Civil Servants, Ministers and Parliament
Chapter 2 - Civil Service Ethics

2.1 The Civil Service Code[1]

The Civil Service Code provides a clear, and commendably brief summary of the values that are common to all civil servants of all grades and in all departments, and the standards of behaviour that are expected of them. This chapter, and the next, explain what the code means in practical terms.

The key parts of this text were checked for accuracy by the Cabinet Office in 2000 but it has occasionally been suggested that we now live in different times. One correspondent wondered "if some people might nevertheless read the material on impartiality and ethics somewhat cynically, given the way senior civil servants have become more politicised in recent years, and especially in the light of today's No 10 shenanigans? Some might argue that the rules, and application of them, are lagging behind the realities of the way that senior civil servants [are required to] operate." My short answer is that no-one in authority, such as a Minister or senior Cabinet Office official, has ever suggested that civil servants' constitutional role or ethical

[1] The first version of this Code of Practice was put in place in January 1996 at the suggestion of the then Treasury and Civil Service Select Committee, and was revised in May 1999 to take account of devolution to Scotland and Wales. A significantly new edition was published in June 2006. It differed from the previous one in two main ways:

- If a civil servant believes that that he/she is being asked to behave in a way which conflicts with the code, he/she may now report the matter direct to the Civil Service Commissioners.
- It is now clearly specified that the code is part of the contractual relationship between the civil servant and his/her employer.

The code has since been amended several times but its substance has remained essentially unchanged.

responsibilities have changed since 2000, or that anything in this text is wrong. Until they do so, clearly and unequivocally, I believe that the following advice remains accurate.

The code's introduction reads as follows (emphasis added):

> The Civil Service is an integral and key part of the government of the United Kingdom. It supports the Government of the day in developing and implementing its policies, and in delivering public services. Civil servants are accountable to Ministers, who in turn are accountable to Parliament.
>
> As a civil servant, **you are appointed on merit on the basis of fair and open competition** and are expected to carry out your role with dedication and a commitment to the Civil Service and its core values**: integrity, honesty, objectivity and impartiality.**

The code defines civil servants' four core values in the following way:

- '**integrity'** is putting the obligations of public service above your own personal interests;
- '**honesty**' is being truthful and open;
- '**objectivity**' is basing your advice and decisions on rigorous analysis of the evidence; and
- '**impartiality**' is acting solely according to the merits of the case and serving equally well Governments of different political persuasions.

These core values are intended to "support good government and ensure the achievement of the highest possible standards in all that the Civil Service does. This in turn helps the Civil Service to gain and retain the respect of Ministers, Parliament, the public and its customers."

The code itself helpfully defines integrity, honesty etc. in more detail. Let's look at each one, and also appointment on merit and accountability, and consider the practical consequences for civil servants.

2.2 Integrity

I like this brief definition of integrity:

> **Integrity is choosing your thoughts and actions based on values rather than personal gain.**

I also like this simple rule governing your spending of public funds:

> All expenditure must be **R**equired, **R**easonable and **R**eceipted.

The code does into more detail:

You must:

- fulfil your duties and obligations responsibly;
- always act in a way that is professional and that deserves and retains the confidence of all those with whom you have dealings;
- carry out your fiduciary obligations responsibly (that is make sure public money and other resources are used properly and efficiently);

- deal with the public and their affairs fairly, efficiently, promptly, effectively and sensitively, to the best of your ability;
- keep accurate official records and handle information as openly as possible within the legal framework; and
- comply with the law and uphold the administration of justice.

You must not:

- misuse your official position, for example by using information acquired in the course of your official duties to further your private interests or those of others;
- accept gifts or hospitality or receive other benefits from anyone which might reasonably be seen to compromise your personal judgement or integrity; or
- disclose official information without authority. This duty continues to apply after you leave the Civil Service.

Many outside the Civil Service would suggest that integrity requires you to act if you see somebody doing something wrong. You should if possible intervene and correct the bad behaviour. If that is not possible then you should publicise the behaviour and/or leave the compromised organisation. It is obviously difficult (and often wrong) for civil servants to take such a principled stand against behaviour which the official regards as 'wrong' but which has implicitly or specifically been approved by democratically appointed and accountable politicians.

