

# Centre for the Study of Corruption



## The Committee on Standards in Public Life Standards Matter 2: Public Consultation

*submission by the Centre for the Study of Corruption at the University of Sussex*

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# The Committee on Standards in Public Life

## Standards Matter 2: Public Consultation

*submission by the Centre for the Study of Corruption at the University of Sussex<sup>1</sup>*

1. The Centre for the Study of Corruption's submission to this review is based on the premise that public integrity and standards in public life are critical to preventing corruption, but also that our interest in understanding and preventing corruption is ultimately driven by the goal of improving governance in the UK and around the world.

2. There are few countries that might claim to have the global clout and moral authority to take an international lead on tackling corruption. Since passing the Bribery Act in 2010, the UK has claimed such a position, and by and large has played its hand well. It has risen up the OECD rankings of corporate bribery investigations; held an Anti-Corruption Summit which resulted in several hundred commitments; is making slow but identifiable progress with the City and the recalcitrant Overseas Territories on issues of money laundering; and has launched a substantive international push on public registers of beneficial ownership. It is therefore important not just for the UK, but for the setting of global standards with regard to corruption, that the UK maintains high standards of integrity domestically.<sup>2</sup>

3. A summary of our submission based on CSC research suggests that:

- UK standards in public life are in decline and at risk of declining further, with numerous recent breaches of integrity at the heart of politics and public life.
- Dependence on established norms and personal integrity is no longer tenable when these are regularly undermined; the UK may need to move in some areas from principles to rules, backed up by enforceable sanctions.
- Key elements of the standards regime need to be strengthened, including ensuring independence from political interference, clear lines of accountability, consistency among different bodies and greatly improved oversight and coordination.
- Standards need to be properly applied to the private sector when it delivers a public service or function, with appropriate penalties for breaches.
- In line with international trends among advanced economies and mature democracies, the UK should consider alternative institutional structures such as an Integrity Commission, Anti-Corruption Agency or Independent Commissioner, to incorporate and where necessary replace the patchwork of arrangements.

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<sup>1</sup> The Centre for the Study of Corruption (CSC) at the University of Sussex has also contributed to the submission by the UK Anti-Corruption Coalition, of which it is a member.

<sup>2</sup> Part of this response is based upon Working Papers published by the Centre for the Study of Corruption, including Barrington, R. 2020. "The Role of UK Anti-corruption Champion: A short history of the championship: who, why and what?", Working Paper 5. Centre for the Study of Corruption, University of Sussex; Barrington, R. 2020. "The Governance of Corruption in the UK: Who is in charge?", Working Paper 6. Centre for the Study of Corruption, University of Sussex.

## Question 1: Standards of Conduct in the UK

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A. *How well do you think ethical standards - as enshrined by the Seven Principles of Public Life - are upheld in public life today?*

4. The standards system in the UK is based to a large extent on principles and informal conventions, rather than on clear rules policed by regulatory institutions. Such a system places great trust in individuals' ability to assess and regulate their own behaviour. In recent years, there have been a number of instances of behaviour by ministers and MPs that have cast doubt on whether individuals perform this task in a way that matches up to the standards expected of them by the public, as outlined in the Seven Principles of Public Life.

5. Although there have been moves to increase regulation and oversight, particularly for civil servants, progress is "patchwork".<sup>3</sup> The strains on the system are increasing, particularly as a result of extensive outsourcing of public service provision to private and voluntary sector organisations, blurring the lines between public and private.<sup>4</sup> One of the unmet trials for public standards is how to make them relevant and practical when there are a range of other pressures on public servants to perform with effectiveness and efficiency.

6. Our contention is not that external service providers are inherently less ethical, but rather that ethics is partly cultural, and the Principles must be clearly applicable in private and voluntary sector working environments. Moreover, while the government retains a responsibility to hold outsourced service providers to account, its expertise and capacity to do so has in many areas been eroded. The Committee has recognised this tension,<sup>5</sup> but it remains unclear how those with commissioning responsibility for the provision of public services monitor ethical compliance in service delivery. This point of public service delivery is often the only interaction that individuals have with the state, and so their treatment and its perceived fairness/ethicality is crucial to their confidence in government institutions.

