

Ethical standards for providers of public services

Committee on
Standards in
Public Life

June 2014



The Seven Principles of Public Life

The Seven Principles of Public Life¹ apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the civil service, local government, the police, courts and probation services, NDPBs, and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The Principles also have application to all those in other sectors delivering public services.

SELFLESSNESS

Holders of public office should act solely in terms of the public interest.

INTEGRITY

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

OBJECTIVITY

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

ACCOUNTABILITY

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

OPENNESS

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

HONESTY

Holders of public office should be truthful.

LEADERSHIP

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

¹ The Seven Principles were established in the Committee's First Report in 1995; the accompanying descriptors were revised following a review in the Fourteenth Report, published in January 2013.

Foreword from the Chair of the Committee on Standards in Public Life

Dear Prime Minister

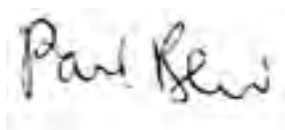
More and more public services are provided by third-party organisations outside the conventional public sector. This report, and the research on which it draws, is an attempt to consider what standards of ethical conduct should be expected from such organisations.

The Seven Principles of Public Life are accepted as the basis of the ethical standards expected of public office holders. While these principles have not changed over time, the scope of public office holders has. Your Government clarified my Committee's terms of reference last year, so that its remit to examine standards of conduct of all holders of public office, encompassed all those involved in the delivery of public services. My Committee have taken this change in remit seriously and considered in this report, the application of the Seven Principles to third-party providers of public services.

The key message, as shown by our research, is that the public want all providers of public services to adhere to and operate by common ethical standards, regardless of whether they are in the private, public or voluntary sectors. For the public "how" things are done are as important as "what" is done. This review has not been based on any assumptions about the respective merits or fitness of any sector and our research demonstrates that the public do not adopt such assumptions either.

Ethics matter. The public are right to expect high ethical standards and the government must ensure that this is achieved regardless of who is providing public services. This is increasingly recognised by the business community as a necessary part of winning trust and building confidence in the public service markets. Ethical standards should not be taken for granted and they have not been taken seriously enough to date. These risks are recognised by some commissioners and providers but they are rarely addressed explicitly. Where implicit, ethical expectations are articulated in different ways.

The Government believes that the Seven Principles of Public Life apply to anyone delivering public services. My Committee believes that this should be reflected in proportionate contractual and monitoring arrangements. Any organisation providing any public service should ensure that such standards form part of its culture and behaviour and are demonstrated in practice from start to finish.



Lord Paul Bew
Chair, Committee on Standards in Public Life
June 2014

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Executive summary

1. The Committee's terms of reference were clarified last year so that its remit to examine standards of conduct of all holders of public office encompassed all those involved in the delivery of public services. This confirms that the Seven Principles of Public Life, the basis of the ethical standards framework for those operating in the public sector, has application to all those delivering public services whether they are public sector providers or third-party providers from the private or voluntary sector.
2. As more and more public services are outsourced or managed through public-private partnerships, those who operate in the private or voluntary sectors may not be aware of these Principles or – even if they are – consider that they are clearly applicable to them. Nor can awareness of the ethical standards framework for public services be taken for granted as the notion of a lifetime career in public service diminishes and the movement of office holders between the public and private sectors increases.
3. Recent examples of poor performance by major private sector providers have focused on cost, competition and value for money considerations. But the poor performance has also highlighted the importance of behaving ethically in the delivery of public services. We acknowledge that poor performance and standards failures have occurred in the public sector – indeed much of this Committee's past work has been reviewing such failures and making recommendations for improvement. But now as public services are increasingly being delivered by those outside the public sector, we wanted to test the expectation and assurance of ethical standards in the public service market.
4. We commissioned new research with members of the public, commissioners and providers of public services. We also spoke to individuals and organisations with current experience of commissioning and providing public services, to understand their expectations of the ethical principles and standards expected of public services.
5. Our approach to this review has not been based on any assumptions about the respective merits or fitness of either public or private sectors. Indeed it is important to note that our research shows that the public also do not adopt any such assumptions.
6. On the basis of our research, we can be confident that:
 - the public want common ethical standards across all provider types regardless of sector, supported by a code of conduct;
 - “how” the service is delivered is as important to the public as “what” is delivered, with a focus on personalisation and user-led definition of quality;
 - public and stakeholder views of what should constitute ethical standards are broadly in line with the Seven Principles of Public Life;
 - commissioners expect providers to conform to ethical standards but rarely explicitly articulate this;
 - commissioners want guidance on how to embed ethical standards in the commissioning and procurement process.
7. What our research clearly shows is that the public care about “how” public services are delivered and want common ethical standards to apply regardless of provider type. This is an issue of trust, confidence and accountability. The public needs to be reassured that the standards it expects are clearly being articulated to providers of public services and being delivered by them. Furthermore, the Government must be capable

of assuring the public that ethical standards are part of service delivery standards and business needs to recognise that a cultural shift is required in their approach to the public service market, in order to meet the public's legitimate expectations and to build public trust.

8. In the course of this review, we have identified some emerging themes, issues and risks and examples of current practice which have led us to make some general recommendations and some detailed proposals for the key features of a framework to support high ethical standards.
9. We welcomed the Government's clarification of our terms of reference as we believe strongly that the ethical standards captured by the Seven Principles should apply to all those involved in the delivery of public services, as do the public. The Seven Principles of Public Life provide a clear value statement of expectations. We believe that the Government should go further and positively reinforce this expectation and make explicit the frameworks required to support such standards. It is evident from our research that currently there are no consistent structures or arrangements in place to actively promote the right ethical culture and behaviours. We are concerned to see high ethical standards proportionately addressed within existing contractual and monitoring arrangements, as part of the process for securing the regularity and propriety of public services.
10. This document does not provide all the answers. It is a guide and a basis for further discussion. It is intended as a contribution to the current debate around the standards expected of providers of public services and complementary to other contract management reviews and value for money reports.
11. The Committee invites responses to this report and will follow it up with further discussions with the Government, commissioners and providers with a view to developing practical measures to help ensure high ethical standards are met.

Our recommendations in full

Recommendation 1

We recommend that the Cabinet Office should:

- adopt a strategic programme to reinforce:
 - the message that the Seven Principles of Public Life apply to any organisation delivering public services; and
 - the frameworks required to support ethical standards;
- ensure that ethical standards reflecting the Seven Principles of Public Life are addressed in contractual arrangements, with providers required to undertake that they have the structures and arrangements in place to support this;
- ensure that high ethical standards are championed by Crown Representatives in their relationship with their strategic suppliers; and
- ensure that Crown Representatives provide specific advice to Ministers on this aspect of their relationship with suppliers;
- work collaboratively with the National Audit Office and HM Treasury to develop guidance on how value for money can be aligned with high ethical standards.

Recommendation 2

We recommend that:

- accounting officers actively seek assurance that public money is being spent in accordance with the high ethical standards expected of all providers of public services and annually certify (as part of managing public money duties) that they have satisfied themselves about the adequacy of their organisation's arrangements;
- ethical standards should be the specific responsibility of one non-executive board member of Government Departmental boards;
- ethical standards should be incorporated within the Committee of Public Accounts recommended Departmental periodic reviews of performance regimes;²
- those directly involved in commissioning and contracting should always receive formal assurance by providers of their acceptance of the necessity of ethical standards in the delivery of public service.

Recommendation 3

We recommend that the Cabinet Office and departments consider ethical awareness a professional commercial capability requirement for those commissioning, procuring or managing government contracts.

We recommend that the Crown Commercial Service working with Civil Service Learning and the Commissioning Academy arrange training on ethical awareness and disseminate best practice on ethical standards.

² Committee of Public Accounts *Contracting out public services to the private sector* Forty-Seventh Report of Session 2013-14 p 8.

Chapter 1:

Introduction

Background

1.1 The Committee has the following terms of reference:

“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.”

- 1.2 In its First Report the Committee set out and defined the principles that underlie public life. The Seven Principles of Public Life are: *Selflessness, integrity, objectivity, accountability, openness, honesty, leadership*.³ These principles have been widely adopted in the public sector and are internationally recognised. They form the basis of many codes of conduct,⁴ codes of practice⁵ and organisational⁶ and regulatory models. The Bar Standards Board, for example, is committed to “conducting its business in harmony with the Seven Principles of Public Life”⁷ and members of the General Medical Council are required as part of the foundation of their Code of Conduct to uphold the Seven Principles in performing their duties.⁸ The Seven Principles are accepted as the basis of the standards ethical framework for those operating in public sector and continue to reflect public expectations.
- 1.3 Surveys of public understanding of and attitudes towards these principles since 2002 have shown that public attitudes about how people in public office should behave are relatively stable. The public has definite expectations as to the behaviour of public office holders which are consistently in line with the Seven Principles. The surveys, conducted since 2002, have consistently indicated that the behaviours that members of the public expect of public office holders are:
- to be committed to public rather than private ends (selflessness and integrity);
 - to be honest and open in decision-making;
 - to make decisions in the light of the best evidence (objectivity);
 - to be held accountable (particularly senior public figures); and
 - to lead exemplary lives in public office (leadership).