Specifically, can an unhappy official achieve more by resigning (perhaps with significant publicity) - or by staying and seeking to improve things from within? This question is discussed in detail in Chapter 4 ("No! Minister").

This aside ...

What does integrity mean in practice?

2.2.1 Conflicts of interest

Great care needs to be taken to avoid conflicts of interest, whether real or perceived. You may be certain that you could rise above them, but others will doubt it. Indeed, much administrative law (i.e. judicial review) is concerned with conflicts of interest.

All potential conflicts of interest, including conflicts with the interests of your immediate family, must therefore be disclosed to managers, remembering that an innocuous friendship, investment, gift or treat can be transformed overnight into a possible conflict of interest. The following paragraphs provide guidance, but nothing in them should be taken to detract from departmental guidance, which should be consulted, and taken to prevail, in case of doubt. Indeed, certain individual departments, or parts of departments, have additional requirements above those mentioned below.

2.2.2 Gifts, Hospitality etc.

These may be divided into three categories.

First, there are gifts from a company whose services you are using or might use, or with whom you might negotiate grant or other support, or which might materially benefit from decisions with which you might be involved. There are absolutely no circumstances in which you can

accept a gift of any value, or any hospitality more substantial than a working lunch, from such a source. This prohibition extends to the use of Air Miles and other benefits offered by the travel trade etc.

Second, expensive gifts (each department defines its own limit) from other donors must also generally be refused or returned. Alternatively, it is sometimes possible to say to the donor 'Thank you for the gift which I will use in the office rather than for my personal use'. (You can donate wine to the Christmas party.) Failing this, you can hand the gift over to the department, or pay the department to let you keep it.

Third, any gifts, hospitality etc. whose acceptance is not prohibited under the first two rules above, should also be refused unless the acceptance can clearly be justified as contributing to the achievement of your objectives. Put another way, the reason for the acceptance has to be clearly defensible, always remembering the Greek proverb that 'gifts are poison'.

Positive reasons for accepting hospitality include the need to carry out an ambassadorial role, make contacts and gain information. It is therefore generally OK to attend celebrations of a company's success or longevity, or an industry-wide gathering, including trade association dinners. It is also reasonable to accept inexpensive gifts such as ties and pens, so as to avoid giving offence. Conversely, it is important to avoid developing a sense of obligation to a host or donor, and to avoid criticism (from those unable to benefit) of benefiting from lavish hospitality etc. In general, therefore, you should not accept tickets for major sporting events, Glyndebourne or Covent Garden. It is seldom a good argument that you are establishing or maintaining contacts at such events, because it is seldom appropriate or possible to discuss business. It is often useful to apply the 'wow' test. When you receive an invitation and find yourself saying 'wow' then it is time to refuse.

A similar approach should be adopted when considering whether you might be accompanied by a partner to an event. Indeed, the negative factors can be more intense, given that the cost to the host will have doubled, and the opportunity to do business will have diminished. On the other hand, it can be helpful to be accompanied by a partner to an event at which one is trying to build up a relationship with the host or to an event at which one is acting as an ambassador, for instance at a company celebration or an event in aid of charity.

It is usually acceptable to accept local transport, lunch and refreshments when visiting private sector companies. But you may never let a private sector company pay your rail fare, air fare or overnight hotel bill. It is also acceptable to accept overnight accommodation in a company's guest house provided for that purpose, but of course you must not then claim the cost of a hotel. And it is permissible to accept a free flight in a company plane if there is no convenient public transport and if the plane would have been making the journey anyway. But the offer of such transport should be refused if convenient public transport is available, or if the provision of the flight would cause the company to incur significant expense.

Incidentally, the NAO published a report, in early 2016, on the acceptance of gifts etc. In general, the NAO found that the above rules were being observed, but they did criticise the acceptance of tickets to professional sports and cultural events, sometimes accompanied by a spouse and/or children; bottles of champagne; wine for a team's Christmas lunch; and iPads. You have been warned!

