Does their "inside information" put them at an advantage vis-à-vis private sector competitors?

## **Citizen Demands**

Making government more client oriented has been a central platform of public management reform in many countries. This means that, at the same time as having to manage with fewer resources, public servants also face pressures from increased public demands for more and better quality services. This pressure is exacerbated by governments' own attempts to publicly state standards and levels of service to be achieved (through Citizens' Charters, for example). Conflict might arrive between client rights and the public servants obligation to keep within economic limits.

Indeed, the very basis of the relationship between public servants and citizens is in transition. The concept of "loyalty to the Minister" or to the government of the day as a guiding principle for administrative action is challenged when public servants are also asked to directly serve another boss, "the citizen". In theory, there is no conflict between serving a government and serving clients: clients get what they are entitled to, as determined by government policy. But in practice, in the interests of "responsiveness" and "service to the citizen", public servants are increasingly expected to use discretion in day-to-day dealings with citizens. In reality, this expectation often amounts to their balancing (or even defining) the "public interest" against taxpayers' interests, or against the individual clients' or "customers'" interest. As Blymke and Bøhagen (Norway) state:

*"Executive authority and service in the public sector were previously much more based on management by regulations, with the consequence that the receiver of the service was met by an interpreter of a set of regulations rather than an authority able to evaluate and fulfil the client's needs on the basis of a more thorough understanding of the client's/user's situation. In some ways it is now more difficult for civil servants to determine what requirements they shall take into consideration ... 'there is no longer anything about it in the regulations'..."*

These conflicts of objectives and responsibilities manifest themselves as dilemmas that must be resolved directly by public servants. When high public expectations are not met, public servants also shoulder the burden of public dissatisfaction.

## **Restructuring the Public Sector**

Public sector restructuring may also have affected the overall state and the management of ethics and conduct. Restructuring has included changes in the status of public sector organisations -- through corporatisation or even privatisation -- as well as the development of new forms of public organisation such as autonomous agencies. As Blymke and Bøhagen (Norway) note:

*“...changes in the legal and political forms of association (e.g. the transfer of authority from ministries and directorates to public enterprises and state foundations/state owned limited companies) result in a certain freeing of public employees from many of the rules, Civil Service norms and established practices that have characterised public administration up to the present day.”*

Of course, it is not inevitable that employees working in new forms of public sector organisations should fall outside public service ethics and norms. But if categorical statements and detailed rules for action were prescribed, this would seem at odds with the managerial autonomy typically afforded to these types of entities. The extent to which public corporations and the like fall under the same ethical and behavioural guidelines as the core public sector is an issue for further debate. Already some countries are taking steps to clarify uncertainties. In the United Kingdom, for example, new guidelines (the *Treasury Code of Practice of Board Members of Public Bodies*) have been introduced to set out the duties and responsibilities of members of executive bodies which operate at arm’s length from government.

### **A Devolved and Discretionary Management Environment**

Public management reform in OECD countries has involved, to varying degrees, increased devolution of resource allocation decisions. This devolution is from central management bodies to line departments and agencies, within line departments themselves, from central to lower levels of government, and from the public sector to private sector subcontractors. In its report *Governance in Transition*, the OECD Public Management Committee concluded that devolution has been largely successful in efficiency terms, in that it allows departments to adopt practices best suited to their individual business needs, and to improve managerial accountability, and has contributed to a sharper focus on results and a better use of resources. However, it was also recognised that fostering greater diversity of practice through great managerial flexibility has raised concerns about an erosion of a service-wide perspective, the collective interest of government and traditional public service values.

#### ***Departmental Autonomy***

In many countries, departments now enjoy relatively more autonomy. As departments define their own standards and ways of operating, concerns have been raised that systems of “professional socialisation” -- that is, the inculcation of public service values -- are breaking down. This is exacerbated by increased recruitment from the private sector, often to management or leadership positions. As a result, the traditional coherent public service culture or ethos may be disappearing.

But is that old homogenous ethos still relevant or appropriate to the roles of the modern public servants and the organisations in which they work? On the one hand, as departments define their own mission statements and objectives, they are also starting to define values and ethical concepts that are appropriate and specifically relevant to those missions. For example, the ethical issues applying to an employee of a defence ministry might vary significantly from those applying to someone working in a social security department. Some countries have therefore attempted to match decentralised management overall with decentralised ethics management.

On the other hand, in order to maintain some coherent public service “ethos” and overcome potential fragmentation, there has also been an attempt to set broad guidelines (or values) by central agencies which apply to the public service overall. These could indeed form the basis of a new, overall public service culture or ethos. From these guidelines, individual agencies design their own agency-specific codes of conduct. For example, in New Zealand, the overall Public Service Code of Conduct is supplemented in departments which have issued their own codes to reflect or suit particular operational requirements and circumstances. Australia reflects a similar trend.

### ***Managerial Discretion***

Within departments too, there has been significant devolution of authority to individual managers. In some countries, considerable discretion is left with operational managers to choose inputs, time their spending, and re-allocate funds between programmes or activities. Flexibility has also been given to managers in the management and deployment of human resources. This increased devolution of authority is aimed at encouraging managers to manage -- that is, to be flexible, innovative, and less risk averse.

A corollary of managerial autonomy is a reduction in detailed rules. In the American context, this has been described as “cutting red tape” (or removing obsolete rules). In other countries -- New Zealand, Australia, and Norway -- the whole nature of rules has changed. As Blymke and Bøhagen (Norway) note:

*“...there has been a general shift of emphasis involving an increase in performance management coupled with a reduction in management by regulations. A consequence of this change in management principles has been that the detailed procedural rules normally incorporated in ad hoc legislation have to some extent been replaced by more goal-oriented formulations concerning the performance that the various agencies are expected to achieve. In some cases, this entails that the code of conduct, both for internal procedures and for the practice of discretion and civil servants’ relations with clients and users, shall to a greater extent be based on discretion and on norms for right and wrong.”*

The reduction in detailed rules and in oversight over inputs and procedures -- what Maas (the Netherlands) refers to as a “greater freedom of action and less supervision at the executive level” -- allows more opportunities for “irregular behaviour”. Irregular behaviour is not necessarily bad; it may reflect innovation rather than misconduct or failure to play by the rules (which may or may not still exist). But taking risks increases the likelihood of mistakes. Moreover, a greater focus on performance creates pressures. If a manager has to meet certain performance targets (especially if his/her salary or employment depends on it) there may be pressure to side-step ethical standards or procedural norms.

Other management changes introduced to aid managerial autonomy, such as the allocation of corporate credit cards to public servants, have been problematic in some countries. The practice may have resulted in efficiency returns but has also decreased control. Governments may have to decide if there is an implicit trade-off between ethics and efficiency, and where the appropriate balance lies. It could be that some public officials may simply be confused about how to operate when detailed regulations and rules have been reduced. This is especially true where management information systems and accountability structures have not kept pace with devolution. Moreover,

there are new aspects entering the public management environment for which there are no rules, because they did not exist before. For example, the need for guidelines on the use of frequent flyer points, official cell phones, or the use of the Internet, is becoming an issue for debate in countries.

### ***Devolution and Public Accountability***

Devolution of authority has implications for public accountability and the division of responsibilities, and sometimes leads to confusion about who is ultimately responsible for certain actions. Public servants are now more visibly responsible for certain operations, especially operations carried out by “arm's-length” agencies. Indeed, under parliamentary systems, ministers may be distancing themselves from responsibilities for the actions of their officials and passing the buck to public servants. In this sense, the concept of ministerial accountability is changing. Traditional accountability relationships are becoming blurred.

In this environment, public servants can sometimes be left carrying the can for decisions that in the past would have been laid firmly at the door of their superiors or political decision makers. The Cave Creek case in New Zealand -- where a group of young people were killed when a viewing platform erected by the Department of Conservation collapsed -- illustrates this point. It shows the difficulty of determining exactly who is responsible and who should be blamed in a highly devolved public management environment. In this case, the public debate continues about the accountability and responsibility of the Minister of Conservation and the Chief Executive of the Department for this tragedy (just over a year after the incident, the Minister resigned from this portfolio). Clearly, the appropriate balance between autonomy and accountability needs careful consideration. It will probably be subject to adjustment over time as new systems are tested and refined.

Public servants are not only facing increasing public accountability for their own actions but are also facing the dilemma of reporting the wrongdoings of others. This tension between accountability required for successful devolution of authority and openness required for more transparency is manifested in the notion of whistle-blowing. Introducing whistle-blowing procedures displays a Government's commitment to devolution and public accountability by providing a workable system for exposing unethical activities. This is discussed below in Sections III and V.

### **Public/Private Sector Interface**

Public management reforms have increased the contacts between the public and private sectors. Public servants are increasingly involved in commercial operations with the private sector. In some cases, this increase may create certain risk areas such as contract management for procurement and management of privatisation processes. Public servants may also be asked to compete with the private sector or to enter into partnerships with the private sector in service delivery.

More direct contact with public money -- coupled with fewer micro-level controls over its use -- may lead to greater temptation for corruption, fraud or simply increase the potential for conflicts of interest. Poor judgement, taking too great risks with public money or simply being ill-equipped to perform certain tasks, may be more of a problem and have more widespread impacts than actual misconduct. Contracting out, for example, may mean that public servants initially employed to perform certain technical or administrative tasks are now being asked to manage contracts. As Blymke and Bøhagen (Norway) note:

*“..the IT (information technology) area has been the subject of a number of investigations ... the IT investments of a number of large agencies have led to questions being asked about both budgetary and managerial issues concerning a lack of controls and of awareness of responsibility as well as poor definition of control mechanisms between levels of management, both political and administrative.”*

It is perhaps in the area of information technology that there has been the most experience with contracting out (OECD, 1992). The problems emerging in this area may provide useful lessons for contracting out in other areas. But regardless of activity sector, ethical contracting out practices can be promoted through the introduction of guidelines such as the “Best Practice Guidelines for Contracting Out Government Services”, recently prepared by PUMA. These include fostering truly competitive markets, properly evaluating in-house bids, ensuring valid comparisons including with direct public provision of the service, specifying service requirements (both quantity and quality) in contracts, and effective monitoring of performance and outputs.

In the search for efficiency in service delivery, some public sector operators are actually asked to compete with the private sector or to emulate private sector ways of doing business. Experience to date suggests that this provides powerful incentives to improve quality, contain costs, and improve efficiency. However, “market testing” raises questions and dilemmas. Are public and private sector operators competing on a level playing field? Should public sector managers be given a free rein to operate as their private sector counterparts, especially in competitive environments? What might be seen as misconduct in the public sector could be viewed as initiative in the private sector. For example, offering hospitality or gifts, while generally disapproved of and in most cases subject to strict limitations in the public sector, is normal practice in the private sector. Are public sector rules and procedures -- such as employment regulations and the requirement for transparency -- an impediment to competition? If so, should the “rules of the game” be equalised, either by freeing up public sector operators or by including those specifications in government contracts with the private sector? These are questions countries will have to consider as they go further down the “managerialism” track.

There are concerns that more recruitment from the private sector may be diluting standards in the public sector as new employees operate by private sector as opposed to public sector “values and norms”. The “revolving door” between the public and private sectors also raises concerns about public servants using privileged information from their public sector employment to seek, or use in the context of, subsequent employment in the private sector. Some countries have responded -- at very senior levels -- by imposing post-employment restrictions on public servants. As Blymke and Bøhagen (Norway) note, “In the ongoing debate about what shall be public and what shall be private, the civil servant's loyalty and ties to his main employer are inevitably put to the test.” However, as noted above, this raises issues related to the fairness of restricting people's future employment without compensating them, especially if their departure was involuntary.

In any case, it should not be assumed that the public sector is intrinsically good and the private sector intrinsically bad. There is a concern for ethics paralleled in the private sector. Most business schools now offer courses in ethics, and many private companies include ethical issues in mission statements and/or run complex ethics training programmes.<sup>3</sup> The influence of private sector values on the public sector may therefore be overstated. However, as interchange between the public

---

3. See for example, Gillian Flynn, “Make Employee Ethics Your Business”, *Personnel Journal*, June 1995.

and private sector increases, there may be a greater need for induction training for, and ongoing socialisation of, employees into the ways of the public sector.