3 The Seven Principles were established in the Committee’s First Report in 1995; the accompanying descriptors were revised following a review in the Fourteenth Report, published in January 2013.

4 Code of Conduct for Board members of Public Bodies para 2. <http://www.bl.uk/aboutus/governance/blboard/BoardCodeofPractice2011.pdf>

5 Code of Practice of the Engineering and Physical Sciences Research Council. <http://www.epsrc.ac.uk/about/standards/employment/Pages/principlesofpubliclife.aspx>

6 College of Policing Draft Code of Ethics para 2.1.2. http://www.college.police.uk/en/docs/Code_of_Ethics.pdf

7 Bar Standards Board Standing Orders Part 2 https://www.barstandardsboard.org.uk/media/1550246/bsb_standing_orders_jan_14.pdf

8 Members Code of Conduct principles para 2. http://www.gmc-uk.org/about/register_code_of_conduct.asp

Why ethical standards are important in the delivery of public services

- 1.4 The Committee has reflected before that high ethical standards are important for society as a whole and that they are particularly important where public money is being spent on public services or public functions. This is because:
- outcomes for society are better when the decisions of public office holders are made fairly and on merit and not influenced by personal and private interests;
 - low levels of corruption and confidence in the integrity of the trading and operating environment are crucial factors in the functioning of advanced democracies;
 - high standards benefit the economy through their effect on international confidence;
 - impartiality and objectivity increases predictability, which improves economic efficiency;
 - Governments which are not perceived to uphold high standards have less legitimacy and basic public institutions such as tax and benefit systems rely on public trust to function effectively.
- 1.5 High ethical standards are important to users of public services. Commissioning and procurement decisions can have a major impact on user's daily lives and their quality of life. The services provided can be:
- essential;
 - services for which the individual has little or no choice in the provider;
 - services where they need to be tailored to individual needs;
 - services for users who can be vulnerable and need support and advice to access services.

Research from the Policy Exchange into the public's attitudes to key issues of public services reform specifically, issues of choice, quality and the use of more providers from outside the public sector, found that people are more concerned with how well services are delivered and not which sector provides them.⁹ When a provider fails to deliver to the standards expected, it may have profound consequences for the individual user and damage public trust more generally.

- 1.6 For the provider of public services it makes good business sense to adhere to ethical standards. Ethical failures by banks, the press and in the public service market have all demonstrated that the damage to reputation and trust, and the financial cost to the business or provider concerned, can be high. As the CBI has recently acknowledged, *"without addressing the legitimate expectation of transparency around provider performance and an assurance for the continuity of service when a provider fails, trust in public service markets cannot be fully realised."*¹⁰
- 1.7 Continuity of public services can also be a major risk to the government, particularly if there is a failure by a significant provider, where there may be little or no alternative provision. As well as the impact on individual users, it may mean that Government has to step in to provide the services by default and meet the financial costs of doing so. Failures in service provision have broader implications for the level of public trust and confidence in the Government and its ability to deliver public services, as referred to in paragraph 1.4 above.

9 Sean Worth and Colleen Nwaodor 2012 *Do the Public Back More Reform of Public Services?* Available at: <http://www.policyexchange.org.uk/images/publications/do%20the%20public%20back%20more%20reform%20of%20public%20services.pdf>

10 CBI *Licence to operate Winning trust in public service markets* p 8.

The Review

- 1.8** While the ethical standards expected of public office holders have not changed, the scope of public office holders has. Accordingly, the Government clarified the terms of reference of the Committee last year so that ‘...the Committee’s remit to examine “standards of conduct of all holders of public office” [encompasses] all those involved in the delivery of public services, not solely those appointed or elected to public office.’¹¹ This confirms that the Seven Principles of Public Life have application to all those delivering public services whether they are public sector providers, or third-party providers from the private or voluntary sector.
- 1.9** We are aware however that those who operate in the private or voluntary sector may not be aware of these principles or – even if they are – may not consider that they are clearly applicable to them. As we have said before, the more ambiguous the circumstances in which the principles apply the less purchase they are likely to have. We consider that unless the ethical principles which are seen as important in the delivery of public services, are clearly translated into contractual arrangements and clear guidance, it is unlikely that providers of public services will believe that they are unambiguously applicable to them or give sufficient priority to how they are expected to behave. These risks are increased as the notion of a lifetime career in public service diminishes and where those employed by external providers have not previously been exposed to a culture of public service ethics. Awareness of the ethical standards framework for public services certainly cannot be taken for granted.
- 1.10** A key issue for the Committee therefore is whether, as part of securing regularity and propriety of public services, effective structures and arrangements are in place which actively promote the right ethical behaviour and ensure that from beginning to end, all public services – however they are delivered – meet high ethical standards.
- 1.11** In its report *Standards Matter*¹² the Committee considered that the new wide ranging ways of delivering public services, which entailed services being delivered by people not previously involved in public service was a live risk to ethical standards in public life. We considered it essential then that care was taken to design structures which addressed this risk. The Committee therefore recommended that:

In all cases where new methods of delivering public services are being created, commissioners and providers should give careful thought to the mechanisms necessary to maintain expected high standards of behaviour and promote the principles of public life.

Public servants designing and commissioning services should, in a consistent and proportionate way, address ethical issues throughout the procurement process. Contractors and others should acknowledge the particular responsibilities they bear when delivering public services, paid for by public money, to individuals who may not have the choice of going elsewhere.

Where powers to regulate standards are devolved to promote local responsibility and leadership, care should always be taken to ensure that there is independent scrutiny, that the results of such scrutiny are made publicly available and that those who have responsibility for imposing sanctions have adequate legal or other powers to do so.

- 1.12** To elaborate these recommendations the Committee has undertaken some further work. Our aim is a better understanding of the ethical principles and standards that should apply to third – party providers of public services and to make recommendations on how to ensure those standards can be met. The Committee commissioned Ipsos MORI to carry out research into public and stakeholder views with regard to what ethical standards providers of publicly funded services should conform to, and how closely they relate to the Seven Principles of Public Life. The Committee has also conducted semi-structured interviews with commissioners and providers to understand how organisations ensure that they meet the high ethical standards expected for delivery of public services and the managing of public resources. From this

¹¹ Hansard (HC) 5 February 2013, col 7WS.

¹² *Standards Matter: A review of best practice in promoting good behaviour in public life (Fourteenth Report) (Cm 8519) (January 2013).*

evidence base the Committee identified some emerging themes, issues and risks and examples of current practice. These have led us to make proposals as to the features of a framework required to support high ethical standards and some accompanying recommendations.

Chapter 2:

The public service market

- 2.1** For the last thirty years, the government has been commissioning and procuring third parties to deliver public services.¹³ An estimated third of all public spending on services is now delivered by private companies.¹⁴ The National Audit Office estimates that £187bn¹⁵ is the total public sector spending on goods and services with third parties across the public sector. Around £84bn is spent by local government, £40bn by central government, £50bn by the NHS and the remainder by devolved and independent public sector bodies. The CBI calculates that the public services sector in the UK accounts for 7.2% of GDP and employs 5.4 million people.¹⁶ The rate and value of public sector outsourcing contracts appears to be accelerating. According to an Outsourcing Index¹⁷ the public sector dominated deal activity¹⁸ accounting for 74% of total (outsourcing) spend in the first three months of 2014. The local government sector alone saw a 58% year-on-year increase in deal values. By contrast, the value of private sector deals decreased by 20% in the same period. 39 new contracts worth a total of £2.1bn were agreed in the period, representing, the Outsourcing Index suggests, a 65% increase on figures from the first quarter of 2013.
- 2.2** Government uses third-party providers for a range of purposes, from procuring basic commodities to providing front line services to the public. The reasons for doing so include accessing external expertise and increasing innovation and competition to improve quality and cost effectiveness. Austerity in public finances and changing demographics are also increasing the pressure on governments to deliver more for less. Using non-conventional providers – often with new ways of working – and reforming the way services are commissioned are seen as responses to all these pressures.
- 2.3** As well as direct out-sourcing, a very wide range of new ways of delivering public services now exists, resulting in increasingly large and complex supply chains. They include clinical commissioning groups, elected mayors and police and crime commissioners, academy schools and private, voluntary sector, mutual or citizen-led provision in areas ranging from prisons to hospitals, social housing and libraries. Services provided are many and varied ranging from direct services at a local level such as housing, and the collection of household waste, to more personal services such as social care services for children, older people and people with disabilities, as well as the buying in of day-to-day goods or products such as IT and stationery. Increasingly public bodies are urged to pool their resources and to undertake joint activity or collaborate in order to achieve value for money for local communities and generate savings for the taxpayer.
- 2.4** This Government's preferred way of delivering public services is through user choice and provider competition through a public services market.¹⁹ In order to support this agenda it has established the Crown Commercial Service to bring together government's central commercial capability into a single organisation to create expert commercial services for common goods and services and complex procurements and to support departments' projects when needed. When fully operational, it is argued that

13 The terms commissioning and procuring are often used interchangeably but there is a distinction between the two terms. In broad terms, commissioning is the establishment of the needs of a population and then buying services to meet that need. The buying of services from third parties as part of a legally binding contract is called procurement.

