

Developing and Implementing Codes of Ethics

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This article argues for an holistic approach to the design and implementation of codes of ethics. Such an approach combines both the integrity and compliance approaches to codes of ethics and recommends the involvement of those who will be subject to the codes in the development of the codes. It is recognised that codes are a necessary but not sufficient element in the development of an ethical culture.

Raktažodžiai: kodeksai, etika, įdiegimas.

Keywords: codes, ethics, implementation.

Introduction

An ethical public service is deemed crucial to the good governance that inspires trust in government from its citizens. Public officials, both elected and appointed, occupy a position of trust, acting on behalf of citizens, and the highest standards are expected of them in developing and maintaining the public interest. A necessary component of an ethical public service is a set of guidelines that promote ethical behaviour on the part of public officials and the imposition of sanctions when such behaviour is found lacking.

Guidelines and sanctions can take a number of different forms enshrined in rules, regulations, statute and codes of ethics. It is important to distinguish between codes of ethics that relate to the ethical conduct of public officials and codes of conduct that are wider in scope, covering a range of organisational practices and employee conduct. A good example of a code of conduct is the Management Code of the UK Civil Service, which includes appointment, equal opportunities, health and safety, management development, pay and allowances, holidays, as well as conduct. As well as the content of the codes, it is also considered that codes of ethics reflect the integrity approach to ethics and a code of conduct reflects a compliance approach [1]. This article examines codes of ethics from both an integrity and a compliance approach.

However, it is generally considered that, despite the proliferation of codes of ethics for both public and private sector organisations, codes are a necessary but not sufficient instrument to facilitate ethical behaviour. One way of exploring this is by considering codes of ethics as a form of rule-governed activity [2]. Rules can be seen from both an external and an internal point of view [3]. The external point of view might depict codes as externally imposed, serving instrumental control and followed through fear of sanctions. In contrast, it can be argued that codes need to be embedded within organisations, such that those who fall under the code can take an internal or 'insider' view towards them. Conditions for taking an insider view include trust that others will follow the rules and general agreement that the rules are a good thing, in some sense. These conditions can be facilitated by socialisation through ethical training and the generation of trust by the behaviour of role models.

In formulating codes of ethics, implementation issues will need to be considered [4]; in a sense, formulation and implementation are but two sides of the same coin. In developing codes of ethics, the needs, values and interests of all stakeholders need to be taken into account, particularly those who are likely to be subject to the codes. In this way implementation problems can be avoided. Thus, Bowman, for example, argues "... codes can be rendered ineffective either because they are poorly designed and /or badly implemented" [1, p.678].

However, whilst agreeing generally with the view that codes are necessary but not sufficient [5], this article argues that a consideration of context, content, implementation and enforcement of codes can enhance their effectiveness, through the adoption of

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an insider view. The article draws upon a range of examples from across the globe and reflects the author's recent experiences in developing codes of ethics for public officials in the Republics of Ethiopia and Lithuania.

Rationale for Codes

A number of simple questions can be asked before seeking to develop a code of ethics. These will include 'What is the problem that a code of ethics seeks to address?' and 'What ethical issues are amenable to management by ethical rules'? Whatever the scope and content of codes of ethics, it is generally considered that they may perform the following functions:

1. Offer a clear statement of values, roles and duties, rights and responsibilities
2. Clarify the ethical behaviour expected of public officials
3. Act as guidelines in developing ethical conduct
4. Form an independent, consistent and predetermined set of criteria for ethical conduct
5. Help resolve possible ethical dilemmas
6. Clarify procedures and sanctions to deal with misconduct
7. Minimise ambiguity and reduce uncertainty
8. Offer a coherent statement of ethical conduct, drawing together ethical statements which may be scattered throughout different pieces of legislation
9. Promote public trust and confidence in the ethical performance of public officials
10. Generate pride amongst staff
11. Reaffirm the values of public service to existing public officials and inspire a new generation of public officials
12. Establish external credibility and indicate that ethics are being taken seriously.