B. *Do you believe that there have there been any notable shifts in approaches or attitudes to ethical standards in public life in recent years?*

7. There have been both institutional and behavioural changes. Institutionally, there has been reduced investment in some independent regulatory bodies and a tendency to decentralise standards regulation – making standards less 'standardised' and implementation more ad hoc or vulnerable to improper influence. This is evident for example in the abolition of the Audit Commission and reliance on private-sector auditors of local government, and the abolition of Standards for England. Conflicts of interest in local government are poorly regulated, with codes of conduct being inconsistent since they became the responsibility of individual councils. While the Local Government Association (LGA) published a model Code of Conduct

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<sup>3</sup> See, Heywood, P.M. 2012. "Integrity management and the public service ethos in the UK: patchwork quilt or threadbare blanket?", *International Review of Administrative Sciences* 78(3): 474-493.

<sup>4</sup> Dobson, R. and Heywood, P.M. 2019. "Clean, but compromised: Corruption in the UK administration", DPCE Online; David-Barrett, E. 2020. "Regulating conflicts of interest in public office", in Graycar, A. (ed), *Handbook on corruption, ethics and integrity in public administration*, Cheltenham: Edward Elgar.

<sup>5</sup> CSPL, 2018. *The continuing importance of ethical standards for public service providers*. London: CSPL.

in December 2020,<sup>6</sup> the Code's advice on declarations of gifts and hospitality is less strict than many councils' existing codes.<sup>7</sup>

8. In terms of behaviour, there have been a number of instances at the highest levels of UK public life in recent years which appear to be unethical, or in direct contravention of the Nolan principles. However, it has been difficult to hold individual officeholders to account because the mechanisms for doing so are based on convention rather than hard rules backed up by institutions with regulatory power.

9. These norm violations relate to:

(i) partisan favouritism in decisions relating to appointments, policy, and how spending decisions are made, such as:

- Allocation of public funds to secure political advantage (as in the case of the Towns Fund grants to marginal seats).
- Award of peerages and honours to party donors.
- Increased politicisation of appointments to key public office roles, with decisions appearing to prioritise individuals with particular ideological views and or demonstrated loyalty, rather than expertise or relevant experience.
- Use of party disciplinary mechanisms to punish disloyalty to No. 10 (e.g., by suspending from the Conservative Party those MPs who voted against the government on the Withdrawal Bill, and removing the whip from an MP after he secured support from opposition MPs on the IS committee to elect him as chair rather than No. 10's preferred candidate).
- Use of "hostile briefings" from government insiders to discredit individuals in public office roles who have fallen out of favour.

(ii) how allegations of misconduct are handled, such as:

- The Prime Minister overruling the advice of the independent adviser on Ministerial standards in the Patel case.
- The PM failing to request an investigation into the conduct of Robert Jenrick over the Westferry affair.<sup>8</sup>
- Ministers and advisers refusing to resign over issues where that would previously have been the norm.

(iii) how the government interacts with mechanisms of public accountability and institutions that provide checks and balances on executive power, such as:

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<sup>6</sup> Local Government Association, "Model Councillor Code of Conduct 2020", 19 January 2021.

<sup>7</sup> See Paul Millar, "Gifts and hospitality loophole in new 'model' local government Code of Conduct", CSC blog, <https://scscsussex.wordpress.com/>, 29 January 2021.

<sup>8</sup> BBC News, "Robert Jenrick: Labour calls for inquiry into Westferry planning row", 26 June 2020. <https://www.bbc.co.uk/news/uk-politics-53193613>.

- The Conservative Party rebranding its official Twitter account as “factcheckUK” during the televised leaders’ debate, using it to publish anti-Labour posts.
- Government boycotts of particular media in certain periods,<sup>9,10</sup> accusations of bias and use of threats to the BBC and Channel 4.<sup>11</sup>
- Exclusion of some journalists from press briefings.<sup>12</sup>
- Politicised attacks on the Supreme Court.
- Government failure to adhere to its own transparency commitments (relating to the timely publication of public procurement contracts).