14 Julius, D., *Public Services Industry Review*, 2008, Retrieved 15 July 2013: <http://www.bis.gov.uk/files/file46965.pdf>. Note that this estimate includes services procured by government to support service delivery cited in Institute for Government 2012 Testing New Commissioning Models A guide to help policy makers learn about publically funded markets.

15 *The role of major contractors in the delivery of public services*. National Audit Office HC 810 Session 2013-14 12 November 2013.

16 CBI *A Value Driven Public Services Sector* page 6 Oxford Economics analysis for CBI.

17 Arvato UK Quarterly Outsourcing Index at www.arvato.co.uk.

18 The Outsourcing Index defines deal activity as meaning the value of new contracts signed in 2014. Private sector deals refers to outsourcing contracts signed between two private companies.

19 White Paper *Open Public Services* 2011 HM Government July 2011.

the Crown Commercial Service will provide a more efficient way of buying common goods and services on behalf of the whole of government by securing better prices through aggregating demand and buying once. One aspect of this strategy, which has been highlighted by stakeholders in the context of our review, is the Crown Representatives, who work across Departments and manage either a small pool of government's key strategic suppliers, or represent a particular sector of the market. As at April 2014 there are 21 Crown Representatives from a mix of commercial and public sector backgrounds.

- 2.5** The provision of public services by third-party providers however does not come without risk. Recent examples of poor standards by third party providers in public service are set out in box 1 below. These examples cover the whole range of failures – by individuals, poor cultural expectations, systematic weaknesses, inadequate leadership and distant or non-existent governance arrangements. These failures have undermined public trust in the providers concerned. Clearly, no one solution is possible to fit all the eventualities, but rather these examples illustrate the need to propose an ethical framework within which such providers should operate.

Box 1

Service (contractor)	Summary	Relevant Principle of Public Life
Cornwall out of hours GP service (Serco)	Concerns that staff were inadequately qualified and were altering data were raised by whistleblowers in 2012. In July 2013 the Care Quality Commission reported that the service did not have enough qualified, skilled and experienced staff to meet people's needs. A forensic audit by Serco found that two members of staff had been making unauthorised changes to performance data. The National Audit Office reported that Serco had consistently not met national quality requirements set by the Department of Health and whistleblower concerns had not been identified by routine management controls or by the Primary Care Trust. The NAO confirmed that steps had been taken by Serco in response to the problems. ²⁰	Honesty Leadership Accountability
Electronic monitoring contracts (Serco Monitoring and G4S Care and Justice Services)	An independent audit of the billing arrangements for both contracts confirmed the Ministry of Justice was billed for services which included instances where the suppliers were not in fact providing electronic monitoring. Bills included charges for people who were back in prison, people who had left the country, and those who had never been tagged in the first place but who had been returned to court. In a small number of cases where charging continued for a period the subject was known to have died. In some instances, charging continued for a period of months and years after active monitoring had ceased. Both companies are currently being investigated by the Serious Fraud Office and G4S has agreed to repay almost £109m of its fees to the Ministry of Justice. ²¹	Honesty Leadership

²⁰ National Audit Office. *Memorandum on the provision of the out-of-hours GP service in Cornwall* HC 1016 Session 2012-13 7 March 2013.

²¹ www.publications.parliament.uk/pa/cm201314/cmhansrd/cm130711/debtext/130711-0002.htm

Service (contractor)	Summary	Relevant Principle of Public Life
Employment and training scheme (A4E)	Four former A4E recruiters admitted a total of 32 offences including fraud and forgery at Reading Crown Court in February 2014 relating to an employment and training scheme called 'Inspire to Aspire' run by the company A4E on behalf of the Department for Work and Pensions. As the Daily Mail reported "Whitehall officials called in police over concerns that staff were billing taxpayers for 'successful' work that was not carried out or for non-existent clients. A whistleblower claimed forged signatures and blank timesheets were 'routine' techniques used for bumping up the numbers of successful job placements." ²²	Honesty Leadership Selflessness Integrity
Provision of accommodation for asylum seekers (G4S and Serco)	The National Audit Office was alerted to concerns over the operation of COMPASS contracts. An investigation found that many properties were below the required contractual standard and that contractors were failing to meet key performance indicators (KPIs) with regards to time taken to carry out repairs. All providers argued that the KPI regime was being enforced too rigorously and should be reviewed. In addition concerns were raised by service users as to the approach of some of the providers' housing staff. ²³ The NAO recommended that the Home Office should work with providers to ensure that training of housing staff is audited with particular regard to understanding service user's needs and that appropriate mechanisms were developed to capture feedback from service users.	Objectivity Leadership Openness Accountability

- 2.6** We acknowledge that poor performance and standards failures have occurred in the public sector – indeed much of this Committee's past work has been reviewing such failures and making recommendations for improvement. Generally, however, there are established and transparent accountability frameworks and independent external scrutiny mechanisms which exist to help identify, scrutinise and remediate failings. Now that public services are being delivered by those outside the public sector, the public need to know that third-party providers can deliver public services to high standards and need to trust that the government will ensure that happens. As a result of recent contract failures by third-party providers, the Government commissioned The Cross Government Review of Major Contracts,²⁴ and required a programme of corporate renewal to be undertaken by several of those contractors. The findings illustrate that there is more to be done.
- 2.7** The National Audit Office ("NAO") published in November 2013 a *Memorandum on the role of major contractors in the delivery of public services*,²⁵ commissioned by the Committee of Public Accounts. It refers to the Managing Public Money standards expected of all public services "Honesty, impartiality, openness, accountability, accuracy, fairness, integrity, transparency, objectivity, reliability" – where there is a high degree of commonality with the Seven Principles of Public Life – which are to be carried out in the public interest "to high ethical standards" and achieving value for money.

²² <http://www.dailymail.co.uk/news/article-2551242/Four-former-staff-scandal-hit-dole-jobs-firm-A4E-admit-swindling-taxpayers.html>

²³ National Audit Office *Report on COMPASS contracts for the provision of accommodation for asylum seekers* HC 880 Session 2013-14 10 January 2014.

²⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/268800/Cross_Government_Review_of_Major_Contracts_Summary_Report.pdf

²⁵ HC 810 Session 2013-14.

- 2.8** Following this memorandum, the Committee of Public Accounts published its report on *Contracting out public services to the private sector*.²⁶ The Report makes recommendations in five areas for improvement: Transparency, contract management and delivery, competition, capability and public service standards. In relation to public service standards the Committee recommended that:

The Cabinet Office needs to be clearer with firms which seek to win government contracts that they are expected to behave with the same standards of honesty, integrity and fairness that apply to the public sector itself. It should set specific expectations which include transparency, the treatment of service users and employees, and ethics; and

The Cabinet Office and government bodies should ensure that government's expectations are then built into standard contract terms.

- 2.9** Like the NAO and the Committee of Public Accounts, we believe there is a need to ensure that all public services however they are delivered meet high standards. High ethical standards are a necessary component of managing public money²⁷ and fundamental to the right use of public funds²⁸ and delivery of services to the public. It is therefore incumbent on the bodies commissioning or procuring public services, which are ultimately responsible and accountable for those services, to obtain assurance that high ethical standards are being met. Accountability does not end and should not dissipate on the commissioning or contracting out of public services.

²⁶ Forty-seventh Report of Session 2013-14 HC 777.

²⁷ HM Treasury Principles for Managing Public Money published in July 2013 must be carried out to "high ethical standards achieving value for money."

²⁸ Ibid Section 2.4 refers to the concepts of regulatory and propriety in the use of public funds and supporting this concept the Seven Principles of Public Life.