### **Working in a Fishbowl**

The nameless, faceless public servant is becoming a relic of the past. Greater transparency in government operations, including through public access to official information, coupled with an increasingly zealous media and well-organised interest groups means that public servants are more and more open to direct scrutiny. They work in a virtual fishbowl. As Blymke and Bøhagen (Norway) note:

*“...the public service is increasingly in the focus of public opinion and the media. Critical questions are asked about the ways in which cases have been dealt with, the justice of decisions and the judgement and discretion of civil servants.”*

When the actions of public servants are more visible, so are their mistakes and misdemeanours. It could be argued that the apparent increase in wrongdoing is more a function of greater transparency and scrutiny than an actual increase in cases. What was before hidden in bureaucratic secrecy is now open to public and media scrutiny. As Moniz (Portugal) notes:

*“ ...where decision-making procedures and the reasons for decisions are known, it is more difficult to distort the rules” ... and “Perhaps no other measure, not even the Public Service Code of Conduct, contributed to ethics in the public service as much as open administration.”*

Armed with increased access to government information, the public and the media have become more effective watchdogs over the public service. Citizens are more likely to have more opportunities -- through complaints mechanisms such as the Norwegian Parliamentary Ombudsman and the UK Citizens' Charter mechanisms -- to challenge decisions on grounds of equity, fairness or any number of other criteria. In this context, scandals or wrongdoing coming to light could be seen as a positive sign that such accountability controls are working.

### **Changing Social Norms**

Behaviour standards in the public sector are also influenced by, and must reflect, changing social norms. For example, measures to eliminate sexual harassment or racism have been prominent in many countries. They are starting to feature in codes of conduct or public service values statements. Greater pluralism in society is also reflected in the public sector. As Maas (the Netherlands) notes:

*“The increasing complexity and individualisation of society have generated social structures that are less easy to grasp and led to widely divergent standards and values. The blurring of standards in society does not stop at the door of the public servant.”*

## **Changing International Environment**

Public servants are also facing pressures from the international environment. For example, globalisation has increased contacts between public officials in different administrations with potentially different behavioural and ethical standards. It has also increased contacts, in contractual arrangements, with foreign-based or multinational enterprises who may play by, or expect, different rules of the game. The impacts of this are as yet unclear, be it a convergence to the lowest common denominator or pressure to improve standards. What is clear is that countries are increasingly watching developments overseas, including ethical crises and attempts to deal with them. As Jones (Australia) notes:

*“These occurrences in other administrations have themselves been a motivating force behind our continuing interest in APS (Australian Public Service) fostering and maintaining appropriate conduct, ethical behaviour and accountability.”*

For the global policy environment to function, there is a need for trust between public officials and their international counterparts. This trust should be built on shared frameworks, or at least understanding, of what is acceptable behaviour. In this context, the OECD Council recently approved a recommendation aimed at encouraging governments to regulate against bribery of foreign officials, including by banning tax deductibility for payments to foreign officials.

## **Conclusions**

Public servants operate in a changed and changing environment. They are subject to greater public scrutiny and increased demands from citizens. They are having to assume greater responsibilities and to adopt new ways of carrying out the business of government. While public management reforms have realised important returns in terms of efficiency and effectiveness, some of the adjustments may have had unintended impacts on ethics and standards of conduct. This is not to suggest that changes have caused an increase in misconduct or unethical behaviour. But they may place public servants in situations involving conflicts of interests or objectives where there are few guidelines as to how they should act. Their behaviour is also influenced by changing social norms and the increasingly international environment in which they work.

### **III. AN ETHICS INFRASTRUCTURE: FUNCTIONS AND ELEMENTS**

So how can public servants be assisted in conducting themselves in a changing environment? Are there adequate measures in place to guide them with the ethical dimension of decision making? Do new measures need to be introduced to help them deal with the complexity of the changes?

In this study, participating countries employ tools or processes which either regulate against undesirable conduct or provide incentives to encourage good conduct. As mentioned in Section I, these measures taken together constitute what we have called an ethics infrastructure. The functions and elements of an ethics infrastructure are described below. This schema might provide OECD countries with a tool against which they can evaluate the range of measures they have in place.

A well-functioning ethics infrastructure supports a public service environment which encourages certain standards of behaviour. Each function and element is a separate but important building block, but should be complementary and mutually reinforcing. The elements need to interact to achieve the necessary synergy to become a coherent and effective infrastructure.

#### **Functions: Control, Guidance, and Management**

An ethics infrastructure can be viewed as being made up of eight elements serving three functions: control, guidance, and management. They are categorised below (and depicted in the diagram that follows), based on their primary functions, although in practice an element can have more than one function.

Control can be achieved through the following three elements: a legal framework enabling independent investigation and prosecution; effective accountability mechanisms; and public involvement and scrutiny.

Likewise, guidance can occur through three elements: a well-articulated commitment from political leadership; codes of conduct expressing values and standards; and professional socialisation activities such as education and training.

Management can be realised through two remaining elements: sound public service conditions based on effective human resource policies; and co-ordination of the infrastructure by either an existing central management body, department or agency, or a special ethics body.

The ideal mix and degree of these functions would depend on the cultural and political-administrative milieu of each country. For example, a country such as the United States, with its tradition of checks and balances seems to place more importance on control, while the Netherlands, with its tradition of trust, emphasises guidance and management.







# ETHICS INFRASTRUCTURE

*Public  
Involvement  
&  
Scrutiny*

## *Commitment*



Political Leadership

 <p>Legislative Framework</p>	<h3><i>Control</i></h3>	 <p>Accountability &amp; Control</p>
 <p>Codes of Conduct</p>	<h3><i>Guidance</i></h3>	 <p>Professional Socialisation</p>
 <p>Coordinating Body</p>	<h3><i>Management</i></h3>	 <p>Public Service Conditions</p>

## **Elements: External and Internal to Department or Agency**

The actual implementation of any ethics programme occurs ultimately at the department or agency level. Therefore it is useful to consider whether an element of the ethics infrastructure is external or internal to a department or agency. Obviously, an individual agency can exert more control or influence over the latter than the former.

For clarity's sake, external elements (political commitment, legal framework, public involvement and scrutiny, and co-ordinating body) can be viewed as providing authority for and substance to behavioural standards and the consequences of breaching them. By contrast, internal elements (accountability mechanisms, codes of conduct, training, and public service conditions) largely provide guidance and direction to public servants. Simply put, external elements furnish rules, often at a public service-wide level, which are adapted by internal elements to a particular environment, at a department or agency level.

The two types of elements, internal and external, complement and depend on each other for credibility and optimum effectiveness. A failure of one kind has the potential to threaten the other. Bold statements by politicians, punitive legislation, a vigilant public, or strong co-ordination will not improve public sector integrity if standards are not translated and understood within the corporate culture of individual departments or agencies. Similarly, public servants who are aware of their accountabilities, read aspirational codes of conduct, and attend training sessions, may become disillusioned if the external elements do not enforce clear standards and disciplinary procedures. It is important that the two sets of elements are consistent and do not send mixed messages.

Some elements are logical preconditions for others. Generally, external elements will need to be in place before the internal ones will be effective. Internal elements are translations or operationalisations of external elements.

To better illustrate the ethics infrastructure, the following sections describe its different elements, outline their functions, and give country examples where possible.

### **Political Commitment**

Any ethics initiative in the public service is unlikely to be successful unless it is underpinned by genuine political commitment. Political commitment is usually expressed through rhetoric (speeches, public announcements, written statements by leaders), demonstrated through setting an example, and supported by allocating adequate resources. It gives not only the authority for legal and administrative controls but also guides all ethics-related activities. It is essential in providing a credible response to a demanding public. Thus it is arguably the precondition to the effectiveness for the other elements of the ethics infrastructure.

Democratically elected officials have two critical roles in promoting ethics in the public service. First, as politicians, they have the obligation to account to voters for activities performed in their name. Thus they are in a unique position to demand that decisions be transparent and services delivered equitably. Second, as legislators, they have at their disposal the necessary powers to enforce their demands. They can ask public servants to report on what activities they have undertaken and how they were carried out. Political commitment can also be demonstrated by setting

up a working body or process to either investigate a scandal and/or make recommendations for new ethics initiatives.

Examples of political commitment to ethics initiatives can be seen in the setting up of the Nolan Committee in the United Kingdom (1994) and the President's Council on Integrity and Efficiency in the United States (1991). Additional examples are also found in Norway and the Netherlands. In 1991, the Norwegian Ministers of Justice and Government Administration appointed a working group to investigate the status of public service ethics. In 1992, the Dutch Minister of the Interior placed integrity in public administration high on the political agenda, following which a policy document was released linking organised crime to integrity in public administration.

Elected officials can individually and as a group promote ethical behaviour by serving as good role models. By demonstrating the desirability and feasibility of ethical behaviour, they can help to offset public mistrust and cynicism. Perhaps more than others, they need to demonstrate respect for democratic institutions and the rule of law. Compliance with special rules about undue influence, conflicts of interest, and improper interference in the activities of the executive branch, are the kinds of issues most likely to confront them personally. On this note, the recently elected (March 1996) Australian government has introduced A Guide on Key Elements of Ministerial Responsibility, to assist recently appointed ministers, parliamentary secretaries and ministerial staff. This document serves as a reference to the principles, conventions and rules by which those in positions of public trust are to conduct themselves.

As a group, elected officials can endorse exemplary behaviour and denounce improper conduct. In the latter case, establishing genuinely independent inquiries can do much to restore the public's confidence. In the Australian state of New South Wales, for example, the Independent Commission Against Corruption (ICAC) was set up in 1989 to investigate allegations of corruption by both the Labour and Liberal Parties while they were in power. It has conducted hard-hitting investigations into land development and allegations of corruption within the police force and other sections of the state bureaucracy. A recent and controversial example from the United Kingdom is the Scott enquiry into the Export of Defence Equipment and Dual-Use Goods to Iraq. The government is now responding to the conclusions and recommendations made in the resulting 1 800-page report, released in February 1996. Clearly, if enquiries are to assist in improving public trust, governments must not only act on the results, but must be seen to act.

Of course, the most tangible expression of political commitment is the allocation of resources. Building an ethics infrastructure requires both authority and money. Even with deconcentration of authority within bureaucracies and diminishing public coffers, elected officials can set legislative requirements and encourage the allocation of adequate funds to training and other ethics-related activities.

Political commitment is often spurred by public scrutiny. In addition, it depends on the legal framework to carry out independent and credible investigations and prosecutions in the event of wrongdoing.

## **Legal Framework**

A legal framework is the set of laws and regulations which set standards of behaviour for public servants and enforce these limits through systems of investigation and prosecution. Since it gives teeth to an ethics infrastructure, it operates as a control function.

In either introducing new or strengthening existing investigation, prosecution and other legal controls, it is necessary to first take stock of existing criminal codes (which apply to all citizens), as well as the range of civil service laws, conflict-of-interest statutes and regulations which apply specifically to public servants and other public office holders.

The major contributions of a legal framework to an ethics infrastructure are setting limits on public servants' behaviour, enforcing them through sanctions, and enabling public scrutiny and action by improving the transparency of government operations (including through access to information provisions). The standards of behaviour expected of public servants are necessarily high, on the basis that they administer the power and resources of the state. Thus any law dealing with integrity typically sets out legal obligations of, expected standards for, and the consequences of failing those standards for public servants.

The continuum of behaviour from "illegal" to "inappropriate" has been discussed in Section I. Where a country chooses to view an action along this continuum depends on its definition of and tolerance for misconduct. For example, "buying" political favours from elected officials or public servants may be viewed as bribery in one country but as legitimate lobbying in another. Sanctions vary correspondingly, ranging from a fine or imprisonment for criminal offences to dismissal for unethical acts.

### ***Offences Against Criminal Law***

To deal with serious illegal acts by public servants, countries typically apply their criminal codes. For example, in the United Kingdom bribery or theft is considered a general criminal offence, regardless of whether the accused is a public servant or not. The difficulty lies in harmonizing the judicial criminal process and public service administrative procedure. The two processes should be based on the same principles and values, whether the sanctions are specified in criminal, civil or administrative law. If not, there is a risk that misconduct may fall between the cracks of the legal system. Conversely, criminal codes can deal specifically with public office offences, such as in the Netherlands where it is a criminal offence for a public servant to accept a gift or a promise. The issue at hand is whether a country's existing criminal code can sufficiently handle illegal behaviour in the public service.