2.2.3 Financial Interests

We must all take particular care to avoid profiting, or enabling others to profit, (or even getting into a position where we could do these things) from information which is supplied to us in confidence. In particular, you must consult your line manager if you are asked to handle papers concerning any company (including a bank) in which you have invested, or with which you have any financial link. (However, standard bank accounts may be ignored for this purpose, unless they contain a huge amount of money.) You must also tell your manager if you hold shares in, or have any other link with, any company which is dealt with by you or your colleagues. You must do this immediately on joining the team, or immediately on acquiring the shares etc. This applies even if the shares are held via a vehicle such as an ISA. Holdings in collective vehicles such as OEICs need not be reported unless you have a large holding (over £5,000) and you know that your trust has invested in a company or companies with which you are dealing.

2.2.4 Outside Appointments and Employments

You must also tell your line manager in advance, or on appointment, about any other employment or self-employment. You must also disclose links to all other bodies (including charities) if it looks as though you might be asked to deal with them on behalf of your department or if your involvement might be time-consuming.

Having done this, you should find that most outside appointments and employments are absolutely fine as long as they do not take up time which should be devoted to your employment in the Civil Service. Indeed, they are often encouraged as a means of broadening your experience. The Business Department, for instance, will often encourage senior staff to become non-executive directors so as to gain experience of business. And Department of Education staff would gain much valuable experience if they were to become school governors.

Again subject to notifying your line manager, it is generally OK to write articles and make speeches etc. on non-work related subjects - as long as you prepare for such activities outside working hours.

2.2.5 Post-Retirement Business Appointments

It is obviously important that there should be no cause for any suspicion of impropriety when you take up a new job after retirement. This is mainly to ensure that you do not treat the companies favourably because you thought you might be rewarded when you were no longer a civil servant.

All offers of employment should therefore be reported to your department who will if necessary involve the Advisory Committee on Business Appointments (ACOBA) which gives advice on applications at the most senior levels, and reviews a wider sample in order to ensure consistency and effectiveness.

Sadly, however, ACOBA has no power other than to give advice, and there have been numerous examples of senior figures, including ex-Ministers, accepting high profile appointments well in advance of seeking clearance.

2.2.6 Fraud and Corruption

Criminal corruption - such as accepting bribes or rigging contracts - is vanishingly rare in the UK Civil Service. Indeed, I know of no examples. This is in large part due to the all-pervasive and

self-policing ethical culture. It also helps that civil servants' salaries are close to market rates so officials generally don't feel cheated by their employer.

Fraud is also very uncommon, though not unknown.

- Edward Chapman in effect stole around £1 million before his mother - also a civil servant - found out about it and informed the authorities. Chapman was jailed for three years in 2016. This was hardly classic corruption as Chapman had no accomplices.
- Alan Williams defrauded his department of £1.7 million between 2017 and 2019 before a colleague became suspicious. Again, there were no accomplices - he simply set up a bogus company and contract, using his knowledge of financial controls to circumvent them. He was jailed for three and a half years.

Daniel Finkelstein, writing in The Times, explained why both civil servants and Ministers must expect heavy punishment when they are dishonest:

> In his excellent book *Lying for Money* Dan Davies investigates large-scale fraud and how the perpetrators manage, at least initially, to get away with it. Common to many of these crimes is that the fraudster has corrupted someone who belongs to what Davies calls the "circle of trust". They have managed to persuade someone who is an accountant, a lawyer or an actuary to become a confederate.
>
> Davies explains the economics of this. The professionals in the circle of trust are expensive to corrupt, because they are well-paid people with a lot to lose. They have spent years training and if found guilty of an offence by a disciplinary panel they lose all the financial advantages their qualifications have bought them. Because everyone knows it is difficult and pricey to "turn" a professional, they tend to be trusted. And this makes fraudulent professionals devastatingly effective. The status, the trust, the price, the fraud, the disciplinary system are all locked together.
>
> For this reason, it is vital the people in the circle of trust are subject to harsh discipline for even minor infractions. Exceptionally tough punishment for what looks like almost irrelevant pieces of dishonesty is what keeps the whole system working. That is why the disciplinary panel dismissed [PC] Simon Read in a kerfuffle about a box of doughnuts. It is about maintaining the system of trust that avoids serious fraud.
>
> The prime minister of the country must be someone inside the circle of trust. Someone that people appreciate has so much to lose that they will abide by the rules and tell the truth in all circumstances. There are so many parts of our governing system that depend upon most people accepting the basic integrity of the occupant of No 10.
>
> The apparent disproportion between the office of a prime minister and the issue of a cheese and wine party is not an argument against resignation. Because the real issue is the maintenance of trust in the office, and the fact that removing a prime minister is almost unthinkable is essential to that trust.