Chapter 3:

Research findings

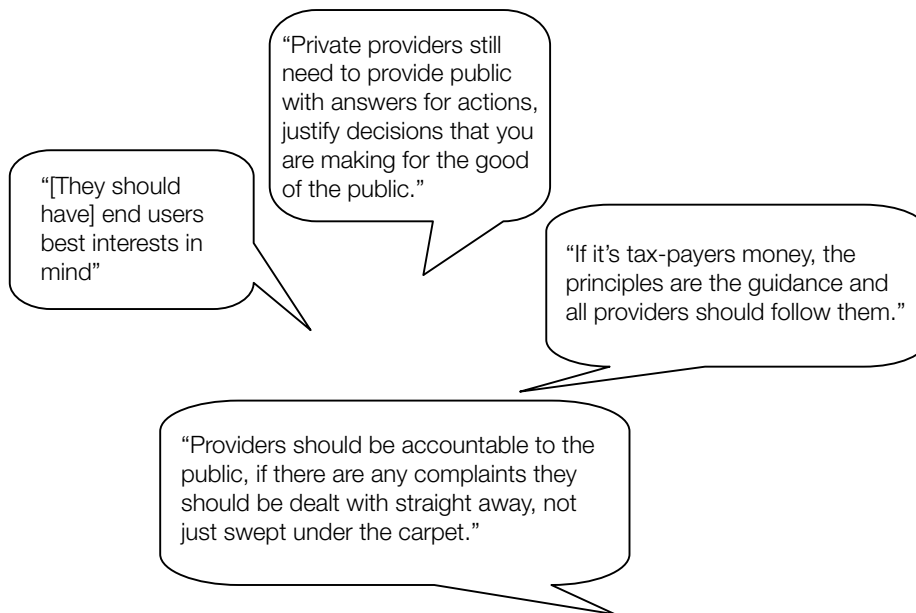
Qualitative research

- 3.1** To better understand the ethical principles and standards that should apply to third- party providers of public services, in January 2014, the Committee commissioned Ipsos MORI to carry out research into public and stakeholder views with regard to what ethical standards providers of publicly funded services should conform to, and how closely those standards relate to the Seven Principles of Public Life. The complete research report has been published along side the publication of this report and is available on the Committee's website.²⁹ As part of its research Ipsos MORI held:
- a. 15 in depth interviews with stakeholders commissioners, providers and individuals from national representative organisations ("stakeholders"), who reflected on what ethical standards providers should conform to and how those providers could best meet those standards; and
 - b. Six discussion groups, with approximately 11 members of the general public in each, discussing what ethical standards should be met by those delivering public services.
- 3.2** In addition to this independently commissioned research, and desk research by its secretariat, the Committee members held a series of meetings with various senior commissioning and procurement staff (mostly at Civil Service Director level) in central government departments and some senior leaders from both the public and private sectors. The Committee held 15 meetings in total and asked those they met a set of questions, which were shared in advance. The departments and organisations the members met are listed in Appendix 3.

Ipsos MORI research – public views

- 3.3** In summary the key findings from the discussion groups with the general public were:
- overall the public felt that the same ethical standards should be upheld by any organisation providing public services regardless of sector and supported by codes of conduct;
 - the public felt that good outcomes and quality of user – provider interaction, particularly from front line staff, behaving with integrity and objectivity, were crucial to ethical service delivery;
 - the public emphasised the importance of needs based provision – taking the needs of the end-user into account, talking openly, and giving honest, impartial advice;
 - accountability – the taking of responsibility and effective external scrutiny of service providers – through mechanisms such as setting minimum standards, monitoring, the use of user satisfaction and complaints data, were both considered very important by the public;
 - use of punitive measures to enforce standards such as barring from future competition and financial penalties were generally preferred as a means of ensuring adherence to ethical standards, but the public were alert to unintended consequences such as gaps in service provision or additional costs to the taxpayer;

²⁹ <http://www.public-standards.gov.uk/>



Responses from members of the public

- the public’s views of ethical standards are closely related to the Seven Principles of Public Life, although the terminology used and interpretations were sometimes different.

The Committee’s survey of public perceptions

- 3.4** Many of these findings resonate with previous independent research carried out for this Committee to track the public’s understanding of and attitudes towards the Seven Principles of Public Life. The latest survey explored amongst other things, which measures for ensuring good standards of conduct in public life elicit most public support.³⁰ Findings suggested, as in the Ipsos MORI research, that the public supported the use of external scrutiny and audit mechanisms and the development of a strong internal culture fostering standards and openness.
- 3.5** In relation to front line staff, where the Ipsos MORI research showed clear expectations of standards, our survey showed the wide spread belief that respondents would receive fair treatment from a range of front line public services – only 15% or fewer of those surveyed expressed concern that they would be treated worse than others, and had more confidence in the probity of relatively junior front line staff – in terms of putting the public interest first, owning up to making mistakes, and being held accountable for mistakes – than in that of more senior managers. They also expressed more confidence in the probity of public sector employees than in those in the semi-public or private sectors.

Ipsos MORI research – stakeholder views

- 3.6** In summary, the key findings from the meetings with stakeholders were:

- despite the common view that providers, will in most cases conform to ethical standards, the research showed that commissioners do not necessarily articulate ethical standards to providers explicitly and it was considered that there were limitations in the current mechanisms to establish how such standards were embedded in provision;

³⁰ *Survey of public attitudes towards conduct in public life 2012*. September 2013. Prepared for the Committee on Standards in Public Life by Isabel Taylor, Nicole Martin and the Committee’s Research Advisory Board.

- whilst many thought efficiency and flexibility gains had been achieved through new ways of working, there was some concern that certain providers would “cut corners” or “deliver below par services” or risk quality of service, in order to achieve value for money or payment by results demanded by commissioners;
- stakeholders felt there was a greater emphasis on transparency around decision making – “...*not just about publishing information and data, it’s much more about transparency of processes, so people know when decisions are going to be taken, know how they can get involved....the timescales.*” – and accountability although the latter tended to be seen predominantly in financial terms;
- the conduct of organisations and individuals delivering services was seen as important and there was an expectation that organisations would comply with legal and regulatory requirements and staff would conform to an organisational code of conduct;
- a view that personalisation of services to the needs of the user – which was not consistently defined – implicitly required high ethical standards;
- an acknowledgement that complaint data and user satisfaction data could be used more effectively;
- a concern that some commissioners may not be equipped to deal with the size and complexity of new contracts;
- a focus on quantitative metrics to measure outcome and impact rather than the “how” where commissioners tend to get a “feel” for desired values through dialogue and relationships with providers;
- commissioners wanted training, dissemination and guidance to help and support them to encourage providers to conform to ethical standards.

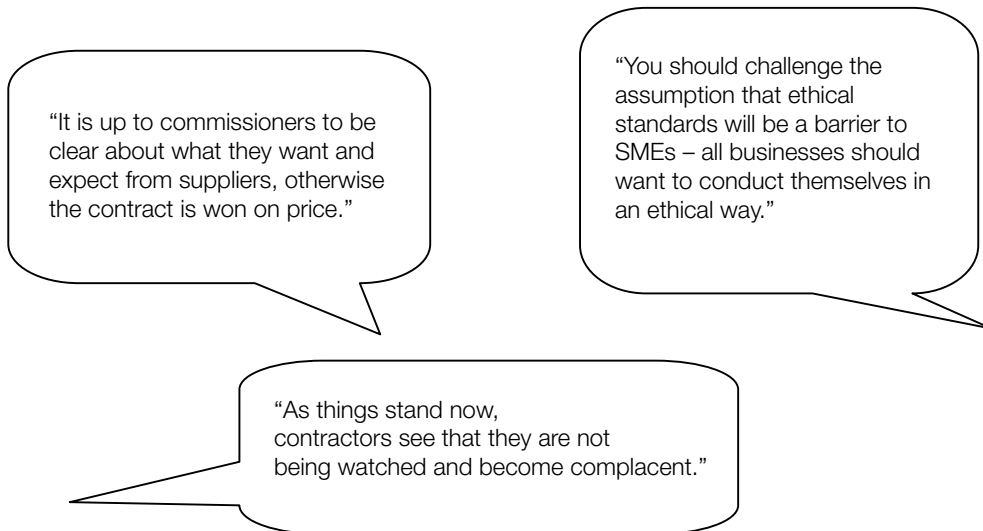
Committee research

3.7 From the views expressed to the Committee during face-to-face interviews we found:

- there was generally **an implicit understanding and application of ethical standards**;
- most respondents **expected to influence ethical standards through non-contractual mechanisms** and their relationship with the providers;
- there appeared to be **limited ongoing monitoring of contracts**, concerns were raised by some respondents that data collection could be poor,³¹ they had lack of visibility of complex supply chains and that contract managers were nervous of challenging the service delivery of big providers and lacked the confidence and training to do so;
- there was a **reliance on the fulfilment of legal or statutory obligations** such as equality and diversity or prevention of fraud and bribery obligations as evidence of high ethical standards;
- a view of some respondents that the **emphasis on cost** won over other considerations such as quality of service which implicitly included ethical standards;
- an acknowledgement that there remained a **lack of commercial skills** within Government, but progress was being made through an increased focus on capability and professional accreditation. There were some suggestions for a mandatory annual compliance statement or self assessment and compulsory e-training for those undertaking commercial work;

31 This concern appears to be borne out by the findings on performance management in the Cross Government Review of Major Contracts, Autumn 2013, para 5.3.