Other countries have established specific conflict-of-interest laws (outlining public office offences under criminal statutes), which may include official misconduct or corruption and unjust enrichment. Penalties related to these are usually dismissal and either fines or imprisonment. In the United States, violations of federal conflict-of-interest laws can lead to civil penalties of up to \$50,000 to imprisonment of up to five years. The Ethics in Government Act of 1978 established a comprehensive public financial disclosure system for all three branches of the federal government, while the Ethics Reform Act of 1989 strengthened post-employment restrictions, prohibited soliciting or accepting gifts, imposed certain outside earned income limitations and employment restrictions, and banned the receipt of honoraria.

### ***Offences Against Civil Service Law***

To deal with less serious illegal acts which do not constitute a criminal offence, countries may rely on their civil service laws. For example, under the Finnish State Civil Servant's Act, a public servant can be issued a written warning or dismissed. Likewise, breaches of the Australian

Public Service Act can result in a reprimand, fines, reduced salary, transfer or dismissal. The Norwegian Civil Service Act also sanctions certain conduct. The Dutch Central and Local Government Personnel Act prohibits a public servant from accepting any work that could have an adverse effect on the performance of his or her duties.

Regulations are often used to flesh out legislation or are used separately to establish standards. In Australia, in addition to the Public Service Act, the Public Service Regulations list a series of rules and obligations. In the Netherlands, the General Civil Service Regulations state that sanctions may be imposed in the event of negligence in carrying out duties.

### ***Enforcement***

Without enforcement, simply setting limits on behaviour and threatening sanctions is like having teeth without biting. The threat of sanctions will only act as a deterrent where they are sufficient, enforced and respected. Enforcement begins with an assessment of the incentives and disincentives to proscribed behaviour, backed up by independent and adequately resourced prosecution and investigation services. These services need to be seen as being effective to gain credibility, not only in the public service but also in the public at large.

In the countries under study, enforcing sanctions is handled differently depending on whether they apply to offences or misdemeanours. Generally, the former involve investigations by the police and prosecution through a national-level court system while the latter are handled by individual departments and agencies. For example, in Australia, breaches of law are investigated by the Australian Federal Police, cases are prepared by the Director of Public Prosecution, and are heard in federal courts. In the United States, violations of the criminal code are investigated and prosecuted by the Public Integrity Section of the Criminal Division Attorney's Office in the Department of Justice. The cases are tried through the federal court system, subject to appeal in the federal circuit courts, with final recourse to the United States Supreme Court. In terms of administrative investigation processes, in the United Kingdom, breaches of the Civil Service Management Code are handled as an employment matter by each department. Although the same rules of evidence are used as employed by the police, the administrative procedure is designed to establish facts rather than to prosecute. Unlike criminal proceedings, the administrative procedure treats disciplinary action in confidence, since it is considered a private matter between the employer and employee.

### ***Increasing Transparency: the Public as a Watchdog***

Access-to-information laws give the public an opportunity to act as a watchdog over public officials. In many countries, access-to-information laws allow individual citizens to seek out information about public service activities. When a citizen can establish evidence of improper administrative action, administrative or constitutional law provide them with a means of redress, though generally corrective rather than punitive. (These laws further institutionalise principles which can be seen to make up public service ethics: procedural fairness, proper use of power, transparency in administrative decision making, the protection of citizens' rights, and public service accountability). By lifting the veil on government operations and allowing public scrutiny, access-to-information laws may help to deter unethical conduct. Institutions such as the media and the ombudsman have an important role to play in this context.

Increasing transparency results in more demand for accountability. Transparency implies that the legislative framework should be accessible (easy to understand), and dynamic (subject to interpretation, review and reform). It should tell public servants what to do and how to do it. And it should inform the public what the public service should be doing so that it can hold public servants to account.

However, there are drawbacks to overly relying on legislation in an ethics infrastructure. It tends to encourage minimum compliance. The enforcement of sanctions, while necessary, is designed to discourage undesirable behaviour rather than promote desired behaviour. Because of its conceptual reliance on absolutes and objectivity, the law can be an inflexible tool for the day-to-day management of workplace ethical problems. Therefore, each country needs to assess the extent to which it wants to specify in law the obligations and required standards of conduct for its public servants. In doing so, it needs to consider its existing legislative framework, legal traditions, and the surrounding cultural milieu. It also needs to consider whether legislating for ethics will simply add to the growing complexity of legislation at a time when the trend is to streamline it.

### **Accountability Mechanisms**

The notion that public servants are accountable to elected representatives sets limits on public servants' responsibilities. This principle is not just promoted through legislation and regulation, as seen above, but also through administrative policies and procedures -- or accountability mechanisms -- which control the day-to-day conduct of public servants.

Accountability mechanisms may be internal to the public service:

- simple administrative procedures such as requiring an activity or request to be put in writing; or
- comprehensive processes such as audits and evaluations of an agency's performance.

They can also be external to a public agency or organisation:

- consultation mechanisms such as community advisory boards; or
- oversight mechanisms such as to legislative or parliamentary committees.

They serve as preventive controls (e.g. regulations and procedural guidelines) as well as performance-related ex-post controls (e.g. for internal and external audits and investigations, internal and external reporting, and appeals processes). Accountability mechanisms play a major role in an ethics infrastructure by providing a clear management framework, supported by investigation and evaluation capacities.

### ***Competing Responsibilities and Objectives***

Accountability mechanisms set guidelines for conducting the business of government, for checking that it has been conducted in an appropriate fashion, and for ensuring that results have been achieved. Ideally, accountability mechanisms encourage ethical behaviour by making unethical activities hard to commit and easy to detect. In this way, they should guide public servants in making

decisions within situations of competing responsibilities and goals. But, as discussed in Section II, public management reforms in many countries have challenged traditional notions of accountability. Public servants are now encouraged to answer not only to elected officials but also to citizens directly and often to a probing media. And they are now responsible not only for following the rules but also for achieving results and doing so within limited resources. Given these competing loyalties, accountability mechanisms will be an increasingly important factor in defining to whom and for what public servants are accountable.

### ***Integration into a Management Framework***

In many countries, public servants are facing the challenges described above under the constraints of outdated accountability mechanisms which by focusing on input controls “slow work, inhibit creativity and reduce responsiveness” (Frederickson, 1993, p. 250). They have to work with what one commentator has described as “outdated policy, unenforceable legislation, inadequate instructions, cumbersome procedures which promote delay or frustration, excessive discretion and lack of effective supervision” (Moore, 1994, p. 84).

To increase their effectiveness, the internal, preventive accountability mechanisms need to be integrated into a clear management framework which reflects the actual roles and responsibilities of public servants. In some countries, there is a move to streamline administrative procedures through removing unnecessary or obsolete regulations and policies, the US “Reinventing Government” goal of cutting red tape, for instance. However, other countries are focusing on broad values and goals to replace detailed rules. For example, Norway is experimenting with management by values. Australia is promoting an overarching goal of performance management.

It is, however, important not to lose sight of the need for boundaries of discretion and responsibility in this drive for simplification. Clearly, some rules will always be needed. Some countries under study have recently introduced and standardised administrative procedures that others are paring down. It was only in 1982 that Mexico promulgated the Federal Law of Responsibilities for the Public Servants, outlining public servants’ obligations and regulating their duties. In Portugal, a Code of Administrative Procedures containing some two hundred articles was instituted in 1991.

### ***Supporting Evaluation and Investigation Capacities***

In addition to acting as management controls, accountability mechanisms also serve as evaluation and investigation criteria. Supreme audit authorities and internal audits have traditionally been concerned with keeping public servants financially honest by receiving detailed data on the use of financial resources. But in some countries, there is a move towards audits as broad assessments of performance in decision making, policy development and other activities which are harder to measure and evaluate but arguably more important in terms of ensuring that public activities achieve what they set out to do. Ombudsmen provide another check on administrative integrity. In addition, legislative or parliamentary committees encourage public servants to be on good behaviour by imposing additional reporting requirements.

A few examples of supreme audit authorities in the countries under study show the traditional concentration on financial accountability, while some demonstrate the move from strict financial to performance accountability. Mexico announced in 1995 that it will establish a Superior Auditing Office to control, supervise, verify and correct use of public resources. The Finnish State

Audit Office (an agency subordinate to the Ministry of Finance) scrutinises the legality and practicability of the government's financial management and compliance with the budget. Likewise, the Australian Auditor-General audits financial performance within the context of the annual Budget. However, he or she may also choose to conduct efficiency audits. The British National Audit Office is now conducting wide-ranging value-for-money studies.

In some countries, the Ombudsman deals with complaints about administrative procedures but may also play an active role in enforcing access-to-information law. In Australia, the Commonwealth Ombudsman deals with complaints from the public against decisions or actions taken by an agency, making public the outcomes of these investigations. Similarly in Norway, the Parliamentary Ombudsman deals with complaints from the public about misuse of power, and evasion or irresponsible handling of business by public servants. In Finland, the Chancellor of Justice and the Parliamentary Ombudsman are responsible for ensuring that public servants observe the law and fulfil their obligations when performing their functions. The latter has the right to attend official meetings of government agencies, obtain information from official minutes, and to bring charges against any action. In the United Kingdom, the Parliamentary Ombudsman also enforces the Code of Practice on Access to Government Information.

In recent times, more direct accountability to the public has created mechanisms external to the public service through consultation groups, "community visitors", or advisory committees. These bodies can sometimes demand oral and written reports on a department's, an agency's or a programme area's performance. In addition, legislative and parliamentary committees also impose reporting requirements. A perennial problem -- especially in the context of greater managerial devolution -- is to encourage them to focus on the big picture of results achieved rather than becoming bogged down in the minutiae of input controls.

These performance-related accountability mechanisms -- audits, investigations, reporting -- act as a check that public servants have carried out their duties toward the right ends and by the right means. But more importantly, they serve as a deterrent for unethical conduct by increasing the likelihood of exposure. In defining the role of accountability mechanisms in an ethics infrastructure, a country needs to be conscious of its general orientation in public management. Is it still grappling with introducing and implementing control systems or is it shedding these detailed controls in favour of broad performance criteria? (This "balance" is discussed in Section VI.) How is accountability being defined? The optimum number and mix of accountability mechanisms to encourage compliance and deter misconduct on the part of public servants depend on the answers to these questions.

## **Codes of Conduct**

In the public service, a code of conduct can be either a legal document or purely administrative statement prescribing the expected levels and quality of performance of the employees it covers. It outlines the ethical principles applying to either the public service generally or to a particular department or agency specifically.

A code of conduct for an organisation may contain a combination of a statement of its values, a description of its role, including responsibilities of and to its employees (in some cases also specifying relationships to the constitution, the public, the government of the day, elected officials and legislative assemblies), and a list of its employees' legal obligations (such as declaring conflicts of interest, restraints in making public comments, and restrictions on political activities). In addition,

it could also include such diverse provisions as procedures for whistle-blowing or minimum performance standards.

Whether as a legal or an administrative instrument, codes mainly play a guiding role in an ethics infrastructure. However, because they establish and publicise boundaries of behaviour and set standards, they also take on a control function. Most codes generally have a dual disciplinary and aspirational function. They establish boundaries (sanctions may be imposed for breaching them) which are based on aspirational values or goals.

Concerns about the effectiveness of codes of ethics or conduct have arisen in both public and private management circles. Problems cited range from the codes being too specific or too general, unworkable, unused, unknown, unavailable, and even insulting to employees. But foremost among those concerns is that relatively simplistic statements of rules are not the ideal medium for answering complicated ethical questions faced by public servants (Kernaghan in Chapman, 1993). No statement of rules will address every permutation of ethical dilemmas in the public sector. Other problems surrounding codes are attributable either to a confusion about their purpose or poor implementation.

### *Coverage*

Codes of conduct can apply to the entire public service or be specific to individual departments or agencies. There are also instances, such as in Australia and New Zealand, where codes can co-exist at both public service (general) and agency levels (specific to the organisational mission and functions).

As described under Section IV, five -- and soon six -- out of the nine countries under study have introduced new codes of conduct at the public service-wide level within the past five years. Australia will include the code of conduct, currently set out in the Public Service Regulations, in its revised Public Service Act to be proclaimed in 1997. New Zealand issued a Public Service Code of Conduct in 1990. Similarly, the United Kingdom has just introduced its Civil Service Code in 1996. In 1992, the American Office of Government Ethics issued Standards of Conduct for public employees. Portugal introduced a Public Service Code of Conduct as part of its 1991 modernisation programme.