10. Taken together, these instances suggest an unwillingness on the part of the government to countenance scrutiny or criticism of its actions, and a disregard for process and institutions designed to ensure public accountability. While it is not yet clear whether these examples suggest a temporary blip or are evidence of a longer-term trend, they highlight weaknesses in the accountability mechanisms for those with the most political power.

11. On the flip side there has been increased recognition in Westminster and Whitehall of the extent of bullying and harassment, which is not only damaging to the individuals involved (although the primary concern in individual cases) but is destructive to the environment in which ethical standards can be upheld. An atmosphere of intimidation is not conducive to the ability to “challenge poor behaviour wherever it occurs”, as required by the Leadership principle. The new procedures for dealing with bullying and harassment have the potential to improve standards across the board, particularly if adequately integrated into the standards framework.

C. *What do you see as the most significant threats to ethical standards in public life today?*

12. The system for regulating standards in the UK is extremely fragmented. A Transparency International study in 2016 found more than 60 separate 'specialist enforcement, prevention, investigative and oversight agencies involved in the policing of offences directed against corruption behaviour' in addition to 45 police forces.<sup>13</sup> More recently, a report by the Independent Commission on Aid Impact (ICAI), the most comprehensive analysis to date of the UK’s institutional architecture with regard to illicit financial flows and corruption,

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<sup>9</sup> Owen, G. “Downing Street boycotts Radio 4’s Today over election bias...”, *Daily Mail Online*, 14 December 2019. <https://www.dailymail.co.uk/news/article-7793107/Downing-Street-boycotts-Radio-4s-Today-programme-bust-election-bias.html>.

<sup>10</sup> See Emily Maitlis’ Twitter post: <https://twitter.com/maitlis/status/1263233919413039112?s=21>.

<sup>11</sup> Taylor, M. & Waterson, J. “Boris Johnson threatens BBC with two-pronged attack”, *Guardian*, 15 December 2019. <https://www.theguardian.com/media/2019/dec/15/boris-johnson-threatens-bbc-with-two-pronged-attack>.

<sup>12</sup> Mason, M. & Sparrow, A. “Political journalists boycott No 10 briefing after reporter ban”, *Guardian*, 3 February 2020. <https://www.theguardian.com/politics/2020/feb/03/political-journalists-boycott-no-10-briefing-after-reporter-ban>.

<sup>13</sup> Transparency International UK. 2016. *Corruption Law: A non-lawyers guide to laws and offences in the UK relating to corrupt behaviour*. London: TIUK.

identified 20 government departments, committees, agencies and operational bodies with overlapping responsibilities.<sup>14</sup>

13. The UK's own self-assessment report for the United Nations Convention Against Corruption (UNCAC) from 2017 describes an extraordinarily extensive, complicated and sophisticated national anti-corruption architecture, but it is impossible to discern who is in charge, or at least has some kind of oversight.

14. Within its multi-agency approach, the UK has an Anti-Corruption Champion. However, in terms of the governance of the UK's anti-corruption response, the role of Champion is unsatisfactory in several ways:

- Its responsibilities and remit are unclear
- This means it is also unclear where responsibilities lie if not with the Champion. To compensate for this void, a series of parallel ad-hoc mechanisms have been gradually created in response to specific issues (like economic crime), with no sense of an overall strategic approach.
- There is a dependence on informal structures and influence, particularly since the post is no longer held by someone with ministerial status.

15. While the UK is on the whole better off for having had a Champion, and the UK has upped its game in other anti-corruption areas – such as by publishing a national Anti-Corruption Strategy and creating the Joint Anti-Corruption Unit – the ad-hoc nature of the Champion's role is increasingly inadequate. Moreover, most achievements have come via a series of tactical decisions rather than a strategic approach.

16. In the context of an increased willingness of those in public office to flout the norms and conventions on which the standards system in the UK has rested so heavily, the fragmentation of the system coupled with the lack of statutory bodies with powers to investigate and punish misconduct is becoming more problematic. When norms are violated and there is no notable reaction or sanction, this can lead to a rapid erosion of standards.<sup>15</sup>

17. On the other hand, there is a risk that institutional responses to norm-breaking in political institutions could lead to a misidentification of weaknesses in political accountability as standards issues. This could lead to bureaucratic solutions, adding to the complexity of the "patchwork". For example, the question of whether the Prime Minister (PM) or another institution, such as Parliament or an independent body, should have the power to hold Ministers accountable has implications beyond individual cases of wrongdoing or the reluctance to uphold standards by individual PMs.