Codes of ethics may perform all of these functions serving to give a clear statement of ethical values to be aspired to; to offer a coherent and consistent set of guidelines to aid the public official; and to indicate what sanctions will be imposed where ethical principles are breached. Thus codes of ethics may be aspirational, guiding and regulatory in character. The balance between these three functions will vary depending upon context.

However, it is also generally recognised that there are a number of critiques of codes of ethics and these critiques argue that:

1. General statements of values have little operational value.
2. Codes cannot provide guidance in all situations

3. Given the complexity of government activity, it is difficult to construct a code to be applied generally
4. They may conflict with other rules and regulations
5. The duties of public officials as outlined in codes, may conflict with their rights as individual citizens
6. They may be difficult to enforce
7. If they are too detailed they become cumbersome and are not used
8. Public officials may hide behind the codes and assume that an action that is not explicitly prohibited may be seen as acceptable.
9. All stakeholders will not agree on principles and content
10. Codes will be subject to the vagaries of political points scoring.

These are serious concerns but can be overcome with careful drafting, particularly if the codes are clear, consistent, comprehensive and have practical application. Clarity will aid understanding and minimise ambiguity. Consistency with existing legislation is crucial, as is general agreement upon a set of principles. Inevitably, organisations and governments will have in place a set of disciplinary procedures and will be subject to civil and criminal law. A code of ethics must harmonise with existing legislation and procedures. In Lithuania, for example, unethical conduct is circumscribed in a number of different laws, civil and criminal, regulations and directives both general (a Law on Public Service) and particular (a Law on Lobbying Activities). Similarly, if codes are underpinned by a set of principles that have been agreed upon by all stakeholders then consistency will be enhanced. Reference will be made to existing legislation, as far as is known, that governs ethical conduct. Where there are no previous codes it is appropriate to draft the codes as comprehensively as is practicable. They may be amended in the light of experience.

If the codes are to have an impact upon the behaviour of public officials then they must have practical application.

The Context of International Practice

The adoption of codes of ethics has long been a practice amongst governments worldwide and these codes have taken a number of different forms, varying in terms of scope, content, intention, status and application. There has also been a recent impetus behind the codification of ethical behaviour as the need to restate traditional values in a rapidly changing public services environment has become obvious.

Kernaghan describes codes as located on a continuum between the two polar extremes of a *Ten Commandments* approach to a *Justinian Code model* [6]. The *Ten Commandments* approach contains a limited number of principles or values that are expressed in broad terms. Examples of this approach are the seven principles advocated by the Nolan Committee in the UK [7] or the twelve principles enshrined in the OECD. The *Justinian Code model*, in contrast, is extremely detailed and comprehensive in scope, and is exemplified in some of the USA codes. Lying somewhere in the middle is the *New Zealand Code of Conduct* [8] which establishes three principles of public service and then illustrates how these might be applied in a seven-page document.

In a similar fashion, the OECD [9] distinguished between compliance-based systems and integrity-based systems. Integrity-based systems define overall aspirational values and focus on encouraging good behaviour, whilst compliance-based systems focus on strict compliance with detailed rules, often defined in legislation, indicating the sort of behaviour that can be avoided. Examples of the former include New Zealand, the Netherlands and Norway: examples of the latter include the USA, Portugal and Mexico.

There are a number of factors that will determine the approach adopted and these include:

1. The extent to which there is in place a clear ethics infrastructure. Where such an infrastructure is not in place the tendency is to follow the rules-based approach. In Lithuania, codes were developed as part of an overall ethics and anti-corruption framework, built into an overall strategy
2. The extent to which there is a tradition of public sector values, agreed upon by all stakeholders. This is often difficult to achieve where regime change is fundamental. In countries that are undergoing political, social and economic transformation some traditions are best overturned completely
3. The strength of administrative and legal traditions. Until recently, the UK Civil Service did not feel the need to codify public service values as it was assumed that these would be passed down from one generation of civil servants to the next. In countries with a strong legal tradition the tendency is to develop codes that can be over-prescriptive; the implementation of codes require judgement and discretion, skills that may be lacking where there is no tradition of decision-making exercised by individual public officials
4. The impact of New Public Management in terms of increasing commercialisation, devol-

ved responsibility, the introduction of business practices, closer engagement with the private sector and increased expectations on the part of citizens

5. The existence, and strength, of other forms of control such as internal and external audit
6. The extent, and pace, of economic modernisation
7. The strength of civil society and relationships between different branches of government and the existence of a free press.