At the department or agency level, the Netherlands have decentralised codes in government organisations. In Norway, government agencies are in the process of preparing rules of conduct on a voluntary basis, which are based on the fundamental principles behind the agency, such as its mandate and values. In 1994, the British Treasury introduced a Code for Board Members of Public Bodies which operate at arm's length from the government.

An agency's code can also be incorporated into a public servant's employment contract. In the United Kingdom, such contracts communicate standards which, if breached, invoke dismissal or other internal disciplinary action. Codes of conduct can similarly be included in oaths of office and enforced through performance agreements.

## ***Development and Implementation***

The development of a code of conduct is an important management initiative. A well-constructed code will be written in simple language, be positive rather than negative in tone, and will target a particular audience (the entire public service or a specific agency). To avoid creating conflicts or confusion, it should refer to any relevant legal conditions of employment or other professional or sector wide codes which already obligate public servants.

To avoid employee suspicion or resistance, development and implementation of codes needs a sound management strategy that secures genuine employee acceptance of the underlying values and ethics being promoted. At the very least, this means employee consultation, ongoing communication and marketing to ensure employee ownership rather than top-down imposition. For example, in the Netherlands, the heightened awareness that accompanies the development of a code was considered as, if not more, important than the code itself.

Genuine staff participation during the formulation of internal agency codes can become the centrepiece for an entire programme of public sector ethics. The result is that the codes then represent more accurately the ethical concerns of the people who will use them. In addition, the upkeep and review of codes provide opportunities for continuing professional socialisation based on real problems (Sampford in Preston, 1994).

In developing codes of conduct, countries need to decide whether to enshrine them in legislation or not. Codes that are not legislated are easier to create and to amend to changing circumstances, but they are less enforceable.

## **Professional Socialisation**

Professional socialisation is the process by which public servants learn and inculcate ethos, values, ethics and standards of conduct. Key socialisation mechanisms are education and training programmes, as well as the existence of good role models at senior levels (Kernaghan, 1993; Langford, 1990). Professional socialisation contributes to an ethics infrastructure by communicating standards of conduct and developing the judgement and skills of public servants to conform to them. In a manner which will not be overwhelming or confusing, it shows public servants how to practically apply legislation and codes, and how to conform to accountability mechanisms (Denhardt, 1991; Woodward, 1994). In this way, it has a guiding role.

## ***Education and Training***

Much has been written on ethics education. The major issues include:

- Can ethics be taught at all?
- If so, is specific education and training required, or is simply relying on osmosis through working in an ethical environment enough?
- Who should be teaching ethics: internal staff or external advisors?

- Who should sponsor training: senior or middle management, central agencies, or independent ethics bodies?

There are usually two kinds of ethics education or training programmes: one as part of induction training; the other, ongoing over the course of employment (periodic refresher courses). They may differ in content and purpose, but both types will draw on and highlight the other parts of an ethics infrastructure. In particular, codes of conduct provide material and content for instruction.

### *Induction Programmes*

Induction or initial training programmes may include information about:

- the role of the public service, including its relationship to the executive and the public;
- relevant legislation, regulations and codes;
- accountability mechanisms, including administrative procedures and reporting requirements; and
- the role of values -- both organisational and personal -- in judgement and making decisions.

The importance of instructing public servants in the fundamentals is clear from the response to alleged scandals such as the 1995 British Report of the Nolan Committee on Standards in Public Life and the 1989 Australian Fitzgerald Commission Report (dealing with allegations of corruption in the Queensland government). These suggest that required standards of conduct, relevant legislation and administrative procedures are not always well understood by public servants, and that specific explanation and clarification of them is necessary in some areas.

Also, as noted in Section II, induction training will be especially important as the “revolving door” between the public and private sectors brings in new employees from the private sector. A quick and systematic overview of the differences in the two sectors is indispensable, especially to those private sector employees who come into management positions in the public sector and hence will have to act as role models.

The Dutch Ministry of the Interior is to publish in 1996 a brochure highlighting the importance of integrity for new recruits. More generally, as part of the preventive approach to ethics, departments are to include integrity as a recruitment and selection criterion. An oath of office for every public servant is to be included in the General Civil Service Regulations.

### *Ongoing Programmes*

By contrast, ongoing ethics education which is targeted to employees with some experience in the public service will have a different function. As well as developing sensitivity to the ethical dimension of their work, these programmes will aim to enhance the decision-making abilities of public servants by concentrating on critical and analytical skills that encourage reflection and independent judgement or ethics analysis (Jackson, 1993; Chapman, 1993).

Continuing education has other benefits for an organisation by becoming a forum for evaluating systems and practices in place. These can be as diverse as whether codes of conduct are effective or whether values are changing. Concerning the latter, exploring societal and personal values of employees -- and where they might conflict with professional ethics -- is a means of keeping ethical behaviour relevant and discouraging misconduct (Near, Baucus and Miceli, 1993).

The United States provides an example of a very comprehensive and systematic ongoing education programme. Each federal agency is required to maintain a programme of ethics training to ensure all employees are aware of requirements of conflict-of-interest laws and standards of conduct. In addition to the required one hour of ethics training for all new employees, designated employees are required to receive one hour of ethics training annually. Although not required by regulation, many agencies also provide ethics briefings to employees who are leaving government service. The 129 agency ethics officers participate in a "train the trainers" programme through a series of workshops run by the Office of Government Ethics. Further, the Office of Government Ethics maintains an information centre, an electronic bulletin board and supports an annual conference to promote discussion and reflection on current ethical issues.

### ***Leading by Example***

Socialisation relies heavily on the exemplary behaviour of senior public servants. Many management initiatives show that rank-and-file public servants draw their inspiration from the behaviour they see, not from speeches they hear.

In New Zealand, Chief Executives share with the State Services Commissioner the responsibility to provide leadership in ethics and to model good conduct. In Norway, courses in ethics and value-based decisional behaviour are targeted to managerial staff and others having responsibility for personnel and development. In the Netherlands, public servants occupying managerial positions are charged with the protection and promotion of ethics. As such, managers setting a good example is viewed as the foremost socialisation mechanism. Special courses are targeted at them.

Professional socialisation, through its guiding function, complements the control function of an ethics infrastructure in a variety of ways. First, its focus tends to be proactive by concentrating on how standards can be met, through training and role models. Second, it brings the ethical dimensions of issues to a more immediate and practical level by relating them to actual circumstances, usually at the departmental or agency level. Third, it is suited to resolving ethical dilemmas which are not or cannot be covered by legislation, regulations or codes (Woodward, 1994). At a practical level, countries also need to consider the differing needs and expectations of different types of employees in the public sector, including permanent and temporary employees.

### **Public Service Conditions**

Public service conditions are important to an ethics infrastructure in that they define an environment which is more or less conducive to ethical conduct. There are external and internal factors.

External factors stemming from adjustment in the public sector have already been dealt with in Section II. Of importance is whether these factors have left any outstanding labour relations

questions, pay issues, or confusion resulting from constant change and reform fatigue. These legacies can deteriorate morale within the public sector which may render it less conducive to ethical conduct.

Internal factors, that is, human resource policies, directly influence the behaviour of public servants. First, they determine the ways in which public servants are recruited, trained, supervised, developed, rewarded and disciplined, making up a large part of the public service organisational culture. Second, they also include factors such as pay and job security which affect morale. Third, and more directly, a human resource policy which gives protection -- be it through protected whistleblowing or some other reporting process -- will inspire confidence in public servants to challenge inappropriate demands on them and to expose corruption and report unethical conduct.

### ***Fair and Equitable Treatment***

Human resource policies promote ethics by ensuring fair and equitable treatment of employees. An appropriately trained, competent, and satisfied public service workforce is more likely to resist compromise, misconduct or corruption. In other words, public servants will face fewer incentives to uphold standards of conduct if they are treated unfairly or see unethical behaviour being rewarded.

Recruitment and promotion by merit reflects fairness. These processes can also meet equity criteria by ensuring that all social groups are represented in a public service. Encouraging competence through merit and fair representation can enhance public service effectiveness. Conversely, accepting incompetent levels of performance is an ethical issue because this may lead to waste of resources and concessions on standards in other areas (Chapman, 1993). More importantly, tolerating incompetence dilutes commitments to quality, service, and accountability (Stahl, 1993). Transparent and equitable human resources policies are essential to organisational integrity. And potential employees will be attracted to an organisation with a good reputation and high standards.

### ***Pay and Security***

As noted above, the jury is still out on the impacts of pay on integrity. Most would agree however, that being underpaid is an acknowledged disincentive for following an ethical course of action in the presence of a lucrative alternative (Gallardo de la Pena, 1992; Klitgaard, unpublished). Yet corruption is not exclusive to low-paid officials. Indeed, it is interesting to note that in the United States evidence suggests that negative public perceptions of public servants and hostile criticism of government are more damaging to morale than pay, even though public service pay lags behind pay in the private sector (Gilman, United States).

Similarly, there is a delicate relationship between employment security and performance incentives. A position tenured for life may lead to complacency and the possibility of poor performance. On the other hand, contract or short-term employees may have fewer incentives for being concerned about the long-term consequences of their actions; they have less to lose. This will be a factor to consider as the trend increases towards flexible employment contracts including temporary work.

## ***Refusal and Reporting***

When and how should wrongdoing be reported? Traditional formulations suggest that when a public servant suspects wrongdoing on the part of others, they have several options open to them: loyalty -- you say nothing; voice -- you voice your concerns to a superior (which is problematic if the superior is the party under suspicion); or whistle-blowing (you voice your concerns publicly) (Lundquist in Chapman, 1993). Similar formulations apply when a public servant is asked to perform an inappropriate task. They can invoke loyalty (do as you are told and perform the task); obstruction (from just doing nothing to trying to sabotage the task at hand); voice (appeal the request to a superior, which is also problematic if the superior is making the request); exit (you terminate your employment rather than perform something that you see as inappropriate); and whistle-blowing (you tell the world about that which you don't approve).

Having appropriate procedures in place will give public servants the confidence that they can report wrongdoing and will be protected in doing so (see Section V for a description of trends in countries under study).

Conditions in the public service, particularly human resource policies, directly influence conduct. Many of the countries under study are in the process of downsizing their public services, which can often result in a general lowering of morale. It is a critical time for countries to look at and decide which of their human resource policies are acting as incentives or disincentives to good conduct. Public service conditions will also directly influence other elements of an ethics infrastructure such as the successful implementation of codes of conduct and socialisation activities.

## **Co-ordinating Ethics Bodies**

Bodies that co-ordinate the overall ethics framework range from parliamentary committees, central agencies, departments, or specially created independent agencies mandated to oversee ethics in the public service. They serve a management function by co-ordinating and supporting all of the other infrastructure elements. They operate either through directly implementing ethics initiatives or by delegating this task to other departments or agencies. For those which also have an enforcement role, they have a control function.

These bodies usually perform one or more of three roles: watchdog, counsellor, or promoter. Depending on the circumstances, their influence can be characterised as primarily coercive or educative, and sometimes both. If set up in response to a scandal or a crisis, they tend to be more coercive. If they are part of a general ethics programme, they tend to be more educative.

In the case of specially created agencies, they can be established according to some unique relationship with the legislature that gives them independent authority. A case in point is the US Office of Government Ethics, a separate agency within the executive branch of government. Its Director is appointed to a five-year term by the President, with the consent of the Senate. Specially created agencies are given absolute independence from the government of the day in order to avoid the appearance of being used for political purposes.

## ***Watchdog***

Co-ordinating bodies with a watchdog approach investigate or prosecute breaches of ethical conduct that may or may not also be criminal offences. As the key to their effectiveness is the exposure of misconduct, they need adequate resources, authority, and independence so that their actions have teeth.

Because of the potential for infringements of civil liberties, co-ordinating bodies with extraordinary watchdog functions are rare. They tend to occur when organised crime or systemic corruption dominates an entire branch of government such as the police, the military or the legislature. As mentioned under the previous section on Political Commitment, the Independent Commission Against Corruption (ICAC) in New South Wales, Australia, is such a body. Examples of the less ferocious but nonetheless coercive watchdogs include government or parliamentary auditors and other bodies which receive public complaints about unethical behaviour. However, it should be noted that concerns have been raised about the effects of over-zealous corruption fighting organisations, including that they render public servants more concerned with protecting their backs than getting on with the tasks at hand. Care should be taken that these bodies do not encourage overly risk-averse behaviour on the part of public servants.