- some concern was expressed about the **potential for conflicts of interest**, particularly in the context of movement of staff between commissioner and provider;
- it was generally agreed that there is a central push for **greater transparency** around the provision of public services from third party providers, but practice was variable. In relation to the use of open book accounting, the challenge of understanding and using this information to make sensible commercial decisions was acknowledged, as was the current lack of commercial capability of commissioners to use it effectively.



Responses from commissioners and providers

- 3.8** Examples given in interviews of existing mechanisms used by commissioners, procurers and contract managers to provide assurance of ethical standards in the delivery of public services are set out in Box 2 below. It is however important to emphasise that we found considerable variation in the non-contractual use of measures to ensure ethical delivery, and as stated elsewhere the capability of commissioners and contract managers is still being developed. While lines of accountability for contracts were established, the arrangements were often complex and it was not always clear whether communication on ethical issues to the main departmental boards were as effective as they might be.

Box 2

Mechanism	
Design and tendering	<p>Pre-qualification questionnaires to pre-screen suppliers e.g. <i>whether suppliers should be excluded because of existing convictions for certain statutory offences such as fraud or bribery; or consideration of supplier' statements of Corporate Social Responsibility</i></p> <p>Supplier due diligence and tendered dialogues <i>it was suggested this might implicitly cover ethical expectations</i></p> <p>Procurement assurance boards <i>provides independent assurance that decisions have been made fairly and transparently in accordance with departmental processes</i></p>
Contractual	<p>Contractual requirements relating to:</p> <ul style="list-style-type: none"> ■ Governance and accountability arrangements³² ■ Anti-bribery and prevention of fraud and corruption³³ ■ Relevant convictions <i>requiring the contracting authority's written consent to the employment/engagement of a person with a relevant conviction</i> ■ Whistleblowing policy ■ Conflicts of interest <i>requiring the contractor to take steps to ensure neither contractor or contracting authority is placed in a position whether there may be an actual or potential conflict of interest and behaviour of contractor is not in Authority's best interest or might adversely affect the Authority's reputation</i> ■ Transparency³⁴ <i>including open book data</i> ■ Internal Audit ■ Key Performance Indicators <i>it was suggested this might implicitly cover ethical considerations through performance and service requirements</i> ■ MERLIN Standards for supply chains³⁵

32 See, for example, Government Legal Service Model Terms and conditions for major services contract Clause D11 and Schedule 8 contract governance.

33 See, for example, Government Legal Service Model Agreement for Service Short Form terms and conditions clause 18 Prevention of Fraud and Corruption.

34 Ibid Footnote 32 Schedule 8.

35 See Appendix 2.

	Mechanism
Non-contractual	<p>Ethical procurement guidelines for commissioners and providers</p> <p>Ethical codes for providers</p> <p>Standards for and assessments of supply chains</p> <p>“Mystery shopper”³⁶</p> <p>Analysis of user complaints</p> <p>Maintaining effective commissioner-provider relationship</p> <p>Process of Corporate Renewal and development of “good corporate citizen”</p> <p>Publication of contracts on Contract Finder³⁷</p>
Capability of commissioners/ contract managers	<p>Professional Accreditation of Chartered Institute of Purchasing and Supply³⁸ <i>which includes adherence to their code of conduct</i></p> <p>Commissioning Academies³⁹ building capability and sharing best practice</p> <p>Codes of Conduct for procurement staff and online training</p> <p>Annual self assessment and maintenance of gift and hospitality registers and registers of interest</p>

- 3.9** Some good practice was observed, particularly in Departments which had made a clear high level policy statement of the importance of ethical standards, such as Defra:

Defra’s Ethical Procurement Policy Statement

This statement sets out that Defra’s expectation that its suppliers will maintain high standards of integrity, professionalism and transparency and how working in partnership with suppliers it will address wider ethical issues outside the public procurement process. These issues include working conditions, employee health and training, discrimination and child labour.⁴⁰ The policy aims to achieve wider societal benefits through ethical principles such as requiring “suppliers [to] have systems in place to ensure high standards of propriety which make sure public money is used for the purpose it is intended.” Defra was able to point more easily than some Departments, to mechanisms which existed throughout the commissioning and procurement process including pre and post award stages.

Conclusion

On the basis of our research, we can be confident that the public expected that the same ethical standards should be confirmed and upheld by any organisation providing public services irrespective of the nature of the organisation providing the service. “How” the service is delivered is as important to them as “what” is delivered. The public want personalisation and a user – led definition of quality. The public are however realistic and acknowledge the need for proportionality and the implications for cost. They recognise that good outcomes as defined in the contract will not necessarily conform to high ethical standards. So, as the

³⁶ The Mystery Shopper is an initiative whereby any supplier can make a complaint about any public sector procurement. Since March 2011 it has dealt with 620 cases – Francis Maude speech to Public Sector Show 2014 May 2014.

³⁷ <https://www.gov.uk/contracts-finder>

³⁸ <http://www.cips.org/>

³⁹ <https://www.gov.uk/the-commissioning-academy-information>

⁴⁰ Ethical Procurement Policy Statement March 2011.

Ipsos MORI research clearly revealed, they also want closer and more effective scrutiny of all providers regardless of sector, to ensure those delivering services are held to account if they do not meet user expectations.

- 3.10** While commissioners also recognise that unethical behaviour can be found in providers from any sector and that conduct is important – they assume that providers will conform to ethical standards. Ethical standards are not therefore explicitly incorporated into either the selection or contractual arrangements, nor is performance monitored on this basis. The primary focus of commissioners appears to be on cost and outcomes – the “what” and not the “how”.
- 3.11** Commissioners rely instead on an implicit understanding and application of ethical standards which across government we found to be fragmented, piecemeal and inconsistent. There is an assumption that a relationship of trust between the commissioner – provider and ongoing dialogue will ensure that the desired values are delivered in the service. But we heard that this is not without risk of potential inter-dependency particularly with big suppliers, and the potential for conflicts of interest, especially in relation to the interchange of office holders between sectors.⁴¹ Reliance for assuring ethical standards was also placed on providers meeting legal and regulatory obligations such as those directed at anti-bribery or corruption. Whilst necessary we do not consider this is sufficient assurance and is not a substitute for ethical consideration.
- 3.12** We also heard about the application of EU procurement rules. We accept that all public procurement must be carried out in accordance with the EC Treaty and EC Public Procurement Directives. We are disturbed by the view that we heard on more than one occasion that these rules prohibit the incorporation of ethical requirements into selection or contractual arrangements. We are clear that ethical considerations can and should be taken into account where – as must usually be the case – they are relevant to the subject matter of the contract and delivery of the service.
- 3.13** One area which gave us particular concern arises from the size and complexity of supply chains, particularly the use of sub-contractors and the potential for lack of visibility on the part of commissioners as to the performance of sub-contractors and the extent to which their behaviour is being monitored and evaluated. Clear lines of accountability need to be established between the commissioner and the lead contractor who holds responsibility for its relationship with sub-contractors. One commissioner told us: *“There is a concern around sub-contracting and that Government Departments do not reach far down enough into the supply chain.”*
- 3.14** A reservation has also been expressed to us that requiring small and medium enterprises (“SMEs”) to adhere to an ethical framework will impose an unnecessary regulatory burden on them or discourage SMEs from bidding for work. We were interested therefore to learn about the Civil Service Learning contract with Capita to manage the provision of training across the civil service. 65% of training has been delivered by SMEs through a transparent open market process. All suppliers operate to standard terms and conditions, ethical expectations are consistent across the supply chain and there are agreed supply chain standards. Suppliers have access to existing Capita processes such as the whistle-blowing procedure and anti-bribery training. In addition to suppliers completing an annual survey to enable regular feedback to Capita, there is a user feedback and complaints processes which enable supply chain issues to be escalated through the governance structures. Such structures do not have appeared to have discouraged SMEs from applying for this work.
- 3.15** There was a general sense that ongoing monitoring of contracts was limited and if it did occur was focused on performance and financial measures. This gives us some unease, especially when taken together with an acknowledgement from commissioners and providers that too many commissioners and contract managers were lacking the commercial skills to effectively manage providers, especially the major suppliers.