The OECD finds that there is a growing emphasis on broader guidance rather than detailed control, partly as a result of the impact of public sector management reforms, which have moved from rules-based public administration to results-based public management. However, it is generally recognised that in those countries that have moved further down the results-based approach such as the UK or New Zealand, then there is a danger that traditional values of probity and integrity may be forgotten in the clamour to be more business-like [10].

Where there is a lack of a systematic approach to public sector ethics or the non-existence of a coherent set of principles to guide the behaviour of public officials it is appropriate to adopt codes that address both the integrity-based approach and the compliance-based approach. Integrity-based approaches tend to be too general and they are difficult to enforce. However, they do set out a clear set of ethical principles and define what constitutes good behaviour.

Compliance-based approaches tend to be too detailed and cumbersome, leading to inefficiency. Such an approach encourages too strict an adherence to a formal set of rules. However, the complexity of government makes it difficult to legislate for every possible issue or course of action. Not only that but also this approach encourages public officials to hide behind formal rules and does not encourage them to exercise ethical judgement. It is important to recognise that in a rapidly changing external environment formal rules cannot cover every contingency and that public officials will need to exercise judgement. This judgement can be developed through commitment to a set of general principles and ethical training.

However, it is recognised that critical judgement needs to be supplemented by guidelines and the codes of ethics provide practical guidance based upon general principles. It is, therefore, argued that the codes of ethics will encourage good behaviour based on a set of general principles (the integrity approach) and will offer practical guidance based on these principles, indicating penalties for breaches of these principles (the compliance approach).

The Content of the Codes

To some extent, the content of the codes will reflect the particular circumstances of individual countries. For example, in those countries such as the UK or Australia, where much of the work of the public services has been contracted out then relationships with the contractors and possible conflicts of interest have featured strongly. In other countries where there is a tradition of movement of individuals between the public and private sectors as in the “revolving doors” that characterise bureaucrats in the USA, then post-employment issues are prominent. In developing countries characterised by a traditional society, how to overcome patronage and nepotism based on strong kinship or ethnic ties is an issue. In Lithuania, a key issue is the extent to which elected politicians can use their public position to pursue private interests.

However, notwithstanding these differences, there is a range of issues that appear to be universal in nature even though they may take slightly different forms in individual countries. These will include:

1. Standards of conduct of public officials
2. Disclosure of official information
3. The political neutrality of public officials and engagement in political activity
4. Relationships between the relevant stakeholders of civil servants, elected representatives, Ministers, the Judiciary, citizens generally, clients and interest groups.
5. Conflicts of interest and balancing competing loyalties
6. Hospitality and gifts
7. Corruption and fraud
8. Duties and rights of public officials
9. Disclosure and Registers of Interests
10. Employment matters in terms of recruitment and promotion on merit, not patronage
11. Maladministration, which includes giving out misleading information, depriving individuals of their rights, or administering services in an inequitable manner
12. Misuse of power
13. Discrimination, malice or bias
14. Whistleblowing
15. Post-employment issues
16. Lobbying
17. Relations between government and business
18. Distinction between public and private lives.

Ethical Principles

Principles are guides to actions and are built upon values. It is important that there is general agreement amongst key stakeholders on the principles that will guide the ethical behaviour of public officials. However, there is no general agreement concerning a correct number of principles, although principles

concerning accountability, integrity, honesty, impartiality, serving the public interest and obedience to law are universal. For example:

1. The seven principles of the Nolan Committee in the UK are selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
2. The principles chosen by the USA government include loyalty, public duty, honesty, impartiality, obedience to law and fairness.
3. The twelve principles chosen by the OECD are concerned with leadership, accountability, transparency, relations with the private sector, the duties and rights of public officials, standards and guidance.
4. The New Zealand principles are concerned with integrity, professionalism, lawful obligations, honesty, loyalty, efficiency, and respecting the rights of others.