## ***Counsel and Advice***

Co-ordinating bodies employing primarily a counsellor approach advise any of the branches of government or the public sector at large. Their work is chiefly consultative and recommending, as distinct from enforcing or investigating. They may also serve as adjudicators in accusations made under administrative codes of conduct which are not enforceable by law. Such bodies might also be used to develop the content of public service ethics through (Chapman, 1993):

- conducting an independent critique of prevailing ethics;
- researching changing societal standards, which should be reflected in public service standards;
- examining the existing organisational environment.

One example of a recently established co-ordinating body which has taken on a counsellor approach is the United Kingdom Committee on Standards in Public Life (the Nolan Committee). Prime Minister Major has stated that the Committee will act as an ongoing “ethics workshop” to examine ethical dilemmas and provide advice on how they should be resolved.

In Australia, although promoting ethics is the responsibility of the Management Advisory Board (see Section IV), the counsellor role has been delegated to the Public Service Merit Protection Commission, a central management body. The Public Service Merit Protection Commission is responsible for:

- setting and promoting a policy framework for ethics;
- developing detailed procedures to deal with misconduct;

- providing advice and guidance to agencies in establishing their own codes of conduct, promoting good conduct, and dealing with misconduct; and
- hearing appeals against significant sanctions other than dismissal.

### ***Promoting Ethics***

Co-ordinating bodies as promoters of ethics are the most common in the countries under study. They are usually existing central management bodies or departments in charge of public service management or government administration. They have the lead in “marketing” ethics in the public service. They educate public servants and perhaps also the public, by raising awareness of ethical issues and supporting the development of skills in ethical analysis.

In Australia, the Management Advisory Board has an overarching interest in promoting good conduct within the public service. In New Zealand, the State Services Commission is the department with the statutory responsibility to prescribe minimum standards of integrity and conduct for the public service and to promote public service values, standards, and appropriate conduct. In Norway, the Ministry of Government Administration is the department with the responsibility for ethics education and training. In this context, public service ethics includes:

- values;
- norms and guidelines for fair and open management and personnel policy;
- regulations to discourage bribery; and
- other norms to influence integrity and credibility of civil servants.

As these examples show, there are many types of bodies for co-ordinating ethics initiatives. Whatever functions they assume will influence their interface with other elements of the ethics infrastructure. Thus, a watchdog approach will depend on a legal framework for authority to investigate, prosecute, and sanction. A counsellor approach can rely on accountability mechanisms such as ombudsmen. A promoter approach will rest on professional socialisation activities. It is important, however, that the existence of a co-ordinating body does not allow departments and agencies to absolve themselves of their responsibilities in relation to ethics management.

### **Public Involvement and Scrutiny**

As outlined in Section II, today’s public is better informed about, more aware of, and takes a greater interest in, public sector activities. In addition to access-to-information laws, there is a move to encourage openness in administration by allowing substantial public access to bureaucratic processes, specific meetings and records of meetings. For example, the United States has passed “government in the sunshine” laws in many of its jurisdictions. Moreover, public servants are also more often required to consult stakeholders through public hearings, focus groups, client satisfaction surveys, etc. in the process of making policy and programme decisions.

Public involvement and scrutiny is a powerful disincentive to corruption and misconduct in the public sector. For example, in the Netherlands, members of the public can report ethics breaches

to the Internal Security Service. But public scrutiny depends heavily on the legal framework allowing for access to information. Moreover, the cultural traditions of public participation in governance as well as the existence of administrative procedures to allow such participation (such as public consultation) will determine the contribution public involvement and scrutiny can make to an ethics infrastructure.

## **Conclusions**

Countries design an infrastructure through leveraging political commitment, a legal framework, accountability mechanisms, codes of conduct, professional socialisation, public service conditions, co-ordinating bodies, and public involvement and scrutiny. Together, these elements act as incentives to good behaviour and disincentives to corruption and unethical conduct. Ultimately, the synergy between the different components of an infrastructure will depend on its cultural and political administrative milieu, a country's approach to public management in general, and its past initiatives in promoting ethics. The mix and match of these elements depend on the functions that a country wishes to emphasize. Like any other tool, the effectiveness of an ethics infrastructure depends on whether it is understood and used consistently.

The following section attempts to describe recent trends in ethics initiatives in the nine countries participating in this study.

#### IV. ACTIONS AND REACTIONS: RECENT INITIATIVES IN ETHICS MANAGEMENT

*“The standard approach to the ethical culture in most public sector organisations is to ignore it until all hell breaks loose and then react to the crisis by creating a new set of rules or resurrecting rules from some dust covered guidelines or codes of conduct.”*

(Langford, 1991, p. 16)

The countries involved in this study highlighted a wealth of new initiatives in the area of ethics and conduct, particularly over the last five years. These developments are summarised below on a country basis. However, few could be seen to reflect the above scenario. It is true that the key impetus for some of the initiatives was a well-publicised scandal, for example the setting up of the Nolan Committee on Standards in Public Life in the United Kingdom following the “cash-for-questions” case. But in general the responses cited by countries reflect more an attempt to examine the functioning of the ethics regime, especially in relation to wider public management reforms. The responses therefore could be described more as reviews and evolutionary developments than knee-jerk reactions. They fall into three main categories (although in practice the distinction between them is often blurred):

- overall reviews to determine gaps in the system for ethics management (the United Kingdom, Norway, the Netherlands, Finland, United States);
- refocusing ethics management in relation to new overall public management reform (Australia, New Zealand); and
- as an aspect of public sector modernisation programmes (Portugal, Mexico).

##### **Reviews to Identify Gaps in Ethics Management**

Four of the participating countries described comprehensive and often high-profile reviews of the overall state and management of ethics in the public service. They can be seen as attempts to identify and close gaps in the system, some emerging from management or structural changes in the public sector.

##### ***United Kingdom***

The independent Committee on Standards in Public Life was set up in 1994 by Prime Minister John Major in response to several scandals mainly involving politicians. Chaired by Lord Nolan, hence the “Nolan Committee”, it was given a broad-ranging task:

*“To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial*

*activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life”.*

(First Report of the Committee, Terms of Reference, 1995)

The Committee’s mandate covered the range of public officials; from civil servants, employees of quasi-governmental organisations (Quangos) to politicians. It produced its first report in May 1995 (on Members of Parliament, Ministers and Civil Servants, and Quangos), and its second in May 1996 (on Local Public Spending Bodies), and will produce others looking at specific areas of the public sector (including local government, expected during summer of 1997) and possibly utility industry regulators. The Committee has since become a “standing committee” to oversee the ongoing status of standards in public life. As Whetnall (United Kingdom) notes:

*“..the very wide-ranging remit of the Nolan Committee, and its direct commission by the Prime Minister to act as an “ethics workshop”, effectively ensures that the Committee has a general role in determining ethical standards in the public service, and for monitoring that these are being maintained.”*

The operation of the Nolan Committee coincided with the launch in 1995 of a Civil Service Code, and a Treasury Code of Practice for Board Members of Public Bodies. The former originated from a concern that “.. standards and values needed to be reinforced because of the number of factors, including fragmentation of the Civil Service through devolution of responsibilities, including to Next Steps Agencies, and the embracing of some private sector qualities” (Whetnall, United Kingdom). The code defines provisions for reporting wrongdoing and procedures for appeal to independent Civil Service Commissioners (previously wrongdoing was officially reported to the Head of the Home Civil Service). The Treasury Code of Practice for Board Members of Public Bodies is aimed at executive bodies that have substantial spending responsibilities but are at arm's length from government. It covers “... the duties and responsibilities of board members and includes guidance on, among other things, audit arrangements, openness and accountability, and the registering of interests” (Whetnall, United Kingdom).

The British initiatives appear to be aimed at clarifying roles and responsibilities in the context of significant structural change or fragmentation of the public sector. These ensure that the multiplicity of public sector officials -- not just core civil servants -- come under an ethics framework. The Nolan Committee as an ongoing ethics monitor suggests the acknowledgement of the need for ongoing debate as the public sector changes and new ethical issues arise.

### ***Norway***

In 1991, the Norwegian Minister of Justice and the Minister of Government Administration appointed a working group to investigate the status of public service ethics in Norway. It had a two fold mandate:

- to describe the values and attitudes that characterise a good administration; and
- to suggest measures to reinforce and improve the work on attitudinal development being carried out in the Norwegian government administration.

A report on public service ethics was subsequently released.

At the same time, there have been several investigations into “alleged weakness and irresponsibility in the handling of large economic projects” (Blymke and Bøhagen, Norway). As noted in Section II, outsourcing of information technology has been the subject of a number of investigations, revealing concerns about “a lack of controls and awareness of responsibility...” (Blymke and Bøhagen, Norway). New regulations have subsequently been added to the Civil Service Act, including for “how the State as an employer shall react in cases where civil servants inflict damage or cause the State to be liable for damages” (Blymke and Bøhagen, Norway).

The Norwegian initiatives can be seen as an attempt to both review and revamp the aspirational side of the ethics framework -- by defining values and reinforcing work on ethics awareness -- while imposing new rules to close loopholes in control mechanisms, emerging from new functions for public servants (e.g. contract management).

### *The Netherlands*

In early 1995, the Dutch Minister of the Interior requested all Ministers to pursue a “preventive policy aimed at protecting the integrity of the civil service” (Maas, the Netherlands). Major integrity initiatives in the public sector, such as the administrative response to organised crime in the area of permits and contracting out, upholding integrity of persons in political office and “Conscious Government Guidelines” to detect improper third-party influence on policy and decision making have been introduced. All ministries are now developing their own policies to, *inter alia*:

- screen for vulnerable spots, to identify those positions having “marketable advantages” which could open them to conflicts of interest (semi-governmental bodies are required to do the same);
- reintroduce oaths and affirmations of office;
- develop strategies for ethics awareness; and
- appoint a “confidential officer” (officers who can be consulted by public servants needing advice or guidance on ethical issues).

The central and local Government Personnel Act is to be amended -- a bill will be presented to Parliament in 1996 -- to include rules of disclosure and registration of interests and to prohibit certain outside activities. Moreover, a disclosures office has been added to the Internal Security Service (BVD) to which “members of the public can report actual or suspected breaches of integrity by government officials” (Maas, the Netherlands). The Netherlands has also attempted to develop mechanisms, “integrity checks” including using information from criminal records, for determining whether potential private sector business partners are legitimate. In other words, they can be screened to determine whether they are appropriate for carrying out public sector activities (including to be granted building or environmental permits or public service contracts).

Initiatives in the Netherlands seem to be directed at ensuring that government organisations assume their devolved responsibility for maintaining ethical awareness and standards, increasing transparency (by requiring declarations of interests and implementing mechanisms for the public to report suspected wrongdoing), and taking steps to ensure that public organisations only enter into business partnerships with legitimate private sector operators.

### *Finland*

A Ministry of Finance working group recently submitted a proposal to government that would require potential top senior civil servants (Chancellor and Assistant Chancellor of Justice at the Council of State, Commander of the Defence Forces, and heads of departments and agencies) to declare their financial and other commitments before appointment to their posts. These commitments include ancillary jobs, quasi-governmental organisational posts, corporate ownership and other major assets. The proposal follows a constitutional amendment in 1995, requiring ministers to declare outside interests. The working group proposed that the provisions should be incorporated into the existing State Civil Servant Act “together with a prohibition on supplying information on assets to outsiders” (Äijälä and Hyvönen, Finland). The new requirement is likely to take effect in early 1997, following consultation with ministries. Finland noted the existence of such arrangements in other OECD countries as an influence behind the proposal, and cited the overall aim as being “to prevent any threats to civil service impartiality long before they emerge” (Äijälä and Hyvönen, Finland).

### *United States*

The United States has perhaps the most comprehensive apparatus for managing ethics, or at least for controlling corruption and wrongdoing. Many of the relevant initiatives were developed in response to the Watergate scandal in the 1970s, such as the system of Inspectors General, the Office of Government Ethics and the Office of Special Counsel. These initiatives were progressively developed throughout the 1980s, including the President's Council on Integrity and Efficiency set up in 1991.