18. In a similar vein, the challenge of technology to the democratic system, particularly around elections, is unlikely to be solved purely by technical innovation. While such improvements are essential to safeguarding the democratic processes we currently possess; in the long-term solutions might demand reform to the democratic system itself to make it

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<sup>14</sup> Independent Commission for Aid Impact. 2020. *Mapping the UK's approach to tackling corruption and illicit financial flows*.

<sup>15</sup> See, Barrington 2020, Working Paper 6.

less vulnerable to manipulation. This might include the wider consideration of participatory models of democracy and decision-making.

## **Question 2: The Seven Principles of Public Life**

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A. *Do the Seven Principles of Public Life accurately describe the appropriate ethical responsibilities for those in public roles, including both political and non-political office-holders?*

B. *Would you amend or replace any of the principles or their descriptors? If so, how?*

19. There is nothing in the principles that describes interpersonal relationships, either between colleagues or standards of behaviour expected in interactions with the public. While there are other ways in which such standards can be upheld, such as through HR systems, an overarching principle on respectful conduct could encourage higher standards.

20. The Leadership principle could be stronger on the point of holding others accountable to the standards. This is particularly important because of the critical role of 'tone at the top' in shaping behaviour, and because norms are maintained through community 'policing', i.e., colleagues being willing to call out poor behaviour or shame those for misconduct. Such community norm enforcement can run into difficulties particularly in political contexts, where partisan loyalty may be prioritised and – as noted previously – such loyalty seems currently to be prized to the detriment of considerations of standards or even merit.

21. There remains – as in many contexts – resistance to whistleblowing, particularly in hierarchical contexts. This hinders the ability of oversight mechanisms to respond effectively to breaches.

## **Question 3: The UK's arrangements for regulating standards**

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A. *Are you confident that the UK's arrangements for regulating ethical standards are robust and effective?*

B. *Are there any areas of public life where regulation on issues of ethical standards is not strong enough?*

22. The web of bodies regulating standards in the UK is very fragmented and has become less fit for purpose in the last decade - for example:

- The abolition of Standards for England and decentralisation of standards regulation to councils, which often lack training and resources to monitor and investigate allegations, leaves a major gap in the standards landscape.
- The Advisory Council on Business Appointments lacks a statutory basis and there is no sanction for failing to seek its advice or ignoring its advice. This is despite a number of factors which have increased the risk of 'revolving door' related conflicts of interest,



including increased use of outsourcing by the government.<sup>16</sup> The risk of conflicts may be particularly high when ministers leave the Cabinet but stay in politics as backbench MPs, a role in which they are permitted to earn income from second jobs and own shares in a company.

- The system for regulating ministerial conduct is very weak and politicised. It is the PM who decides whether the independent adviser on ministers' interests investigates a matter, and the PM who decides whether sanctions are imposed. The independent adviser is in turn appointed by the PM.
- There are inconsistencies between the Ministerial Code and the Code of Conduct for MPs, with rules for ministers in some cases less stringent than for MPs. Given that most ministers are also MPs, this creates an unnecessary ambiguity.
- There is insufficient ability to ensure that third-party providers of public services uphold ethical standards.

#### **Question 4: Best practice in standards regulation**

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A. *What makes an effective standards regulator?*

23. Research on the effectiveness of Anti-Corruption Agencies (ACAs) suggests that an effective regulator of the conduct of public officeholders needs high-level political endorsement, in terms of tangible resources and secure autonomy, so that it cannot be used as a political weapon. ACAs vary in function, with some focusing on prevention of corruption through policy and public outreach, while others have investigatory and even prosecutorial powers.

24. Effectiveness requires firstly 'a concrete notion of who the regulator *is* in the area, what the rules being regulated *are*, and what powers the regulator *has*',<sup>17</sup> buttressed by clear institutional support in terms of resources to fulfil any regulatory aims. A regulator also needs the power to sanction violations, which are proportionate in that they act as a sufficient deterrent to wrongdoing, but do not deter engagement in public life and, finally, should be transparent in all its activities, including publishing searchable databases relevant to its remit (surrounding appointments, lobbying opportunities or conflicts of interest) to allow for greater oversight.