Whatever the agreed upon set of principles chosen they will be applicable to all groups, although how they are applied will vary. The principles chosen should form the basis of ethical conduct and it is considered that they should be positive rather than negative in tone. See *Table 1* next page.

The above set of principles describes a set of values to be aspired to by all public officials. They are, by design, general in nature. However, it is recognised that more needs to be provided to guide public officials in their day-to-day activities and that the principles need to be grounded in actual experience. Thus, each of the principles needs to be taken in turn, concrete issues identified and guidance offered on how these issues can be resolved. For example, under the principle of *Transparency* a number of issues will need to be addressed and these include:

- Access for citizens
- Performance evaluation and feedback
- Providing basic information
- Procedures for redress
- Register of interests
- Transparency in public procurement
- Publicising government services
- Recognising the importance of public scrutiny.

Under the principle of *Impartiality* it is likely that the following will need to be addressed:

- Offering impartial advice, without “fear or favour”
- Adhering to non-discriminatory practices
- The merit principle on recruitment and promotion
- Considering the views of all relevant stakeholders
- The political activities of civil servants.

Table 1. Common Ethical Principles Defined

Principle 1: Integrity

Public officials shall conduct their public, professional and private lives in a manner that will maintain and strengthen the public's trust and confidence in government. Public officials shall exhibit the highest standards of professional competence and private conduct, carrying out their duties with energy and goodwill, with efficiency and effectiveness.

Principle 2: Loyalty

Public officials will dedicate themselves to upholding the constitution and the laws, and trusted to discharge their duties by fellow public officials.

Principle 3: Transparency

Public officials exercise powers and distribute resources entrusted to them by the governed. They should be as open as possible about the decisions they make, taking care to justify their actions. Information should be restricted only when the wider public interest clearly demands it.

Principle 4: Confidentiality

Public officials may use and disclose information which is a matter of public knowledge or which the public have the right to access. However, in the course of their official duties, public officials will have access to information of a confidential or private nature, which is not authorised for disclosure.

Principle 5: Honesty

Public service is a public trust; the public entrusts public officials to act on their behalf. The confidence and trust in, and respect for, the government by the governed depends upon public officials being honest and being seen to be honest. Public officials must keep the promises that they have made, be sincere and be free from deceit, fraud or corruption.

Principle 6: Accountability

Public officials are held responsible for their decisions and actions, ultimately by the governed. They must be prepared to give an account of their decisions and actions and submit themselves to whatever scrutiny is appropriate for their office.

Principle 7: Serving the Public Interest

Public officials should make decisions and act solely in the public interest and not in their private interests including the interests of family, or friends or any other outside body or group. Public office should not be used for private gain.

Principle 8: Exercising Legitimate Authority

Public officials are entrusted with power and authority. That power and authority should be exercised legitimately within the authority of office. Public officials must not abuse their power and authority.

Principle 9: Impartiality

Public officials should make decisions and act in a fair and equitable manner. Choices should be made on the basis of merit, and advice offered should be without "fear or favour." Preferential treatment should not be given on the basis of colour, race, nation, nationality, sex, language, religion, political opinion or other status or any other irrelevant consideration.

Principle 10: Respecting the Law

Public officials should obey the law and should comply with any enactments, regulations or directives appropriate to the performance of their duties and as instructed to do so by the relevant authority.

Principle 11: Responsiveness

Public officials should listen and respond to the needs of their stakeholders, in a timely manner, treating them with respect and courtesy.

Principle 12: Exercising Leadership

Public officials should promote and support these principles by taking the lead and setting examples, demonstrating the highest standards expected of role models.