2.2.7 Institutional Integrity

The vast majority of civil servants have a pretty good idea of what it means to behave with integrity as individuals. I am less sure that we collectively ensure that our departments act with integrity. Do they (as required by the Civil Service Code):

- always act in a way that is professional and that deserves and retains the confidence of all those with whom they have dealings;
- carry out their fiduciary obligations responsibly (that is make sure public money and other resources are used properly and efficiently);
- deal with the public and their affairs fairly, efficiently, promptly, effectively and sensitively, to the best of their ability;
- keep accurate official records and handle information as openly as possible within the legal framework; and
- comply with the law and uphold the administration of justice?

The Civil Service is, after all, just as prone as other large organisations to start acting in its own self-interest rather than the wider public good. Many senior managers do not know (and sometimes do not want to know) what is going on in local establishments such as hospitals and prisons. The perennial difficulty of speaking truth to power[2], compounded by the incentive to report good results, also means that even well-motivated senior managers are often the last to learn what is going wrong. Herd behaviour and groupthink are also surprisingly common and exacerbate the culture and tensions that are typical of most large organisations.

Whole departments are therefore sometimes accused lacking integrity - for instance in their dealings with immigrants - see the Windrush scandal. And the Department of Health was shown to have presided over a dysfunctional local health service and regulators in the report into deaths at the Gosport War Memorial Hospital:

> "Over the many years during which the families have sought answers to their legitimate questions and concerns, they have been repeatedly frustrated by senior figures. ... The obfuscation by those in authority has often made the relatives of those who died angry and disillusioned. ... The records show that the Department of Health used a number of different Freedom of Information Act exemptions to resist publication of the Baker Report until legal advice was received in July 2013 that it should be published.

I am pretty sure, too, that a good number of departments fail to deal efficiently and promptly with the public, and fail to keep accurate official records. I understand that it is proving particularly hard to access electronic records in some departments. More generally, there is a good deal of evidence that the 21st Century Civil Service now devotes too much effort to defending Ministerial policies and devotes too little effort to speaking truth to power. The Cabinet Office, for instance, led some pretty determined resistance to freedom of information requests which might embarrass the government. A Bulgarian official was quoted as saying that "in Britain [your] corruption is so sophisticated that cunning people can deny its existence".

It will be interesting, in years to come, to see how later generations and historians view our current struggles with these issues.

2.2.8 Compliance with the Law

[2] https://www.civilservant.org.uk/richborne_publishing.html#STtP

It is well accepted that some laws cannot, or should not, be fully enforced against citizens. HMRC, for instance, maintains a substantial list of current or previous *extra-statutory concessions:-* "relaxations which give taxpayers a reduction in tax liability to which they would not be entitled under the strict letter of the law."

On a rather larger scale, eyebrows were raised when Ministers ordered HMRC to 'prioritise the flow of goods into the UK over compliance with customs regulations' because the department's systems were not yet ready when the UK left the European Union on 31 January 2020. HMRC accepted that 'some compliance risks' would arise as a result, and that the UK would probably lose £800m in customs duty and VAT in 2021[3]. This failure to properly apply the law was nevertheless accepted as a reasonably pragmatic step which did not raise ethical questions for officials.

But civil servants must not ignore or seek to circumvent laws which confer rights upon UK citizens. **The Civil Service Code says that civil servants must 'comply with the law and uphold the administration of justice'.**

This obligation (and the other Civil Service Code obligations) were incorporated into civil servants' terms and conditions of employment by the Constitutional Reform and Governance (CRaG) Act[4].

International Law

Should civil servants accept instructions which are incompatible with international law? The majority of lawyers experienced in these fields suggest that the answer is 'No' – they should not.