25. Transparency ought not to be seen as an end in and of itself, and should certainly not be seen as a reform which will necessarily lead to greater public confidence in the political system. Indeed, there is evidence from those that study political finance<sup>18</sup> and freedom of

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<sup>16</sup> David-Barrett 2020; David-Barrett, E. 2011. *Cabs for Hire: Fixing the revolving door between government and business*. London: TIUK.

<sup>17</sup> Power, S. 2020. "The Transparency Paradox: Why transparency alone will not improve campaign regulations", *Political Quarterly* 91(4): 733.

<sup>18</sup> Power, S. 2020. *Party Funding and Corruption*. Basingstoke: Palgrave MacMillan.

information initiatives<sup>19</sup> that transparency might well have the opposite effect.<sup>20</sup> It may well curb instances of corruption, while at the same time leading to an increase in *perceptions* of corruption from the public. It is, therefore, necessary to complement greater transparency with increased outreach and political literacy education.

*B. Do the UK's standards regulators have the right powers and remit to act effectively?*

26. ACOBA is not adequately regulating the 'revolving door'. In thinking about ways to improve regulation of this area, there are several options. The most extreme is to ban civil servants from taking certain jobs when they leave public office, but this carries a number of disadvantages. Most evidently, it would risk deterring people from joining the civil service or becoming ministers in the first place, since doing so would constrain their career opportunities and, importantly, earning potential. Instead of banning officeholders from post-public employment, most countries rely on softer approaches. It is common to have a temporary 'cooling off' period, in which individuals are not permitted to take certain kinds of job. The length of the period can be adapted depending on the risk associated with the officeholder – more senior officials can be banned for longer. Similarly, the type of activity from which the official is excluded can be specified, to prevent someone from engaging in lobbying specifically, for example, or working on projects for their private-sector employer that relate to their previous job. However, it is difficult to monitor compliance with cooling-off periods, or even to ensure that the need for them is identified.

27. Clear guidance and training on the application of the principles in private and voluntary sector service providers is needed, as the principles do not necessarily fit seamlessly into non-public sector working environments. This needs careful consideration. The Cabinet Office's Green Paper on transforming public procurement notes that the regulatory framework should be consistent with the seven principles, but provides little clarity on how this would be achieved.<sup>21</sup> Careful consideration should be given to the role they could play in assessments about the effectiveness of public sector contracts.

*C. Should the independence of standards regulators be enhanced and protected, and if so, how?*

28. One possible way of improving the standards system would be to introduce a single competent authority for preventing and investigating corruption in public office. This contrasts with rather well-respected agencies in some advanced economies, including Singapore, Hong Kong and the Republic of Korea. France recently created its first such agency under the recent Loi Sapin II in 2018, while Australia is in the process of a public consultation about the powers and extent of an agency to which the government has already committed.

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<sup>19</sup> Worthy, B. 2010. "More Open but Not More Trusted? The effect of the Freedom of Information Act 2000 on the United Kingdom central government", *Governance* 23(4): 561-582.

<sup>20</sup> See also Grimmelikhuisen, S.G. and Meijer, A.J. 2014. "Effects of Transparency on the Perceived Trustworthiness of a Government Organization: Evidence from an online experiment", *Journal of Public Administration Research and Theory* 24(1): 137-157; Fenster, M. 2015. "Transparency in search of a theory", *European Journal of Social Theory* 18(2): 150-167.

<sup>21</sup> Cabinet Office, "Green Paper: Transforming public procurement", 15 December 2020.