Initiatives in the 1990s reflect the “promulgation of more detailed rules to govern the conduct of Government officials” (Gilman, United States). Standards of Conduct for the Executive Branch issued in 1992 by the Office of Government Ethics provide specific guidance on such questions as gifts, conflicting financial interests, impartiality, seeking employment, misuse of position, and outside activities. As part of the National Performance Review -- to make government more efficient and responsive -- there has been an increased emphasis on “...eliminating fraud, waste and mismanagement of Government programmes and operations through a system of inspectors general, through protection provided to whistle-blowers, and through heightened importance of chief financial officers” (Gilman, United States).

On the first day of his administration, President Clinton signed an executive order, Ethics Commitments by Executive Branch Appointees, which requires certain non-career senior appointees and trade negotiators to sign a contract limiting their post-employment activities, including lobbying activities, for a period of five years following termination of their government contract. Also in response to the concern about the influence of lobbyists in Washington, the Lobbying Disclosure Act 1995 was initiated. “When enacted, the new law will require lobbyists to both the Congress and the executive branch to register and to report on the identity of their clients, the issues they are lobbying on, and the amount of money they are being paid” (Gilman, United States).

Adding to an already detailed regulatory framework governing the behaviour of public servants, the American initiatives reflect an attempt to specify rules and requirements in more detail, to close any loopholes (for example to avoid post-employment conflicts of interest) and to increase the roles of policing and monitoring bodies. The requirements for disclosure of lobbying activities appear to try to limit conflicts of interest or undue influence over government employees, not by targeting them directly but by making private sector contacts reveal the nature of their relationships with government officials.

## **Linking Ethics Management to Overall Public Management**

Both Australia and New Zealand have introduced ethics initiatives in the context of and as an integrated component of wider management reforms. In both cases, regulatory frameworks are still an important part of the ethics machinery. However, the focus is on ethics as an integral part of managing the public sector and its human resources rather than as a separate issue.

### ***New Zealand***

Recent ethics initiatives in New Zealand reflect wider and comprehensive reforms in public management. The objective of ethics initiatives has been to “promote ethical conduct... consistent with a devolved management system, using an integrity-based approach rather than a more traditional compliance or rule-based approach” (State Services Commission, New Zealand). Apart from the Public Service Code of Conduct issued in 1990, the focus has been on developing ethics awareness across the public service.

In 1991 and 1995, the State Services Commission produced a series of papers to stimulate discussion on ethics. The 1995 series highlights roles and relationships -- including between public servants and the public, Parliament, with Maori (the indigenous people of New Zealand) and in relation to official information -- rather than rules and procedures. They also highlight dilemmas and conflicts between responsibilities as a means of developing ethics awareness. As the State Services Commission (New Zealand) notes:

*“Ethics by their very nature, are concerned with making choices, of using discretion. The aim of the integrity-based approach is to provide public servants with the basis on which decisions might be made and trust that they will apply sound principles accordingly”.*

New Zealand argues that the principles and values of the public service must be given “operational relevance -- to be built into the management systems and the ‘psyche’ of the public service” (State Services Commission, New Zealand). Consistent with this approach are the principles and values of the public service, set out in the New Zealand Public Service Vision Statement.

Recently a review to assess the need for whistle-blowing provisions recommended that “public sector organisations be required to implement internal processes for reporting and addressing public interest issues within the organisation. Introducing such processes would be discretionary for the private sector. Statutory protection is recommended for whistle-blowers among both public and private sector employees” (State Services Commission, New Zealand). Protection for whistle-blowers legislation is planned for 1996. The aim will be to reduce impediments for employees to disclose serious wrongdoing and to increase the protections applying to them.

## *Australia*

Australia has reformed its approach to ethics management by emphasising "...conduct and ethics as key components of performance management and located performance management in the broader context of a strategic approach to people management" (Jones, Australia).

The Management Advisory Board, which is charged under the Public Service Act with advising the Commonwealth Government on the management of the Australian Public Service, published a paper in May 1996 on "Ethical Standards and Values in the Australian Public Service". The purpose of this paper is to increase awareness and understanding of ethical issues. It is intended to provide senior managers in particular with a conceptual framework for ethical conduct.

The paper acknowledges that there are rules and guidelines that govern some aspects of public service behaviour, but in some situations determining the correct course of action requires considerable judgement. An awareness and understanding of how the application of the rules, guidelines, principles and values comes together is essential if public servants are to make ethical judgements and defensible decisions.

New Guidelines on Official Conduct of Commonwealth Public Servants were launched in 1995, which added to previous versions changes in accountability arising from financial reforms, greater emphasis on equity, dealing with whistle-blowing and fraud control, and the inclusion of the key public service values. The new Public Service Act, which is expected to be proclaimed in early 1997, will bring together in legislation for the first time a set of values and a code of conduct for public servants.

Like the New Zealand approach, the guidelines emphasize relationships rather than rules. They are also supported by discussion documents to provide practical advice on ethics and accountability questions, including through case studies. Ethics analysis has also been integrated into management training programmes and through seminars, workshops and the development of training modules. As in New Zealand, some individual agencies have supplemented the overall public service-wide codes of conduct with codes specific to their mission and organisation (the Department of Defence is a notable example).

## **Modernising Public Administration**

Two of the participating countries, Mexico and Portugal, stand out as developing ethics initiatives as part of attempts to modernise public administration. In both cases, the first step was to establish the rules related to administrative action and behaviour. These were previously either non-existent or little understood and subsequently not adhered to. Given this situation, these initiatives could be seen as actually creating ethics frameworks rather than reforming or revising existing systems.

## *Mexico*

While the Federal Law of Responsibilities in Mexico -- the legal framework covering all regulations related to public servants' behaviour -- was enacted as far back as 1982, it was clear that the structures for reviewing the behaviour of public servants were inadequate. For example, the requirement for public servants to register or make formal declarations of wealth and income were

ineffective. It depended on capacities to review those declarations which were either inadequate or so slow that it was extremely difficult to prosecute any wrongdoing. Moreover, evidence suggested that public servants were basically unaware of their responsibilities or potential conflicts of interest.

Two key and recent initiatives related to building an ethics framework in Mexico are: the Public Administration Modernisation Programme and the establishment of the Superior Auditing Office of the Federation, announced by President Zedillo in 1995. A priority for the Public Administration Modernisation Programme is to "... carry out an extensive review of the current legal framework, through which rights and duties for both public servants and citizens must be established with full clarity, so as to decrease discretionality in the application of the law" (López Presa, Mexico). The main functions of the Superior Auditing Office of the Federation are "...to control, supervise, verify and correct the use of public resources and...to make recommendations to improve public sector management" (López Presa, Mexico). Indeed, building an ethics framework in Mexico -- by defining the rules and regulations applying to administrative behaviour and by attempting to develop accountability through effective audit -- is linked to the ongoing democratisation of Mexico and its governmental institutions.

### *Portugal*

Initiatives in Portugal related to ethics and conduct have been introduced in the context of a significant public administration modernisation programme. These were introduced into the historical context of a public service which Moniz (Portugal) describes as a "...closed, extremely hierarchical and traditionalistic institution which resists innovation". The Code of Administrative Procedures (1991) -- containing some two hundred articles -- the Public Service Code of Practice and the Public Service Quality Charter are the three basic texts of Portuguese Administrative Modernisation (Moniz, Portugal).

The Code of Administrative Procedures has four primary aims: "...rationalising the work of government services, systematising and standardising procedures, guaranteeing public information and transparency of decisions, and providing mechanisms for participation and bringing services closer to those concerned", including public access to administrative records and registers (Moniz, Portugal). The Public Service Code of Conduct was introduced as a "positive affirmation of desirable conduct" and therefore a supplement to the Code of Administrative Procedures (Moniz, Portugal). It sets out the essential values of the public service. Moniz, however, notes several process questions, in particular, the lack of consultation with public servants and a top-down imposition of the code of conduct, as impediments to implementation. However, clearly there has been significant progress in defining the rules that govern the actions of public servants and in "creating an environment of transparency that discourages wrongful conduct" (Moniz, Portugal).

As the preceding countries' summaries show, there have been different stimuli for and approaches to new ethics initiatives. However, there are some initiatives common to several countries that are worthy of special attention because they may signal certain trends or emerging pressure points. They are elaborated upon in the following section.



## V. TRENDS AND APPROACHES: COMMON DIRECTIONS IN ETHICS MANAGEMENT

The similarities between the new initiatives in countries seem to signal some common directions for ethics management in the public service. They include:

- attempts to redefine values;
- new codes of conduct;
- whistle-blowing procedures; and
- requirements to declare interests and assets.

### **Redefining Public Service Values: In Search of a New “Ethos”?**

*“...we cannot expect to build strong ethical cultures in our public sector organisations if there is no clarity or consensus about what behaviour we are trying to reinforce and what behaviour we are trying to restrain. When we aren't agreed on what the right thing is, it's awfully hard to get us to do it.”*

(Langford, 1991, p. 22)

Most of the participating countries have indeed attempted to define the overall values they are trying to encourage in the public service. These are described below. (See table *Comparative Public Service Values*.) What they show is a good deal of homogeneity in terms of the values desired. Moreover, there is clearly an attempt to articulate values that could be associated with new orientations in public management. Countries seem to be searching for a new “ethos” in the public service, one that incorporates the traditional notions of public service with new considerations such as “efficiency and effectiveness”, “value for money”, and “service to the citizen”. This is especially the case in Australia and New Zealand:

*“It is the continuing pursuit of a balance between contemporary approaches to management and our traditional values of public service that has been at the heart of our focus on conduct, ethical behaviour and accountability over the last decade”* (Jones, Australia).

*“Public Service reform has focused on improving management competency, restructuring departments and reallocating functions among departments, and making the Public Service better equipped to do the business asked of it. The core values engendered by this concentration of effort are mainly concerned with being efficient, purposeful and accountable. That approach, of course, does not eschew other core values usually associated with public services such as honesty, integrity, fairness, or non-partisanship, but it does mean that public servants need to be imbued with a wider range of values than before”* (State Services Commission, New Zealand).

**COMPARATIVE PUBLIC SERVICE VALUES**

<b>Australia</b>	<b>Netherlands</b>	<b>New Zealand</b>
<p>As stated in 1993 <i>Building a Better Public Service</i>, the main principles of official conduct are identified by the following key public service values:</p> <ul style="list-style-type: none"> <li>• responsiveness to governments;</li> <li>• a close focus on results;</li> <li>• merit as the basis for staffing;</li> <li>• the highest standards of probity, integrity and conduct;</li> <li>• a strong commitment to accountability; and</li> <li>• continuous improvement through teams and individuals.</li> </ul>	<p>While not presented as an official statement of values, Maas notes some “key words” to describe the “special status of the public servant.”</p> <p>The key words are:</p> <ul style="list-style-type: none"> <li>• impartiality;</li> <li>• expertise and professionalism;</li> <li>• reliability;</li> <li>• loyalty; and</li> <li>• transparency.</li> </ul>	<p>The New Zealand <i>Public Service Vision Statement</i> sets out the principles and values to which the Public Service will adhere. According to the <i>Statement</i>, the Public Service will:</p> <ul style="list-style-type: none"> <li>• give free and frank advice to the Government of the day, and inform and implement its decisions with intelligence, enthusiasm, energy, innovation and common sense;</li> <li>• demonstrate qualities of leadership, sound judgement, fiscal responsibility and high ethical standards that attract the confidence and respect of the Government and people of New Zealand;</li> <li>• establish and maintain an equitable and challenging working environment able to respond to constant change, and train, develop and motivate every public servant to perform to the highest levels of their ability;</li> <li>• ensure that people with professional management skills and the attributes of leaders are recruited and developed across the Public Service. This is to meet current and future Public Service-wide needs for high quality management, and contribute to enhancing New Zealand’s management resources overall;</li> <li>• ensure that every public servant demonstrates understanding of the collective interest of the government and the special nature of the relationship between Parliament, the Crown and the Public Service in the need for apolitical, objective and professional policy advice and the custodianship of the nation’s resources for future generations of New Zealanders; and</li> <li>• act at all times within the true spirit of the law and work to maintain the stability and continuity required in a system with democratically elected government.</li> </ul>