This extends to officials' duty to comply with any interim measures imposed by international courts in advance of their final decisions. The leading case is *Mamatkulov and Askarov v. Turkey* which held that any failure to comply with interim measures would frustrate obligations and rights provided in the relevant international treaty.

The fundamental point is that civil servants are (under their Code and the CraG Act) required to "comply with the law" and that means every law, not just most of them. I and others fail to see how those employed in areas subject to international law can avoid complying with that law. In addition, of course, the Ministerial Codes (in both Westminster and Belfast) are very clear that Ministers may not ask civil servants to do things which are illegal or improper. (See also chapter 4.4.)

Here is a brief history of the debate.

The status of international law was considered when an amended Ministerial Code was published in 2015. This (still) required Ministers to obey the law, but omitted previous versions' references to the need to obey international law. The Cabinet Office itself did not draw attention to this potentially significant change, but responded, on being challenged, that the previous reference to international law had been unnecessary as it was subsumed within the definition of law.

This point was expressly considered in *R (Gulf Centre for Human Rights) v (1) The Prime Minister and (2) The Chancellor of the Duchy of Lancaster [2018] EWCA Civ 1855.* The key text is in paras 19-22

[3] Public Accounts Committee c.21 January 2021

[4] https://www.legislation.gov.uk/ukpga/2010/25/contents

where the Court of Appeal held that the reference to "international law and treaty obligations" in the previous (2010) Ministerial Code had been subsumed within the stated duty "to comply with the law" ... they are not independent obligations but simply part of the "overarching" duty of compliance with the law. ... the reference to the duty "to comply with the law" in the 2015 Code is general and unqualified. In so far as that duty includes international law and treaty obligations, they are so included. It is not necessary for there to be specific inclusive language."

As noted in Chapter 4.4, there have been very few examples of civil servants ever being asked to do something illegal ... until 2020 when the Johnson government tabled *the Internal Market Bill* some of whose provisions - if enacted - would have conflicted with international law in the form of *the Brexit Withdrawal Agreement*. Clause 45 of the Bill provided that "The following [various regulations etc.] have effect notwithstanding any relevant international or domestic law with which they may be incompatible or inconsistent …". The Bill drew much criticism and opposition as it made its way through Parliament and the controversial provisions were withdrawn from the Bill.

The Cabinet Secretary determined (correctly in my view) that civil servants could not refuse to help draft the Bill. It was far less certain that they could have implemented the provisions of the Act (if it had become law) and so contravene international law. The same principles apply to the distinction between drafting and implementing the Rwanda legislation - see further below.

Following publication of *the Internal Market Bill*, there was a lively Twitter debate in October 2021 where one lawyer argued that international law is in some ways dissimilar to domestic law and (if I understood correctly) applies only to states (such as the UK) and not to individuals within those states. The UK as a whole might therefore breach international law, but its civil servants could not. I did not find the argument 100% persuasive and – more importantly – neither did those experienced international and constitutional lawyers who joined the debate.

A deeper and longer analysis of the debate (though not dealing with the role of civil servants) may be found in David Allen Green's 'The Law and Policy Blog' published on 12 October 2021. In short, he argued that the UK government was not about to breach the Northern Irish protocol by accident or through recklessness, or on the basis of a grey area of interpretation. It intended to deliberately breach the Northern Irish protocol by using domestic legislation. This was, in essence, the United Kingdom government asserting that a legal obligation did not bind it. This would be a fundamental repudiation of the general principle that a legal command should be obeyed.

The legal position was then tested in 2022 when Northern Ireland Minister Edwin Poots demanded that officials stop building the Border Control Posts required by the UK/EU Northern Ireland Protocol. Mr Poots' Permanent Secretary told Stormont's Agricultural Committee that he was "absolutely required to comply with the law ... I am accountable to the Minister generally, but in this case I am acting against the Minister's wishes." The Northern Ireland courts agreed. A judge ruled that "There shouldn't be any doubt or confusion hanging over those civil servants who have to comply with the law. I propose to make an order, suspending the order or instruction given by the Minister for Agriculture until further order of this court or completion of these proceedings".

