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ETHICS IN THE PUBLIC SECTOR

I was very pleased to be invited to take part in the CAROA Conference and delighted to accept. I have a very broad topic to explore, Ethics in the Public Sector and I thought long and hard about what would be the most useful approach to this morning's presentation.

I'd like first to talk a little of my own background in relation to your work and then to focus on the history to the setting up of The Committee on Standards in Public Life and their seven principles.

Then explore this ethical framework and finally some personal conclusions.

I have been involved in the Public Sector for many years, previously as:-

- Chair of a Health Authority
- Chair of an NHS Region
- Member of the NHS Policy Board
- Commissioner for Public Appointments

Currently as:-

- Vice Chair of the Audit Group of the - Scottish Public Service Ombudsman
 - Health
 - Housing
 - Education
- Chair or Member of Appointment Selection Panels e.g. Electoral Commissioner, Ofsted, Metropolitan Police Commissioner, and as
- Chair of a Mental Health Foundation Trust

I have been a Regulator and or Ombudsman, I have been and am, part of the Public Service Delivery machinery in my own Country and my views today are based on those experiences.

The dictionary definition of Ethics is:-

- (a) A set of principles of right conduct.
- (b) A theory or system of moral values.

Public Services, using public money require a strong system of moral values, a set of principles of right conduct in order to not only have the confidence of the Public, but also to provide a comprehensive framework to enable a coherent and connected basis for the design and delivery of public services. I'd like to explore the seven principles of public life, to say a little about how and why they were devised and to look at some remaining issues.

I have drawn heavily from the work of The committee on Standards in Public Life and I would like to recognise the contribution of Rob Beherns, a former Clerk to that committee.

The Committee on Standards in Public Life is an independent, non-departmental body of the Cabinet Office which reports to the Prime Minister with policy recommendations to ensure the highest standards of propriety in public life. It was established in 1994 by the Prime Minister following damaging allegations about the behaviour of Members of Parliament, ministerial patronage over public appointments, and the unregulated exodus of Ministers from public office to lucrative private sector directorships. In announcing its establishment, the then Prime Minister, John Major, gave the Committee broad terms of reference “to examine current concerns about standards of conduct of all holders of public office ... and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life”. These terms of reference were widened by Prime Minister Tony Blair in November 1997 to cover the funding of political parties.

In its fourteen year existence this Committee has undertaken public inquiries and published reports. It has also published a Survey of public attitudes towards conduct in public life, where it is clear that the public places a high priority on a much broader definition of “honesty” than currently described by the Seven Principles. It is clear that the public wants public office-holders to be more honest or truthful about policies and services, acknowledging difficulties and competing pressures, and also admitting or owning up when things go wrong or have unintended consequences. From the beginning, Openness or Transparency has been a cardinal principle in the Committee’s own operations and in its prescriptive account of high standards of conduct in British public life.

Fourteen years on, the Committee’s First Report, *Standards in Public Life* still repays careful reading. Prominence was given to two sets of principles, one substantive the other procedural. Openness is at the heart of both these sets of principles. The first set, the Seven Principles of Public Life, prescribed appropriate behaviour for public office-holders under the headings of:

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

Openness was defined as “Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands”.

The second set of principles was procedural, or “mechanisms which need to be put in place to ensure that our principles are understood”. These were “common threads” including codes of conduct to be drawn up by every public body, independent scrutiny and monitoring to support internal systems to ensure high standards of behaviour, and guidance and education to support dissemination of ethical standards.

I will group the seven principles into three sets. Those with an Ethical content, those of a Procedural nature, and those in relation to Performance.

Three of the Seven Principles have an ethical content, namely

- Integrity
- Honesty
- Selflessness

These ethical principles are absolutes. You are honest or you are not. You cannot be half-honest, - and the broader definition of honesty which the public recognises goes far beyond just declaring any conflict of interest. And the same goes for integrity and selflessness, there are no half way houses.