<https://www.gov.uk/government/consultations/green-paper-transforming-public-procurement>

29. There is a mis-match between the current system of ad-hoc governance and the Government's stated aspirations. Moreover, this is on a subject which it has repeatedly said is important for economic prosperity and national security – and regarding which there are significant international commitments to fulfil. In other words, while certain aspects of the national anti-corruption approach have been successfully updated (creation of the Joint Anti-Corruption Unit and the National Anti-Corruption Strategy 2017-22, key legislation), overall governance has yet to catch up.<sup>22</sup>

### **Question 5: Creating ethical cultures**

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A. *How can the Seven Principles best be embedded within a public sector organisation's working culture?*

B. *What are the most significant obstacles to embedding high ethical standards in a public sector organisation?*

30. Research suggests that (good) government functions around 'logics of appropriate behaviour' which function at the formal (regulatory) level, but also the informal (normative) level and that the norms and values embodied within our political institutions shape the behaviour of those within these institutions, but also those outside.<sup>23</sup> Therefore, norm erosion is not just a political problem, but can erode social trust as well. A renewed focus on holding officeholders to account against the Nolan Principles and leveraging informal 'soft' power might help to rebuild norms.

31. As discussed, the UK system of standards relies heavily on trusting individuals to evaluate and regulate their own behaviour. Yet, recent research has shown that:

"the idea that individuals can regulate their own conflicts of interest makes an assumption that may be misplaced: that individuals can screen out biases in making judgements. The ethical officeholder is expected to identify a potential conflict of interest and take appropriate action to ensure that it does not influence the execution of his or her duties. Fundamentally, this assumes that their actions are based on conscious choices and deliberate decisions. Yet insights from psychology suggest, on the contrary, that human behaviour is often the product of 'automatic' or 'fast' thinking. As such, they may be influenced by 'implicit biases', automatic associations that influence action without triggering reflective awareness."<sup>24</sup>

32. This raises questions as to whether officeholders' judgements about their own impartiality can be trusted. Psychologists have also identified the phenomenon of 'motivated reasoning', where an individual's self-interest changes their understanding of reality and individuals are able to justify corrupt actions to themselves and others.<sup>25</sup>

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<sup>22</sup> Barrington 2020, Working Paper 5.

<sup>23</sup> See, for example, Olsen, J.P. and March, J.G. 2006. The Logic of Appropriateness, in Moran, M., Rein, M. and Goodin, R.E. (eds.), *The Oxford Handbook of Public Policy*. Oxford: Oxford University Press.

<sup>24</sup> Dávid-Barrett 2020.

<sup>25</sup> See Redlawsk, D.P. 2002. "Hot cognition or cool consideration? Testing the effects of motivated reasoning on political decision making", *Journal of Politics* 64(4): 1021–44; and Snow, N.E. 2009. "How ethical theory can improve practice: Lessons from Abu Ghraib", *Ethical Theory and Moral Practice* 12(5): 555.

33. In public office, these risks may be especially acute, because of the frequency with which officeholders face ethical dilemmas and the often ambiguous or complex nature of the decisions they must make. The subtlety present in many conflict-of-interest situations may mean that officeholders justify potential breaches of integrity by characterising problems in certain ways or noting that there is a lack of clarity about which course of action would be the most appropriate.<sup>26</sup> This may provide ‘cover’ for individuals to engage in questionable actions while claiming plausible deniability.

34. Moreover, these situational effects may interact with the character of politicians and public servants. The work of Feldman and others suggests that some individuals identify as ‘good people’ and see themselves as far more moral, unbiased, and law abiding than they actually are.<sup>27</sup> Such people, Feldman argues, may be particularly good at ignoring or justifying their own unethical behaviour, and do not respond to ordinary forms of regulation. If politicians and public officials are more likely to see themselves as ‘good people’, as seems plausible, this may affect their ability to accurately judge their own behaviour.

35. Therefore, simply changing the rules – or the system of sanctions for misconduct in public office – may not be effective ways of changing behaviour owing to a range of cognitive biases, including that individuals may not recognise their behaviour as rule-breaking, or underestimate the likelihood that they will be sanctioned. However, the literature does also suggest that people can be sensitised to these biases, and can become more proficient in recognising them and in moderating their own behaviour. Therefore, any changes to formal regulatory systems need to be supported with more training and engagement with public officials about the complexity of ethical dilemmas.

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<sup>26</sup> Feldman, Y. and Halali, E. 2019. “Regulating ‘good’ people in subtle conflicts of interest situations”, *Journal of Business Ethics* 154(1): 65–83.

<sup>27</sup> Feldman, Y. 2018. *The Law of Good People: Challenging states’ ability to regulate human behavior*. Cambridge: Cambridge University Press.