The formulation and delivery of government policy requires the interaction of a number of different stakeholders engaging in different relationships with each other. Although it is recognised that a number of different codes to meet the needs of different classes of public officials may be required, it is also the case that these codes do not exist in isolation from each other and that the codes will need to address the nature of the relationships between the different groups of stakeholders. For example, civil servants will have obligations to their Minister and the Minister will, likewise, have duties to the civil service even though they will be governed by different codes.

Formulating public policy and delivering public services is an increasingly complex business. The competing demands on those who formulate policy and deliver services are increasing and it is recognised that the task of the public official is not an easy one. However, a general set of principles can be operationalised that have specific meaning for different groups of public officials and different departments.

Implementation of the Codes

Addressing implementation issues is a key factor in ensuring that codes of ethics contribute to good government. The success of implementation will depend upon a number of factors including:

1. The public commitment to an ethical public service must be demonstrated by those in leadership positions, whether political, administrative or judicial. Without that commitment the proposals will not be taken seriously. In Lithuania the development of the codes of ethics was endorsed by the President and supported by a Parliamentary Working Party.
2. The extent to which ethical principles become embedded in organisational culture will be important in determining the success of implementation. This will take time and resources but can be achieved in a number of ways including:
 - a) consulting with key stakeholders in the development of the codes of ethics,
 - b) disseminating and publicising the codes through workshops and briefings to those who will fall under their remit,
 - c) ensuring that the ethical principles form part of the induction programme for all categories of public officials,
 - d) demonstrating the benefits of an ethical public service to public officials and to the public interest as a whole.

3. There will undoubtedly be resistance to the reforms [4, 11, 12]. Some staff may, for example, see the codes as just another control mechanism imposed by senior officials. It is important, therefore, that the aspirational and guiding characteristics of the codes are stressed as much as the regulatory requirements.
4. As with the implementation of any policy, there will certainly be problems thrown-up that are not identified in advance, there will be distractions and the environment will often be turbulent. Under such conditions ethical frameworks are often casualties of wider political agendas. To succeed in implementation high-level support, persistence, early results, and communication are all crucial.

Codes of ethics are necessary but not sufficient of themselves in the pursuit of good governance. They must form part of a wider ethical framework that is itself part of a wider framework of public service reform, including the development of a human resources strategy and a service delivery strategy. Other elements in the framework will include:

1. Ethical training and education
2. Strengthening internal and external accountability mechanisms, particularly financial ones
3. Developing skills; unethical practices can result from ignorance and incompetence.

The codes of ethics should not be written in "tablets of stone", but should be subject to review in the light of experience in, say five years. Ethics moves on shifting sands and codes of ethics need an element of flexibility.

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" [9, 32].

It is important to strike a balance between encouraging good conduct and policing behaviour. This balance will vary from country to country and over time. The most effective enforcement mechanisms involve a mixture of law enforcement, independent investigative bodies, preventative management

controls, transparency mechanisms and raising awareness and developing skills. It is important to note that in many countries the ethical conduct of public officials is governed by more than one piece of legislation. For example, the USA has passed the *Ethics in Government Act (1978)*, *Inspector General Act (1978)*, *Ethics Reform Act (1989)* and the *Lobbying Disclosure Act (1995)*. Other countries, in addition, also have *Freedom of Information Acts* and Whistleblowing legislation. Ethical issues for public officials constantly evolve and to seek to legislate for all acts of unethical behaviour requires an ever-increasing number of statutes, or the constant revision of existing statute. The codes of ethics will include existing statute. The codes will also recognise new categories of inappropriate, unethical and illegal behaviour and will include relevant guidelines. It is important to recognise that the codes should not be considered final and must constantly be reviewed and refreshed. It is likely that as the political, social and economic environment changes then new demands will be placed upon public officials and guidelines will need to be introduced to aid public officials in their decision-making.

However, all codes of ethics need to address three questions:

1. What type of offence is it?
2. What sanctions should be imposed?
3. Who is to impose those sanctions?

1. The type of offence.

Breaches of conduct are usually characterised in terms of illegal behaviour, unethical behaviour or inappropriate or unreasonable behaviour. However, it is recognised that the boundaries between these different types of behaviour are blurred.