We must require standards of honesty, integrity and selflessness to be high among public sector leaders, government ministers, local politicians as well - and public sector managers, civil servants, local authority and health service executives and head teachers.

But there are always one or two bad apples who make the public think that everyone is tainted with the same disease.

A word or two about the role of the media

In the United Kingdom the press gives a great deal of publicity to the failures of “the one or two bad apples”.

Absolutely right too. A journalist once said this,

“... [the press has] ... the duty to monitor the workings of government and the workings of the legislature on the behalf of the people ... that is what we are there for.”

That is clearly the press’s overriding duty in helping maintain the health of a liberal democracy.

Yet there is often a "... three way breakdown in trust between government and politicians, the media and the general public..."

Another journalist recently wrote the following,

"... in British journalism today, there are too many people who want to make news rather than correctly report it, too many journalists who want to play on the political field rather than to explain it. The response of government has been defensive - to control the flow of information rather than to assist the debate. Caught in the crossfire, the public struggles to understand what is really happening in politics."

A further journalist referred to "... the corrosive cynicism and partisanship of some papers and journalists..."

But it is not only the media and the government who are blamed for the widely perceived decline in the people's trust in public sector leaders and managers. This brings me on to two further principles of a procedural nature - those of openness and accountability.

Some blame the various mechanisms used to implement those two Principles of Public Life, which are procedural in nature - Openness and Accountability. Mechanisms, such as code of conduct, declarations of financial and other interests, the Commissioners, Boards and Regulators who exercise surveillance over public office holders and so on.

Publication of information generated by these instruments, it is said, creates a culture of blame, of confusion in the minds of the people; all compounded by a press eager to expose and amplify allegations, whatever their merits, into a mire sleaze and scandal.

I think this is a poor argument. A holder of public office, whether an elected official or manager, is given one or both of two privileges. The first privilege is the power to spend tax payers' money, taken from the taxpayer by force of law. The second is the power to compel or restrain the actions of citizens through the use of public law.

These privileges carry responsibilities. One is the requirement to account for the exercise of that privilege and the other is to show how that privilege is being used - in short, two of the Seven Principles of Public Life, namely Accountability and Openness.

Of course, that is not a universal defence of the various instruments and procedures for Accountability and Openness devised over the last few years.

Those procedures

- Must be effective and proportionate to the outcomes sought
- Must not be over bureaucratic or act as a disincentive to public service, and above all

- Must be supported by a culture that protects and promotes the high standards of conduct, which people expect.
- Must be respected by those who use them.

In fact, we must ensure that we are "Getting the Balance Right" which is the title of the Committee's Tenth Report.

That leaves two of the Seven Principles of Public Life, Leadership and Objectivity. These principles concern performance. I will define these principles more widely.

Warren Bennis, an academic specialising in Leadership described Leadership in this way, 'Leaders do the right thing, Managers do things right.' Clearly this means that the role of the leader is to choose the strategic direction of the organisation, to set the direction of travel, the future agenda. But it also means to behave in the right way to model ethical behaviour.

Leadership for elected officials and for public sector managers signifies "setting good example". But leaders - whether their business is public health, public education, public transport, or public finance - have a responsibility too to perform, to deliver good public services. Such delivery is not measured against an absolute standard. Standards of service regarded as acceptable twenty years ago, today, may be regarded as unacceptable. In putting the citizen at the heart of our work means that the time for deference is past, in society - expectations are higher. So is the hurdle to leadership success, whether the leaders are elected officials or managers, Leaders selected on merit, against published criteria and through an open process are far more diverse and able than an outdated method of picking favoured sons.

So I come to the last of the Seven Principles of Public Life - Objectivity - and again I will broaden its definition from the one usually used. The delivery of public service is a complex process with several stakeholders and many measures of success. It is a process usually run by professional managers. And it is a process that usually takes place within a framework of policy determined by politically mandated elected officials. It is a process where tensions may quite properly arise. Those tensions have to be managed and explained. Their management was the theme of the Committee's Ninth Report on "Defining the Boundaries within the Executive" where they sought to clarify the relationships between Ministers, Special Advisors and the Permanent Civil Service.