⁴¹ See further *Strengthening Transparency Around Lobbying* November 2013 Chapter 5: The “revolving door” of employment.

Chapter 4:

An ethical framework

What are the ethical standards expected?

- 4.1** Our recent research shows that the public want common ethical standards to apply to all providers of public services and that public and stakeholder views are broadly in line with the Seven Principles of Public Life – *Selflessness, integrity, objectivity, accountability, openness, honesty, leadership*. We also know, as discussed in chapter 1, that these principles remain valid, are endorsed in the Committee’s public perceptions surveys and are important socially, economically and politically.
- 4.2** The Committee’s approach to this review has not been based on the assumption that the public sector is a better provider and the private sector worse and our research shows that the public do not fall into this false opposition either, but the public do want common ethical standards regardless of sector and commissioners of public services want help and support to encourage providers to comply with ethical standards. As one commissioner informed us: *“There is currently an absence of policy to push the ethical agenda rather than a policy against it.”*
- 4.3** We believe that government should be clear that it expects the same high standards of all who provide public services and that the Seven Principles of Public Life provide a clear value statement of expectations. As one stakeholder argued: *“having those ethical principles articulated clearly states the premise, the context within what you want things doing but also provides a very clear remit to take action should things falls short.”*⁴²

What framework is required to support these ethical standards and provide assurance they are being met?

- 4.4** Using the evidence base from this review we have reflected on the sort of high level framework which is required to support these ethical standards and provide assurance to accounting officers, government and the public that these standards are being met, regardless of the status of the service provider. The framework should be organisation wide and applicable to all its people as well as systems and processes. It is evident from our research that currently there are no consistent structures or arrangements in place actively to promote the right ethical standards as part of a process for securing the regularity and propriety of commissioning and procuring of public services.
- 4.5** We acknowledge there is a need for any such framework to be risk-based, flexible and proportionate: *“In the standards field proportionality is concerned with the balance between propriety, accountability and efficiency; in the context in which decisions are made; and the outcomes intended.”*⁴³ How it is implemented in practice will depend on the nature of the public service being provided, the model of delivery and the kind of provider. This framework is intended as a guide and as a basis for further discussion.

⁴² *Ethical Standards for providers of public services*. Ipsos MORI June 2014 p 32.

⁴³ Getting the balance right: Implementing Standards of Conduct in Public Life January 2004 Issues and Questions Paper page 6.

- 4.6** We also accept it is inherently difficult to contract for values and culture. But we believe we can build on existing mechanisms, many of which will already be present in organisations delivering these services, to prompt and promote ethical behaviour. This, taken together with an increased focus on the personalisation and user-led definitions of quality, is what our research shows the public demands.
- 4.7** In the next five sections, we outline the key components which any framework must incorporate. The Committee considers that any organisation providing public services must be able to demonstrate that it has in place:

- A. Principled Leadership and Governance**
- B. A suitable Code of Conduct**
- C. A Culture of dialogue and challenge**
- D. Clarity of Accountability and Transparency**
- E. Ethical Capability**

A. Principled Leadership and Governance

The organisation needs to demonstrate that – from the top – the role of ethical standards in the delivery of public services is understood, supported and lived out. This requires ethical leadership, visible championing and actual accountability. There may be a specific person with responsibility for advising on and championing ethical issues or annual public reporting on ethical standards through an annual report, accountability or corporate social responsibility statement.

Standards for Members of NHS Boards

Clinical commissioning groups adhere to the Standards for Members of NHS boards and Clinical Commissioning Group governing bodies in England.⁴⁴ These standards set out the skills expected of leaders in the NHS in relation to their personal behaviour – which includes the values to be applied in their work, technical behaviour and business practices. Members sign a statement to abide by those standards. The aim is to increase their accountability and drive up standards for the sector as a whole.

Any organisation should also have an appropriate governance structure in place, led by the main board (where relevant), whereby ethical risks are identified, reported, managed and resolved. Depending on the size of the organisation these could include ethics committees or other internal scrutiny mechanisms with a clear line of accountability to the main board. Appropriate governance and accountability structures can be provided for in the contract or where appropriate demonstrated by adherence to a code of practice.

The NCVO and Good Governance Code for the voluntary and community sector⁴⁵

This Code sets out the principles and practices that should be adopted in those sectors for good governance. It can be applied in a flexible way depending on the type and size of the organisation. It covers behavioural governance including the effective board behaving with integrity and being open and accountable. It recognises the applicability of the Seven Principles of Public Life to the sector as recognised good practice and complimentary to those principles.

⁴⁴ <http://www.professionalstandards.org.uk/docs/psa-library/november-2012---standards-for-board-members.pdf?sfvrsn=0>

⁴⁵ www.governancecode.org

B. A suitable Code of Conduct

Any organisation providing public services must adhere to a proportionate set of values (typically a series of Do's and Don'ts) set out (apart from the smallest organisations) in its own code of conduct or ethics, or equivalent document. A code of conduct is one of the basic elements of a strong ethical framework.⁴⁶

The Committee anticipates that such codes would include, or refer to, the organisation's whistle-blowing arrangements. Normally, the code would be publicly available and staff adherence to the code monitored. Our research showed that the public were positive about publishing a code of conduct as they felt it would encourage providers to "up their game".

CAPITA Ethical Code of Business Conduct⁴⁷

The Code applies to all businesses and to all staff (permanent, temporary or on contract) engaged to work within or on behalf of the Group. It sets out standards of behaviour including related to bribery and corruption and outlines how the Group will respond to any reports of bribery, and environmental and social objectives the latter including non-discrimination.

We would agree with one provider however that: "*An ethical code is necessary but not sufficient.*" The principles and standards should demonstrably underpin policy, decision making and behaviour. This will be supported by relevant organisational policies, processes and procedures which are complied with and appropriate disciplinary proceedings taken where there is non-compliance.

We are aware from our research that there are a variety of existing operationally focused policies and processes in place, such as:

- Fraud and bribery policies and checks
- Gifts and hospitality registers
- Registers of interest
- Whistleblowing policies

Reciprocal whistleblowing policy

A whistleblowing policy for London Borough of Barnet and Capita staff is set out as part of an anti-corruption framework in Barnet's 'Protocol for Joint Working' document. The policy states that "it is agreed within this protocol that Capita staff should utilise the Council's Whistleblowing Policy in relation to reporting a matter.....it is also acknowledged that Capita staff may also choose to report such matters under their equivalent Capita 'Speak up' Policy. Any referrals received under the relevant LBB or Capita policy will be notified to the relevant parties in accordance with the agreed notification timescales. It is agreed that it is Capita's responsibility to actively promote and raise awareness of this within Capita in accordance with principles of openness and transparency and joint commitment to protect public funds."⁴⁸

⁴⁶ First Report Committee on Standards in Public Life, *Members of Parliament, ministers, civil servants and quangos*, May 1995, Cm 2850.

⁴⁷ www.capita.co.uk

⁴⁸ Available on request from Barnet Council.

Subsidiaries and sub-contractors must be managed in accordance with those obligations.

NCVO and Serco Code⁴⁹

The Code of Practice provides advice on a range of issues in the relationships between prime and subcontractors, including setting reasonable expectations, having strong mechanisms for open dialogue between contractors and developing financially sustainable models. Serco has pledged to follow the guidance when it subcontracts within its public service contracts, and will also encourage other outsourcing companies to sign up to the document.

There are various models currently in place to help organisations manage the supply chain such as MERLIN standards, SPRAM and CAESAR, further detail of which is provided in Appendix 2.

C. A Culture of dialogue and challenge

The organisation needs a culture where everyone is encouraged to question and challenge and report unethical behaviour, where complaints are respected and concerns addressed, feedback is encouraged and acted upon in order to continuously improve and whistle-blowing is seen as last resort.

This could be evidenced by:

- a. **Existence of credible independent challenge** such as independent members of boards or trustees.
- b. **Use of staff feedback surveys and self assessment**⁵⁰
- c. **Commissioner – provider dialogue** including tendered dialogue together with increased confidence by the commissioner to challenge and increased willingness by contractors to provide information to demonstrate compliance.
- d. **User – provider dialogue** prioritising the needs of the user,⁵¹ treating them fairly and with respect, being open with information, responding to and acting on feedback, good complaints handling⁵² and the effective use of complaints data to evaluate how well standards are being achieved and to help deliver service improvements.