The OECD [8] defines these different types of behaviour as follows:

1. illegal behaviour - acts that are against the law; may cover criminal offences to misdemeanours
2. unethical behaviour - acts that are against ethical guidelines, principles or values
3. inappropriate behaviour - acts that are against normal convention or practice.

2. Appropriate sanctions

It is considered that punishment by the courts may be too blunt an instrument to apply to all types of unethical or inappropriate practices. Sanctions should be appropriate to the offence. As indicated above, there will be in existence a body of relevant law and disciplinary procedures. Enforcing unethical or inappropriate behaviour is more difficult but guidelines are more flexible and easier to amend than law. It is proposed that the sanctions be reviewed in, say, two years, to evaluate their effects. It is

appropriate to identify a minimum and a maximum sanction for all breaches of the codes. Undoubtedly, judgement will have to be exercised by the relevant disciplinary authority.

3. Enforcing bodies

A key question is who is to enforce the different types of sanctions. Often breaches of conduct are dealt with either by the courts or through disciplinary action. Many countries have the office of Ombudsman and a Central Body dealing with fraud and corruption. The terms of reference, duties and powers of these bodies need to be absolutely clear and discrete. It will thus be possible to clearly identify what sanctions are to be imposed for what breaches of conduct and by what authority. Thus, each code of ethics may include a matrix based on the example in *Table 2*. *Table 3* identifies the range of sanctions that might be appropriate.

Table 2. Type of Offences and Appropriate Sanctions

<i>Type of Offence</i>	<i>Appropriate Sanctions</i>	<i>Enforced by</i>
Inappropriate	Reprimand, disciplinary action	Superiors, Public Service, Tribunal, Ombudsman
Unethical	Disciplinary action, dismissal, the law	Public Service, Tribunal, Central Body, the courts
Illegal	The law	Central Body, the courts

Table 3. Range of Appropriate Sanctions

<i>Sanction</i>	<i>Type of Sanction</i>	<i>Seriousness of offence</i>
1. Verbal warning	Administrative	Low
2. Written warning	Administrative	Low
3. Fine	Administrative	Medium
4. Disallowing of next increment	Administrative	Medium
5. Downgrading	Administrative	Medium
6. Dismissal	Administrative	Serious
7. Fine	Criminal	Serious
8. Imprisonment	Criminal	Serious

Conclusions

The paper has argued for a *balanced* approach to developing codes of ethics that can inspire public

officials, offer guidance and regulate behaviour. In so doing any code will need to include a set of principles that are operationalised for different types of public officials and different functional departments. There will thus be a balance between the general and the specific, comprehensive and selective, national and local.

A code of ethics will also need to be *in harmony* with existing disciplinary procedures and legislation. Indeed one feature of a code could be that it brings together all sanctions under one document.

Of course codes, in offering guidance, should not minimise *individual ethical responsibility* nor offer a shield behind which individuals can hide [11]. The key is ethical judgement of which codes play a part in developing. Not all ethical issues lend themselves easily to rules or sanctions; ethical judgement is required when making a decision. Rules can function as short cuts to decision-making but rules do assume that different situations have enough in common to be treated as a coherent group.

Building codes from the bottom-up will help in developing that judgement since the process of code development itself is educative. Formulation and implementation are but two sides of the same coin and can be considered alongside each other. Developing codes from the bottom-up will help develop an 'insider' perspective and minimise the key problem of codes being seen as a management control tool imposed from above.

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Etikos kodeksų kūrimas ir diegimas

Reziumė

Straipsnyje pateikiamas holistinis požiūris į etikos kodeksų kūrimą ir diegimą. Toks požiūris apima dorumo ir nuolaidumo etikos kodeksų atžvilgiu principus ir taikytinas kuriant naujus etikos kodeksus. Pripažįstama, kad kodeksai yra būtinas bet nepakankamas elementas etinei kultūrai kelti.

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