Another challenge is to explain this process, part political, part managerial, to the people. Often as an inevitable element in the political battle, the explanation is couched in the adversarial terms of party politics to an audience, the people, who may themselves be disengaged from the political process. Even so, if explanation is to carry conviction, it needs to

carry consistency, credibility, reliability and accuracy. In short, explanation must live up to the Principle of Objectivity.

These then are the Ethical Principles which underpin Public Service in the United Kingdom.

The committee's early work led to the setting up of a series of regulators to ensure probity. The Commissioner for Public Appointments, a role which I held for seven years, was the first, followed by the Parliamentary Commissioner for Standards. Other bodies were set up as a result of constitutional changes, for example The House of Lords Appointments Commission, which selects members of the House of Lords against published criteria and which follows a rigorous selection process, the route I followed to become a Baroness in the House of Lords. And so now we have not only an ethical framework but also Regulators and Ombudsmen to regulate and investigate.

Does this mean that Public Services are now unimpeachable and enjoy the full confidence of the Public? No. Any reading of our newspapers will identify major concerns. Cash for Honours, MP's expenses, and the reluctance of the Government to release information about them, funding of political parties are just three.

Do we now need more regulators? Last year the House of Commons Select Committee on Public Administration produced a report on 'Ethics and Standards: The Regulation of Conduct in Public Life' where they explored this very question. Their view was that more thought had been given to the tasks these regulatory bodies were to perform than the nature of the institutional design they should follow. They said that Ethical regulation and audit is now conducted by an illogical and unplanned patchwork of unconnected bodies of various institutional designs, with budgets which vary from £164,000 to over £65million. A patchwork quilt which demands attention.

They did not recommend more regulation or even a merged super regulator but a direction of travel for ethical regulators which would lead to a collegiate structure. They had fifteen conclusions and recommendations I highlight just five. They stated that :-

1. A rule based system should never substitute for a culture of high standards, rooted in the traditions of public life and shared by all those who participate in it.
2. Ethical regulation should not be driven by a desire to respond to every allegation that is ventilated. Such a response will lead to precisely the rule-based system which several of our witnesses suggested would lower standards. Moreover, there is a danger that it will perversely undermine the trust it attempts to build, as the public asks why the system requires the addition of even more safeguards. If standards are high, and properly safeguarded, then the hope is that public perception may, eventually follow.

3. We believed that the primary purpose of the ethical regulatory system is to ensure that standards of public conduct remain high, rather than to seek to promote trust in public life as a whole. Trust is a slippery concept, and will often depend on the general culture and political environment.
4. To command public confidence, ethical regulators need to be robustly and conspicuously independent, and the system of regulation needs to be proportionate and coherent.
5. We believe that constitutional watchdogs should, in principle, have power to initiate their own inquiries into matters of specific or general concern. They should generally consult before doing so, as a matter of good practice, but the decision as to whether an inquiry is warranted should remain theirs alone.

I agree with the committee, we do not need more regulation. I've been looking at the whole business of regulation with some interest and I detect a trend in the way that we are moving. When they are first set up, external regulators take a detailed look at the area they are there to regulate and then produce a list of rules and regulations based on a number of principles. These rules are often comprehensive and are intended to cover most eventualities so that those being regulated can check at every single stage in the process to ensure they are compliant. While this can initially be very successful as an approach there is a danger that the principles on which they are founded fade into the background and the outcome or intention of the process - for example to appoint people who are fit for purpose, can be forgotten. Indeed someone once remarked to me "in the Civil Service it didn't used to matter if I got to the wrong place even if it cost a lot of money, so long as I could prove I followed all the rules to get there". A danger is that over time we add on more and more rules, so that those who have to follow the process are weighed down by an over-expanding rule book where their key skill is to memorise and apply rather than consider and interpret.