As the Public Administration Select Committee has recently concluded in relation to complaints:

*“How complaints are handled determines the quality of the relationship between consumers and public services. The best performing organisations welcome complaints as a means of engaging consumers.”*⁵³

This is reflected in our research which highlighted the public view that a: *“key aspect of upholding standards was the use of user feedback and complaints to understand an organisation’s attitude towards its service users.”*⁵⁴ It is an essential component in building and retaining public trust, the public felt scrutiny of this data should be a requirement for those commissioning and monitoring their provision and commissioners themselves acknowledge this data could be use more effectively.

- e. **Robust regular scrutiny** using information which is intelligible to those monitoring, with increasing efforts to achieve the use of real time information.

49 https://www.ncvo.org.uk/images/documents/practical_support/public_services/ncvo_serco_code_of_practice_april_2013.pdf

50 For example the Audit Commission’s changing organisational culture audit tool.

51 Survey data from *The Collaborative Citizen Report 2014* shows that the most important aspect for organisations delivering public services to focus on are 1) understanding people’s needs 45% and 2) treating people with dignity and respect 33%, this is consistent with the findings of our research.

52 See further *ibid* pages 8-12 What does good complaints handling look like?

53 Public Administration Select Committee *More Complaints please!* Twelfth Report of Session 2013-14 HC 229 Published on 14 April 2014 p3.

54 *Ibid* 42, page 21.

D. Clarity of Accountability as well as Transparency

The organisation should adopt “Intelligent accountability”⁵⁵ putting out good quality information in intelligible and adaptable formats,⁵⁶ creating a genuine dialogue with stakeholders. This should be aimed at building a degree of trust over time in which stakeholders can see policies being influenced and changed as a result of their input and being open, particularly in relation to reporting problems and avoiding a culture of blame.

There must also be clarity of accountability, particularly where there are complex supply chains, to enable effective holding to account especially for individuals who wish to raise questions or concerns about the services provided to them, and an effective means of redress.

Case study – Barnet Council on openness and transparency

Barnet Council has a continuing agenda to proactively publish more open data information, in reusable, machine readable format. They regard it as key to holding elected politicians and public bodies to account and in building trust. As part of this agenda Barnet Council published their contract with Capita last year with minimal redactions. The Council has monthly meetings where the public can submit questions on the Council's work. The Council and Capita work together jointly on responses and supplementary questions can be asked at the meeting. Meetings are recorded and put on the Council's website together with the list of questions and replies. The questions asked demonstrate the public have read the contract.

March 2014

In our meetings we heard much about a greater emphasis on transparency – both to commissioners and to the public. Greater openness can help improve standards and strengthen public accountability. This can be achieved through:

- public reporting, such as Annual Reports;
- contractual information and performance requirements, such as open book accounting and user feedback;
- proactive disclosure, such as publishing government contracts online at www.contract-finder.gov.uk; and
- the impact of the Freedom of Information Act (“FOIA”) where applicable.⁵⁷

We have as a Committee, touched on the grey area around the applicability of the FOIA when services are contracted out to the private sector, and the limitations of the use of FOIA before.⁵⁸ We therefore welcome the work the Government, CBI and Information Commissioners Office have been doing on developing guidance on FOIA and its applicability to contractors and standard contract clauses to provide greater clarity for commissioners and providers.⁵⁹

We agree with the Committee on Public Accounts however, in its report *Contracting out public services to the private sector* in March 2014, that “there needs to be far greater visibility to Government, Parliament and the

55 As defined in *Standards Matter* ibid 12, paragraph 6.15.

56 Barriers to accountability can include accessibility, quality and presentation of data see *Strengthening Transparency Around Lobbying* November 2013 Chapter 4 and Public Administration Select Committee *Statistics and Open Data* Tenth Report Session 2013-14 HC 564 p 9-11.

57 We note the recent public debate to extend the application of the FOIA to private companies when operating services in the public interest, for example Freedom of Information (Private Health Companies) motion or leave to bring in a Bill Grahame M Morris Hansard 8 October 2013.

58 *Strengthening Transparency Around Lobbying* November 2013, Chapter 4 Transparency Around Lobbying.

59 See further: a) UK National Action Plan commitment to “take steps to ensure transparency about outsourced services is provided in response to freedom of information requests”. b) Making public service markets work: Professionalising government's approach to commissioning and market stewardship. c) Institute for Government July 2013 recommendation 4. d) CBI “principles for the transparency of public services” in Licence to Operate report. e) <http://iconewsblog.wordpress.com/2014/03/05/ensuring-transparency-isnt-the-cost-of-outsourcing-05032014/>

public about suppliers' performance, costs, revenues and profits."⁶⁰ The Barnet experience shows the public can and will engage when the dialogue is well framed and supported.

E. Ethical Capability

To establish an ethical culture, any organisation providing public services needs to embed ethical awareness in induction, progression, training and professional development. This capability is also needed, as a professional commercial requirement for those commissioning, procuring or managing contracts.

Chartered Institute of Purchasing & Supply Code of Conduct⁶¹

Members of the CIPS are required to uphold a code of conduct, the purpose of which is to "define behaviours and actions which CIPS members must commit to...." It includes provisions in relation to conflicts of interest, gifts and hospitality, fraud and corruption.

Reference was made in our review to existing professional development and accreditation schemes such as CIPS and also to internal training on aspects of ethical behaviours such as anti-bribery and corruption training. We understand as part of the corporate renewal process Serco's senior management team will be undertaking ethical training.

At the same time as conducting this review, the Committee is also conducting a research project on the role of standards in induction, education and training. The focus of the project is to identify what works in terms of building an understanding of ethical principles and practice, as well as the ability to behave ethically, with "ethics" defined by both principles and codes. We will publish our report in July 2014 and its conclusions will be relevant to this aspect of the framework.

⁶⁰ Ibid 26.

Chapter 5:

Implementation

- 5.1** We welcomed the Government’s clarification of our terms of reference as we believe strongly that the ethical standards captured by the Seven Principles should apply to all those involved in the delivery of public services, as do the public. The Seven Principles of Public Life provide a clear value statement of expectations. Our research among the public, commissioners and providers leads us to the conclusion that the Government should go further and positively reinforce that ethical standards reflecting the Seven Principles of Public Life apply to anyone delivering public services and make explicit the frameworks required to support such standards. These standards should be reflected in proportionate contractual and monitoring arrangements and should also form part of the culture and behaviour of any organisation selected to provide any public service and must be demonstrated in practice. This must then be supported by Departmental Ministers and Boards and senior officials.
- 5.2** Many of our other recommendations are aimed particularly at Cabinet Office and Crown Commercial Service and central Government departments, reflecting the fact that the majority of stakeholders we met were either central government commissioners or providers. We consider however that much of the research findings and many of our conclusions are generic and will be of broader relevance and application across the public sector.

Strategy

- 5.3** Cabinet Office and Crown Commercial Service must lead by example in their relationships with major suppliers and promote high ethical standards. Crown Representatives have a particular leadership role to play given they ensure a single and strategic view of the Government’s needs is communicated to the market. High ethical standards need to be seen as being part of being a “good corporate citizen” in the same way as paying corporation tax is. The Cabinet Office and Crown Commercial Service should work with commissioners and representatives of providers to articulate the features it would expect to see implemented in risk-based, proportionate ethical frameworks, depending on the nature of the public service being provided, the model of delivery and the kind of provider.

We recommend that the Cabinet Office should:

- *adopt a strategic programme to reinforce:*
 - *the message that the Seven Principles of Public Life apply to any organisation delivering public services; and*
 - *the frameworks required to support ethical standards;*
- *ensure that ethical standards reflecting the Seven Principles of Public Life are addressed in contractual arrangements, with providers required to undertake that they have the structures and arrangements in place to support this;*
- *ensure that high ethical standards are championed by Crown Representatives in their relationship with their strategic suppliers; and*

- *ensure that Crown Representatives provide specific advice to Ministers on this aspect of their relationship with suppliers;*
- *work collaboratively with the National Audit Office and HM Treasury to develop guidance on how value for money can be aligned with high ethical standards.*

Accountability and assurance

5.4 Those accountable for managing public money need to demonstrate ethical leadership and actively seek assurance, relative to the business needs, that the high ethical standards expected are being met in order to meet their responsibilities more generally.