## COMPARATIVE PUBLIC SERVICE VALUES

<b>Portugal</b>	<b>United Kingdom</b>	<b>United States</b>
<p><i>Essential Values of the Public Service</i> as included in the <i>Public Service Code of Conduct</i> are composed of:</p> <ul style="list-style-type: none"> <li>• public service;</li> <li>• legality;</li> <li>• neutrality;</li> <li>• responsibility;</li> <li>• competence; and</li> <li>• integrity.</li> </ul>	<p>The <i>First Report of the Committee on Standards in Public Life</i> lists the following <i>Seven Principles of Public Life</i>:</p> <ul style="list-style-type: none"> <li>• selflessness;</li> <li>• integrity;</li> <li>• objectivity;</li> <li>• accountability;</li> <li>• openness;</li> <li>• honesty; and</li> <li>• leadership.</li> </ul>	<p>In April 1989, President Bush issued Executive Order 12674, <i>Principles of Ethical Conduct for Government Officers and Employees</i>, which outlines 14 principles of ethical conduct:</p> <ul style="list-style-type: none"> <li>• Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain.</li> <li>• Employees shall not hold financial interests that conflict with the conscientious performance of duty.</li> <li>• Employees shall not engage in financial transactions using non-public Government information or allow the improper use of such information to further any private interest.</li> <li>• An employee shall not, except as permitted by subpart B of this part, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or non-performance of the employee's duties.</li> <li>• Employees shall put forth honest effort in the performance of their duties.</li> <li>• Employees shall not knowingly make unauthorised commitments or promises of any kind purporting to bind the Government.</li> <li>• Employees shall not use public office for private gain.</li> <li>• Employees shall act impartially and not give preferential treatment to any private organisation or individual.</li> <li>• Employees shall protect and conserve Federal property and shall not use it for other than authorised activities.</li> <li>• Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.</li> <li>• Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.</li> <li>• Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those -- such as Federal, State, or local taxes -- that are imposed by law.</li> <li>• Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, colour, religion, sex, national origin, age, or handicap.</li> <li>• Employees shall endeavour to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.</li> </ul>

## **New Codes of Conduct**

Five of the nine countries in the study -- Australia, New Zealand, Portugal, the United Kingdom and the United States -- have implemented new codes of conduct for public servants over the last five years, and a sixth -- the Netherlands -- is in the process of designing one. This suggests that countries still see the need to define explicitly, although not necessarily in minute detail, the behaviour expected of public servants. This is true even for those countries that are moving away from a prescriptive approach to management. The notion that codes are at odds with the new devolved and discretionary public management is not borne out by country experience. In fact, it could be suggested that instruments such as codes help maintain common standards and values, thereby enhancing coherence in a devolved public management environment where fragmentation is a risk.

There is a tendency for those codes to include a statement of overall and broad public service values as noted in the above table, Comparative Public Service Values. In more devolved countries, an overall public service-wide code -- which tends to be more aspirational and quite general in nature -- is often supplemented in individual agencies by specific guidelines that reflect the mission and functions of that organisation.

In terms of implementation, simplicity and comprehensibility (some countries mentioned the importance of short documents in plain language) are key factors in the practical use of the code as a guide to actions and decisions. Some countries also mentioned consultation with stakeholders, staff and union representatives as an important factor in ensuring that public servants “own” and “embrace” codes. Countries still report difficulties related to how best to promulgate codes and the principles they embody. Education and awareness programmes, either at a central or decentralised level were described as important, and therefore feature in many countries. The focus is on developing ethics awareness or analysis in public servants that can be applied to various situations. Codes and value statement provide important reference material in this context.

## **Whistle-blowing Procedures**

Many countries reported new initiatives related to “whistle-blowing”, typically the development of procedures to facilitate reporting of wrongdoing (the United Kingdom in the Civil Service Code) or procedures for public servants to appeal or seek counsel (United Kingdom to independent Civil Service Commissioners, the Netherlands to “confidential officers”) when asked to perform a task they feel is inappropriate or unethical. Protection for whistle-blowers has also been a concern (New Zealand, the United States).

Having workable and efficient procedures for reporting wrongdoing is perhaps more important in the modern public management environment than before. The existence of such procedures reflects a commitment to openness and transparency, important themes underpinning public management reforms. Moreover, they are consistent with the notion of performance-related control; these procedures might provide another form of informal internal auditing. If procedures are also available to the public -- for example, in the Netherlands members of the public can report ethics breaches to the Internal Security Service -- they help to cultivate civil society as a watchdog over administrative action. The existence of clear procedures for reporting wrongdoing also helps to avoid

the situation where public servants feel their only option is to report outside, either openly or discreetly, in the form of leaks to the media. A probing media offers more temptation and opportunities for public servants to take this option.

But it should not be forgotten that reporting wrongdoing has always been problematic for public servants. The commitment to openness may conflict with the traditional notions of loyalty to superiors and solidarity with colleagues. Indeed, in the past, blowing the whistle has often resulted in the whistle-blowers becoming the victims -- they are considered disloyal, not team-players, and reporting wrongdoing can seriously blight their own career.

It is perhaps the response to this tension between openness and loyalty that is behind attempts in OECD countries to improve procedures for reporting wrongdoing. These systems must have credibility with public servants, so that they can air their concerns and feel confident that these will be taken seriously and dealt with. Having an independent body from which to seek advice and to report to is another aspect of this credibility (as above, the United Kingdom Civil Service Commissioners, the Netherlands "confidential officers"). Offering greater protection for whistle-blowers can be seen as another attempt to encourage public servants to report on any suspected wrongdoing. As mentioned above, in New Zealand, a review of whistle-blowing procedures found them to be adequate, but the protections afforded to whistle-blowers were not. Legislation to protect whistle-blowers (in both the public and private sectors) is expected in 1996.

### **Disclosure of Interests**

Several countries -- Finland, the Netherlands, and the United Kingdom -- report new initiatives related to disclosure of financial and other interests by public servants. In the case of Finland, this is just for senior public servants, to increase transparency of and public confidence in government and to bring top public servants into line with obligations applying to politicians. In the case of the United Kingdom, the new provisions apply to board members of public bodies. The United States and Mexico have long had registering of interests and assets arrangements. Indeed a recent PUMA survey revealed that 12 out of 20 countries surveyed had a requirement for public servants -- at the senior level in any case -- to declare their interests.

This could be seen as another attempt to improve transparency in the public service. Conflicts of interest can be more easily spotted if public servants are asked to register their outside involvements. This is especially the case if the resulting information is made public, as in the United States. In that case, registration allows the media and the public to assume the role of watchdog. The increase in disclosure requirements might also be an attempt to deal with the revolving door between the public and private sectors. As more public servants are recruited from the private sector, and sometimes for a limited time, they are more likely to have previous outside interests which may potentially conflict with their public sector employment. Increased transparency is a way of highlighting these potential conflicts. The simple fact of having to register a declaration may act as a deterrent to, or highlight, conflicts of interest.

On the other hand, there is a tension between transparency and privacy for public servants. In Mexico, declarations are kept secret in the interests of privacy for public servants and to avoid any potential problems such as blackmail. In this case, declarations are utilised as part of an internal audit function. However, as noted above (Section IV), concerns have been raised about the effectiveness of

current arrangements, particularly related to the administrative capacity to review declarations and take any follow-up action.

## **Conclusions**

As seen above, countries still see the need to specify bottom-line standards, as evidenced through the introduction of new codes of conduct. But at the same time, there is a greater move toward reliance on aspirational values and increased transparency of actions through whistle-blowing procedures and up-front disclosure of interests. This emphasis on broad guidance and greater transparency rather than detailed control reflects wider trends in public management. This raises the question of how countries can ensure that their ethics infrastructure is consistent with and reinforces these wider management initiatives. The following section attempts to uncover some of the implications of a move from rules-based to results-based public management for the management of ethics and conduct in the public service.

## VI. FROM RULES TO RESULTS: IMPLICATIONS FOR ETHICS MANAGEMENT

### Public Administration versus Public Management

*“Public administration is the objective science of law with assumptions about behaviour being determinant and rational; its controlling force is legality and ethics; public administrators do what they are told to do. Management is the craft of determining objectives, leading people, harmonising goals and resources, seeking compromise, responding to the turbulent fluid environment of the market, of seeking opportunity for ‘profit’.”*

(from draft of : Serving the Economy Better, OECD, 1991)

The potential tensions between traditional notions of public administration and new forms of public management are starting to emerge in some OECD countries and, not surprisingly, mostly in those that have gone the furthest in adopting the principles and practices of managerialism. It is perhaps in the area of ethics that the manifestations of those tensions and contradictions are most clearly identifiable. For example, in the conclusions of its report *Governance in Transition*, the OECD Public Management Committee noted that fostering diversity of practice through greater managerial flexibility has raised concerns about an erosion of a service-wide perspective, the collective interest of government, and traditional public service values. And clearly, reducing rules and detailed controls increases the risk of mistakes and allows more opportunities for impropriety.

The proponents of traditional “public administration” argue that those risks are too great. They call for a return to “the neglected foundation of public law”<sup>4</sup>. They maintain that there is room to improve government efficiency within that model. They see adopting a managerial model, or trying to emulate the private sector, as a mistake. For example, Moe and Gilmore insist that the public and private sectors are fundamentally different and that the principles of public administration and the control systems they imply “protect the citizenry from an overbearing, arbitrary and capricious use of government power...”, that is, they ensure ethical action. “It is for this reason that the standards for governmental control and enforced adherence to prescribed processes and procedures are -- and have to be -- so much higher than those of the private sector”. “...Each regulation, whether directed internally or externally to government, was enacted or promulgated in response to a problem or crisis. Internally, such rules are put in place to prevent the occurrence or recurrence of an actual or apparent opportunity for fraud, conflict of interest, or other abuse of public funds or power” (Moe and Gilmore, 1995, p. 143). Tolerating any impropriety, therefore, is the thin edge of the wedge.

---

4. See for example Ronald Moe and Robert Gilmour, “Rediscovering Principles of Public Administration; The Neglected Foundation Of Public Law”, *Public Administration Review*, March/April 1995, Vol. 55, No. 2, pp. 135-146.

Few, even the most staunch, supporters of new managerialism would argue that the public and private sectors can be managed identically, and/or that the legal bases of administrative action should be entirely thrown out. But the new managerialists contend that trying to regulate for every contingency and then demanding strict adherence to rules and processes works against efficiency and can actually undermine ethical conduct. Too many rules also result in overly risk-averse behaviour; public servants are frightened to move for fear of putting a foot wrong. The greater the complexity and volume of rules, the less likely it is that public servants are going to be able to grasp them and abide by them. They will be seen as something to avoid or work around, rather than used as guidance in how to act in those grey areas between right and wrong. Moreover, when rules become obsolete and unworkable, they lose credibility and create confusion, which in turn leads to either inaction or misaction.

*“Excessive controls can disrupt consistent administration and produce inequities. Excessive controls multiply requirements for review of proposed decision, increase red tape, and delay action. So much energy can be spent attempting to control administrative activities, in fact, that little time or money is left to do the job at hand. Excessive controls, therefore, may dull administration's responsiveness to its public.”*

(James Fesler and Donald Kettl, cited in Anechiarico and Jacobs, 1994, p. 471)

Instead of regulating for all administrative procedures, the new managerialists opt for improved accountability: defining who is responsible for what and developing comprehensive monitoring, reporting and evaluation systems. This is a means of preventing misdemeanours, or at least exposing them to scrutiny, including public scrutiny, after the fact. As noted in *Governance in Transition* (OECD, 1995), “The quid pro quo for additional autonomy has been more stringent accountability for performance (which) requires the development of indicators for monitoring, reporting and evaluating performance in results-oriented terms”. Public managers in this context are not tied to details related to inputs, but they are held to account for outputs or results. In bald terms, this means that the ends are relatively more important than the means.

While the rules/results dichotomy is not a straightforward one, there are clearly political decisions to be taken as to whether the emphasis should be placed on due process or flexibility for efficiency. These decisions imply trade-offs and an awareness of the administrative costs of control systems. If there is too much control, nothing will get done (government will be frozen in action), if there is too little control, the wrong things will get done (resources will be used for the wrong and illegitimate purposes). But there are definite costs associated with attempting to catch out every misdeed, minor misdemeanour or actual corruption. As Anechiarico and Jacobs explain,

*“A number of critics point out that efficiency and corruption control are conflicting goals”; ...they have not however explained “a formula for calculating the optimal amount of corruption control, nor have they explained how a cost/benefit approach to corruption that would treat some corruption as not worth worrying about could be sold to the public and the media.”*

(1994, p. 472)

Perhaps rather than a cost-benefit analysis for corruption control, countries need to improve risk management strategies. At least when a decision is taken in this case, it is taken in the light of the fullest information possible, including the risks of corruption, impropriety or mistakes.