This approach reminds me of a passage in the Dickens novel 'Hard Times' where children are given numbers rather than names. A character, Thomas Gradgrind interrogates a child called girl number 20 about a horse. In a bullying manner he instructs her to describe a horse. She stammers and stutters in trying to give picture of the animal. He then turns to a boy called Bitzer.

'Bitzer' said Thomas Gradgrind. 'Your definition of a horse.'

He replied

'Quadruped. Graminivorous. Forty teeth, namely twenty four grinders, four eye-teeth, and twelve incisive. Sheds coat in the spring; in marshy countries, shed hoofs too. Hoofs hard, but requiring to be shod with iron. Age known by marks in the mouth.' Thus (and much more) Bitzer.

'Now girl number twenty,' said Mr Gradgrind. 'You know what a horse is.'

They then called for the children to draw a horse from the boys description but having only hard facts they could not understand what a horse was and so they could not do so.

My point here is that if we lose sight of the whole - the purpose and the principles, we are only left with hard facts and somehow miss the point.

Regulation Trends

The trend that I observe is that as both regulators and those being regulated, mature, we go back to first principles and become less prescriptive in our guidance and more flexible and proportionate. I did it myself in as Commissioner of Public Appointments when I stripped my code of practice down to a flexible framework which was principle based. In order to help those working with my code to develop good practice and additional guide was developed. This Good Practice Guide offers a menu of possibilities for every stage of the process. All of which are compliant but offer choice and flexibility and demand thoughtful involvement of the users.

This trend was further highlighted when the Better Regulation Task force produced its report on Independent Regulators where they identified the Principles of Good Regulation as being:

PROPORTIONALITY - Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.

ACCOUNTABILITY - Regulators must be able to justify decisions, and be subject to public scrutiny.

CONSISTENCY - Government rules and standards must be joined up and implemented fairly.

TRANSPARENCY - Regulators should be open and keep regulations simple and user friendly.

TARGETING - Regulation should be focused on the problem, and minimise side effects.

So where does this all leave us in relation to Ethics in the Public Sector? Some of my conclusions are:-

1. The public may never have 100% wholehearted trust in politics and processes that deliver our public services however they will have more confidence in a system that is ethically based and regulated and require stated standards by which to measure them and independent regulators and ombudsmen to regulate and investigate them.
2. The independence of these regulators and ombudsmen is paramount and great care should be given to -
How they are set up.

How they are appointed.

How they are funded.

How they are audited and measured.

3. We need to explore the phenomenon of 'principled pragmatism.' To illustrate I would quote Barbara Stocking the Oxfam GB Director. She was asked what Oxfam does when a government is not accountable. For example, what does Oxfam do about the Sudanese and Zimbabweans of the world when faced with the moral hazard of supporting brutalised people, possibly at the price of extending an unacceptable regime. Barbara said that Oxfam makes a judgement in each case. For example in Zimbabwe the organisation has to decide whether to provide food or whether to speak out against the regime. She says this , "If speaking out would make a difference to enormous numbers of peoples lives in a short time, then we would do that, even though it might jeopardise our direct delivery to them. A key for us is building up local accountability. I'm not saying straightforward democracy in a Westminster style, but there has got to be a way that governments are accountable to their own people." In a sense, she says, you need that before you can give budget support. This, for me, is 'principled pragmatism' at the coal face. And finally:-
4. The tension between the choice between doing the right thing, taking an ethical stand or the choice of building a successful track record is one we all face. We need to have our own moral compass to enable us to do this. I am personally much supported by the word of Schumacher which I have printed on the wall of my office as a constant reminder.

He said:-

'We must do what we conceive to be the right thing,
 And not bother our heads or burden our souls whether it will be successful.
 Because if we don't do the right thing we will be doing the wrong thing,
 And we will just be part of the disease and not part of the cure.'

Thank you.

THE END

Rennie Fritchie April 2008