We recommend that:

- *accounting officers actively seek assurance that public money is being spent in accordance with the high ethical standards expected of all providers of public services and annually certify (as part of managing public money duties) that they have satisfied themselves about the adequacy of their organisation's arrangements;*
- *ethical standards should be the specific responsibility of one non-executive board member of Government Departmental boards;*
- *ethical standards should be incorporated within the Committee of Public Accounts recommended Departmental periodic reviews of performance regimes;⁶¹*
- *those directly involved in commissioning and contracting should always receive formal assurance by providers of their acceptance of the necessity of ethical standards in the delivery of public service.*

Capability

5.5 Our research demonstrates that those commissioning and managing contracts seek a multi-pronged approach to providing them with the capability to ensure services are delivered to high ethical standards, including training, dissemination and guidance. We have also heard more generally that a lack of commercial capability is limiting government's ability to effectively manage providers of public services, something which has been acknowledged by the Cabinet Office already.⁶²

5.6 There is also a particular risk to manage when recruiting those with commercial and financial expertise from outside civil service in that they need to understand the public facing context in which they work, using taxpayer's money and delivering services to the public. We welcome some of the examples of internal guidance we have seen for procurement staff, which help to set that context, for example:

Department for Work and Pensions guide for internal staff

DWP has issued a guide for internal procurement staff on Business Conduct and Ethical Behaviour. The guidance sets out information on civil service values, professional conduct, gifts and hospitality and registers of interest and conflicts of interest in one document and states that it is the responsibility of procurement staff to adhere to ethical standards. The principles for staff include not only complying with the law but also 'complying with the spirit of the law'.

The guidance includes details of a Whistleblowers hotline: "During your duties you may feel uncomfortable with something that you have been asked to do, or something that you suspect or know someone else is doing. You can report these using the confidential Whistleblowers Hotline."

61 Ibid Footnote 26 *Contracting out public services to the private sector Summary*.

62 Ibid Summary.

- 5.7 We remain of the view, as we have said before,⁶³ that ethical awareness must be embedded in induction, appraisal, progression, regular training and professional development to establish an ethical culture in the public sector. Our forthcoming report Ethics in Practice will set out in more detail how this can be achieved.
- 5.8 More than that however, we believe it is essential that ethical awareness is regarded as a professional commercial requirement for those commissioning/procuring or managing contracts. The Commissioning Academy is working to build the capability of senior commissioners from all parts of the public sector, including contract and supplier management.

We recommend that the Cabinet Office and departments consider ethical awareness a professional commercial capability requirement for those commissioning, procuring or managing government contracts.

We recommend that the Crown Commercial Service working with Civil Service Learning and the Commissioning Academy arrange training on ethical awareness and disseminate best practice on ethical standards.

⁶³ Ibid 12 Standards Matter Chapter 4.

Appendix 1:

About the Committee on Standards in Public Life

1. The Committee on Standards in Public Life is an advisory Non-Departmental Public Body (NDPB) sponsored by the Cabinet Office. The Chair and members are appointed by the Prime Minister. The Committee was established in October 1994, by the then Prime Minister, with the following terms of reference:

“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.”

2. The remit of the Committee excludes investigation of individual allegations of misconduct.
3. On 12 November 1997 the terms of reference were extended by the then Prime Minister:

“To review issues in relation to the funding of political parties, and to make recommendations as to any changes in present arrangements.”

4. A triennial review of the Committee was carried out this year, the report of which was published by the Government in February 2013. As a result, on 5 February 2013, the terms of reference of the Committee were clarified in two respects: ‘...in future the Committee should not inquire into matters relating to the devolved legislatures and governments except with the agreement of those bodies’ and ‘...the Committee’s remit to examine “standards of conduct of all holders of public office” [encompasses] all those involved in the delivery of public services, not solely those appointed or elected to public office.’⁶⁴

Membership of the Committee

The Lord Bew (Chair)
 The Lord Alderdice
 The Rt Hon Dame Margaret Beckett DBE MP
 Sheila Drew Smith OBE
 Patricia Moberly
 Dame Denise Platt DBE
 David Prince CBE
 Richard Thomas CBE
 Dame Angela Watkinson DBE MP

⁶⁴ Hansard (HC) 5 February 2013, col. 7WS

Secretariat

5. The Committee's Secretariat consists of Ruth Thompson (Secretary), Leila Brosnan (Senior Policy Advisor) Laurie Mousah (Policy Advisor) and James Anderson (Secretariat Coordinator). Press support is provided by Maggie O'Boyle.

The Committee's previous reports

6. The Committee has previously published the following reports.
- Strengthening Transparency Around Lobbying (November 2013)
 - Standards Matter: A review of best practice in promoting good behaviour in public life (Fourteenth Report (Cm 8519)) (January 2013)
 - Political party finance: Ending the big donor culture (Thirteenth Report (Cm8208))(November 2011)
 - MPs' Expenses and Allowances: Supporting Parliament, Safeguarding the Taxpayer (Twelfth Report (Cm 7724))(November 2009)
 - Review of the Electoral Commission (Eleventh Report (Cm 7006)) (January 2007)
 - Getting the Balance Right: Implementing Standards of Conduct in Public Life (Tenth Report (Cm 6407)) (January 2005)
 - Defining the Boundaries with the Executive: Ministers, Special Advisers and the Permanent Civil Service (Ninth Report (Cm 5775)) (April 2003)
 - Standards of Conduct in the House of Commons (Eight Report (Cm 5663)) (November 2002)
 - Standards of Conduct in the House of Lords (Seventh Report (Cm 4903)) (November 2000)
 - Reinforcing Standards: Review of the First Report of the Committee on Standards in Public Life (Sixth Report (Cm 4557)) (January 2000)
 - The Funding of Political Parties in the United Kingdom (Fifth Report (Cm 4057)) (October 1998)
 - Review of Standards of Conduct in Executive NDPBs, NHS Trusts and Local Public Spending Bodies (Fourth Report) (November 1997)
 - Local Government in England, Scotland and Wales (Third Report (Cm 3702)) (July 1997)
 - Local Public Spending Bodies (Second Report (Cm 3207)) (June 1996)
 - Members of Parliament, Ministers, Civil servants and Quangos (First Report (Cm 2850)) (May 1995)
7. The Committee is a standing Committee. It can not only conduct inquiries into areas of concern about standards in public life, but can also revisit that area and monitor whether and how well its recommendations have been put into effect.

Appendix 2:

Standards for supply chains

Merlin Standard⁶⁵

The Merlin Standard is designed to recognise and promote sustainable excellence within supply chains. Its aim is to encourage excellent supply chain management and to ensure fair treatment of partners and subcontractors by the Prime Contractor. The principles on which it is built include Conduct and elements of the assessment of the organisation validated by supply chain partners includes such criteria as “culture in which communication is open, honest and without unreasonable constraint”, “procurement processes are fair and transparent” “it actively seeks users feedback...to inform and improve practices” It is a required standard for providers of Department of Work and Pension Disability Assessments.

SPRAM

SPRAM (sustainable procurement risk assessment methodology) is a tool developed in-house by DWP for ensuring the department’s sustainable procurement targets and objectives (e.g. Small Medium Enterprises (SMEs) agenda, Greening Government Commitments, Equality duties) are factored in to contract programmes. It allows for consideration and mitigation of potential environmental, economic and social risks associated with a contract. SPRAM must be completed prior to tender specifications being developed and updated on contract award. It is the responsibility of the Procurement Lead, the Senior Responsible Officer (SRO) and during contract management the non-commercial staff, to ensure SPRAM is regularly updated and submitted as directed. All suppliers can expect to be subject to a SPRAM assessment.⁶⁶

CAESER

CAESER ‘Corporate Assessment of Environmental, Social and Economic Responsibility’ is an online tool managed by NQC Ltd, which validates high environmental standards in a supply chain. CAESER examines areas such as working conditions, use of SMEs and skills development of each organisation’s operations, which are then assessed against the wider context of Corporate Social Responsibility and the Government’s sustainability agenda. Suppliers can undergo a ‘self certified’ assessment, which is then ‘verified’ or a ‘gold status’, where CAESER assesses the responsible practices of suppliers and can recommend improvements to their policies and practices.

The CEASAR assessment methodology is recognised by the Chartered Institute of Purchasing and Supply and is used by a number of central Government departments in their procurement of goods and services.⁶⁷

⁶⁵ www.merlinstandard.co.uk

⁶⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/251510/dwp-sustainable-procurement-strategy.pdf

⁶⁷ https://nqc.com/files/downloads/caeser_brochure.pdf

Appendix 3:

List of interviews

In preparing this report Committee members met with representatives from the following Government Departments and organisations:

- Department of Health
- Department for Education
- Department for Communities and Local Government
- Cabinet Office and Crown Commercial Service
- Home Office
- Ministry of Justice
- Department for Environment Food and Rural Affairs
- Department of Work and Pensions
- Department of Transport
- The Civil Service
- Police and Crime Commissioners
- London Borough of Barnet
- Capita plc
- Serco Group
- PwC UK

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