It would be inappropriate to suggest that either the public administration or the managerial approach is better, including for the management of ethics. Moreover, no pure models exist of either. Governments must define their own path on the basis of historical factors and existing constitutional, political, administrative, and cultural systems. However, they must be aware of the trade-offs inherent in those decisions. And it would seem logical that an ethics regime should be consistent with approaches to public management in general. Indeed, the approach to public management offers signals as to how the ethics regimes should be developed. For example, it would be inconsistent to try to marry a strict centralised compliance-based ethics infrastructure with devolved results-based management systems.

### **Compliance-based versus Integrity-based Ethics Management: a Typology**

In practice, most countries manage the behaviour and therefore the ethics of public servants through a range of systems and processes based on a mixture of rules and managerial incentives. These were included in what we have described above as the ethics infrastructure.

The chart below is an attempt to suggest a typology of the nine countries participating in this study. We argue that at one end of the scale is the teleological or integrity-based approach to ethics management. This approach is consistent with a results-based managerial approach to public management. While there should be clear rules against illegal behaviour and sanctions applied when those are breached, the focus would be on what should be achieved rather than what behaviour should be avoided. That would suggest:

- the definition of overall aspirational “values” for the public sector or the “high road” (sometimes supplemented by decentralised codes of conduct reflecting the specific mission of relevant organisations);
- a focus on what is achieved rather than how it was achieved (that is, a focus on ends rather than means); and
- an emphasis on encouraging good behaviour rather than policing and punishing errors or bad behaviour.

As we saw above, encouraging risk taking means accepting a greater margin for error or mistakes. Adopting an integrity-based approach to ethics management means giving up some control. Some would argue that detailed codes of conduct are inconsistent with this model. For example, you cannot have enforceable aspirational codes, because anyone who fell short of best practice would be punished.

At the other end of the scale is the deontological or compliance-based approach to ethics management. This focuses on strict compliance with administrative procedures and detailed rules (often codified in legislation) which define what public servants should do and how. In this context, the focus of codes of conduct is often on the negative, that is, what public servants should not do and what sort of behaviour they should avoid. This could be seen as the “low road” approach, setting

minimum standards beyond which behaviour should not fall. In this context, there is heavy emphasis on policing actions and catching wrongdoing. This reinforces the tendency to management by rules since rules provide a base-line for identifying error.

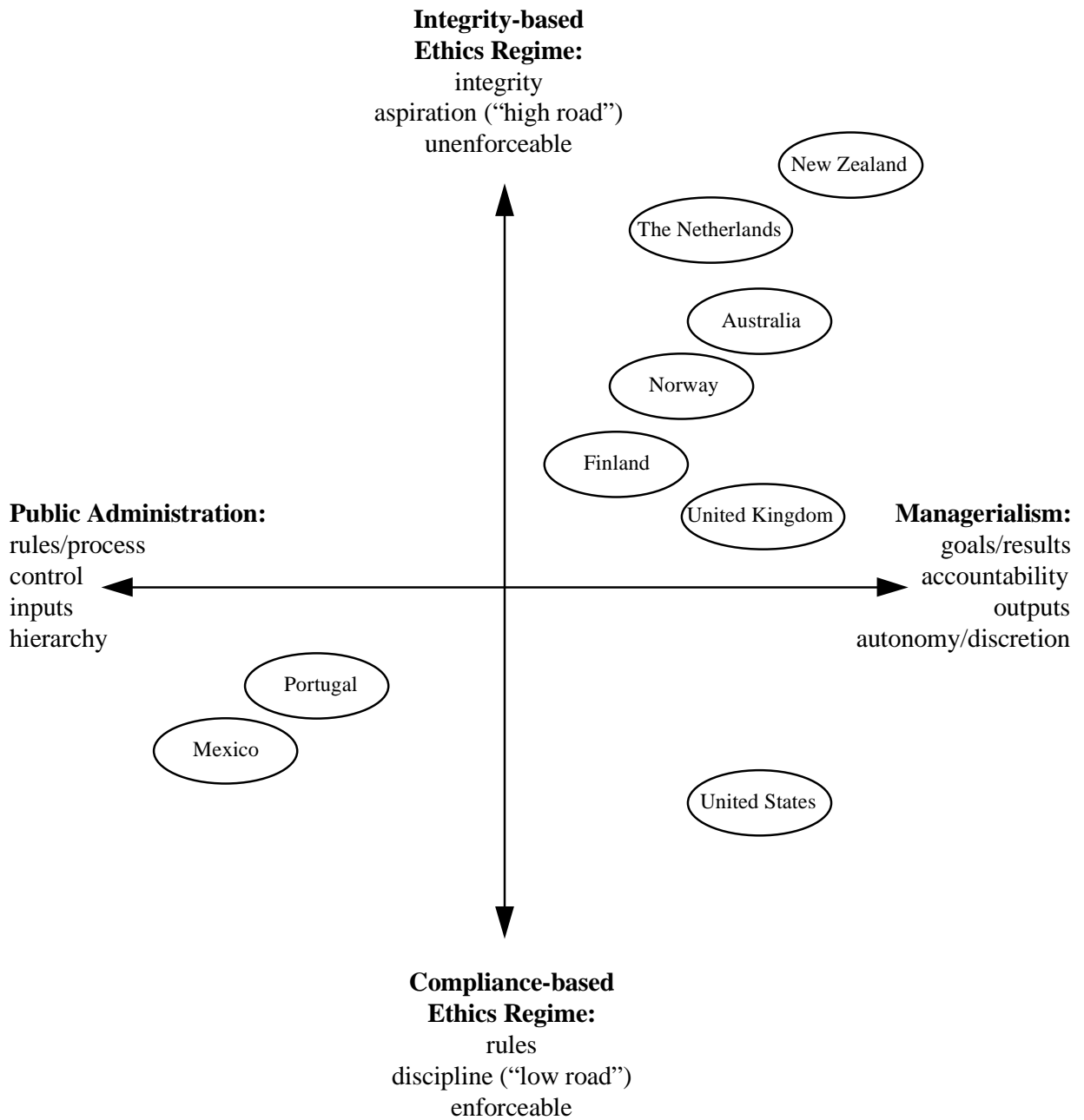
None of the participating countries fits neatly into either of the two scenarios. New Zealand falls closest to the integrity-based approach, and in fact classifies itself as such. It can also be seen as the country that has taken the new managerial paradigm the farthest. The United States reflects a very complex and comprehensive rules-based system. However, the implementation of the National Performance Review also defines a clear focus on results. Portugal and Mexico have a focus on rules mainly because, as noted above, they are in the process of defining an ethics infrastructure and a modern system of public administration. However, they are also both taking steps to develop the other side of the coin to encourage good behaviour. In Portugal, alongside disciplinary measures -- what Moniz (Portugal) describes as the “repressive approach” -- the “emphasis was also put on incentives and persuasion on the belief that rallying people to a set of values could be more effective than the fear of punishment.” In Mexico too, there has been talk of long-term strategies such as introducing civic education into the education system as one way of developing the public as a watchdog over the activities of the state.

Other participating countries fall somewhere in between, although there appears to be a definite tendency towards a more integrity-based approach. For example, Blymke and Bøhagen (Norway) note a fundamental change in management principles -- from a rules to results focus -- and a change in the type of rules produced -- from detailed procedural rules to goal-oriented formulations. But they qualify this by saying “...it must however be added that there is still a considerable production of rules in the public service today.” The Netherlands and Finland also appear to be moving towards a more integrity-based approach, consistent with their related public management reforms.

In terms of the evolution of an ethics regime, the question remains as to whether it is possible to go directly to an integrity-based system or whether a rules-based system is a necessary transitory phase. This will be an important question for the countries of Central and Eastern Europe, for example, as they attempt to define a framework for ethics and conduct in the public service. Much will depend on a thorough assessment of what level of risk or otherwise exists, and what mechanisms are already in place. If an administration had significant problems of misconduct in the past, the approach would be different from one taken where there is no such history.

Regardless of where a country may fall in the continuum between public administration and managerialism, the goals of the “three E’s”: economy, efficiency, and effectiveness are and should be important. To these, should be added a fourth “E”: ethics. Given the roles and responsibilities of public servants, proper conduct has always been a prerequisite for good governance. In spite of, or perhaps because of, the changes sweeping through the public sector in many OECD countries, good conduct is needed now as much as, if not more than, before. The success of public management reforms and public confidence in government will depend on it. As we have argued, encouraging good behaviour requires the existence of an effective ethics infrastructure.

**CHART: COUNTRIES BY OVERALL MANAGEMENT AND ETHICS REGIME**



## BIBLIOGRAPHY

### Publications by individuals

- CHAPMAN, R. A., ed. (1993), *Ethics in Public Service*, Edinburgh University Press, Edinburgh.
- DENHARDT, Kathryn G. (1988), *The Ethics of Public Service: Resolving Moral Dilemmas in Public Organizations*, Greenwood Press, Westport, Connecticut.
- FREDERICKSON, H. George (1993), *Ethics and Public Administration*, ME Sharpe, New York.
- KERNAGHAN, Kenneth and John W. LANGFORD (1990), *The Responsible Public Servant*, The Institute for Research on Public Policy, Toronto.
- PRESTON, Noel, ed. (1994), *Ethics for the Public Sector*, The Federation Press, Sydney.

### Books published by institutions

- NEW SOUTH WALES INDEPENDENT COMMISSION AGAINST CORRUPTION (1993), *Review of ICAC Code of Conduct*, ICAC, Sydney.
- OECD (1995), *Governance In Transition: Public Management Reforms In OECD Countries*, Paris.
- OECD (1992), *Information Technology in Government: Management Challenges*, Paris.
- OECD (1990), *Serving the Economy Better*, Paris.
- QUEENSLAND ELECTORAL AND ADMINISTRATIVE REVIEW COMMISSION (1992), *Report on Review of Codes of Conduct for Public Officials*, EARC.

### Articles

- ANECHIARICO, Frank and James B JACOBS, "Visions of Corruption Control and the Evolution of American Public Administration", *Public Administration Review*, Vol. 54, No. 2, September/October 1994, p. 465-473.
- DENHARDT, Kathryn G., "Ethics and Fuzzy Worlds", *Australian Journal of Public Administration*, Vol. 50, No. 3, September 1991, p. 274-278.
- DENHARDT, Kathryn G., "The Management of Ideals: A Political Perspective on Ethics", *Public Administration Review*, March/April 1989, p. 187-193.
- FINDLAY, M. and A. STEWART, "Implementing Corruption Prevention Strategies Through Codes of Conduct", *Corruption and Reform*, Vol. 7, 1992, p. 67-85.
- FINN, Paul, "Official Misconduct", *Criminal Law Journal*, Vol. 2, 1978, p. 307-325.
- GALLARDO DE LA PENA, Francisco, "Mexico's Federal System of Accountability of Public Servants" *Public Audit*, Year 11, No. 4, September 1992, Mexico, p. 41-43.
- GILMAN, Stuart and Carol LEWIS, "Public Service Ethics: A Global Dialogue", *Public Administration Review*, forthcoming October/November 1996.
- KLITGAARD, Robert, "National and International Strategies for Reducing Corruption", unpublished paper prepared for the OECD Symposium on Corruption and Good Governance, March 1995.
- LANGFORD, John W. "Building an Ethical Government Organisation: A Micro Approach for Middle Managers", *Optimum*, Vol. 21, No. 2, 1990, p. 49-55.

- LANGFORD, John W., "The International Experience: Reflections on the Way Ahead", Proceedings of a Royal Australian Institute of Public Administration Seminar "Do Unto Others: Ethics in the Public Sector", January 1991, p. 14-23.
- MOE, Ronald and Robert GILMOUR, "Rediscovering Principles of Public Administration: The Neglected Foundation of Public Law", *Public Administration Review*, Vol. 55, No. 2, March/April 1995, p. 135-146.
- NEAR, J., M. BAUCUS and M. MICELI, "The Relationship Between Values and Practice: Organisational Climates for Wrongdoing", *Administration & Society*, Vol. 25, No. 2, August 1993, p. 204-226.
- "The Pulse of Europe: A Survey of Political and Social Values and Attitudes", *Times Mirror Centre of the People and the Press*, 1991.
- THOMPSON, Dennis F., "Paradoxes of Government Ethics", *Public Administration Review*, Vol. 52, No. 3, May/June 1992, p. 254 - 259.