There was an interesting exchange in the House of Lords Constitution Committee on 28 June 2023. Attorney General Victoria Prentis agreed that "the rule of law requires compliance by the state with its obligations in international law". The above-mentioned change in the Ministerial

Code was then brought to her attention and she agreed that the Government had confirmed in litigation that, nevertheless, the reference to the rule of law included the rule of law in the sphere of international law.

Ms Prentis was rather more cagey when questioned about her role if there were ever a serious conflict between domestic law (which can be altered by Parliament) and an international law obligation of the UK. Commenting later, George Peretz KC said that her reluctance to be pinned down reminded him of a Private Secretary in "Yes Minister" when asked whether, when the chips were down, he'd be loyal to his Minister or to the Civil Service. "My job", he said, "is to see that the chips stay up".

Then came the December 2023 draft Safety of Rwanda (Asylum and Immigration) Bill which contains quite dramatic 'notwithstanding' (or 'ouster') provisions which purport to disapply large swathes of international law. Crucially, however, it does not apply the CRaG Act and so does not remove civil servants' duty to comply with international law. Here are extracts from Joshua Rozenberg's commentary (emphasis added) drawing on the views of Mark Elliott, Professor of Public Law at the University of Cambridge.

> What clause 1 is trying to establish is that removing a "relocated individual" to Rwanda once the Rwanda treaty has been ratified would not be a breach of international law. But there is an obvious flaw in this proposition. **Parliament makes national law but not international law.** Simply saying something is in compliance with international law does not make it so. The most that this legislation can do is to stop the courts of the United Kingdom finding removals to Rwanda unlawful. It cannot affect the UK's international treaty obligations.
>
> ...
>
> Subsection (2) says: It is for a Minister of the Crown (and only a Minister of the Crown) to decide whether the United Kingdom will comply with [interim measures]. ... there is no escaping what this stark subsection means. A junior minister, on behalf of the United Kingdom, may choose to break what the court responsible for its enforcement regards as a binding provision of international law. **The minister would be acting lawfully — but His Majesty's government would not.**
>
> After all, he explains, this bill is "an affront to the separation of powers and the rule of law, in that it effectively reverses a Supreme Court judgment, undermines the judicial function and attempts to remove from the courts' jurisdiction questions about the legality of government decisions. In orthodoxy, the principle of parliamentary sovereignty — which makes whatever parliament enacts lawful — would be a complete answer to these charges. But, in *Privacy International*[5], Lord Carnwath said "**it is ultimately for the courts, not the legislature, to determine the limits set by the rule of law to the power to exclude review**". For a court to take the step implied in this comment — by holding, in effect, that parliament had exceeded its authority by seeking to limits the courts' constitutional role — would be fraught with risk for the judiciary. **It is, however, conceivable that the Rwanda Bill might transform what has largely**

[5] https://www.supremecourt.uk/cases/docs/uksc-2018-0004-press-summary.pdf

remained a hypothetical question about the fundamental relationship between parliament and the courts into a live one.

Ultimately, [Elliot] believes [that] the Rwanda Bill is "proceeds on the basis of the sleight of hand that the UK parliament, because it is sovereign, can somehow free the government from its international legal obligations. But this is to conflate the sovereignty of the UK parliament in domestic law with the UK's sovereignty on the international plane as a state. It is precisely in exercise of its state sovereignty that the UK can enter, and has entered, into binding treaty obligations. The peculiarity that the UK's parliament, as a matter of domestic law, is sovereign in the sense of being (in orthodoxy, at least) beyond judicial control cuts no ice whatever on the international level.

2.3 Honesty and Objectivity

The code says that:

You must: set out the facts and relevant issues truthfully, and correct any errors as soon as possible; and use resources only for the authorised public purposes for which they are provided.

You must not: deceive or knowingly mislead Ministers, Parliament or others; or be influenced by improper pressures from others or the prospect of personal gain.

You must: provide information and advice, including advice to Ministers, on the basis of the evidence, and accurately present the options and facts; take decisions on the merits of the case; and take due account of expert and professional advice.

You must not: ignore inconvenient facts or relevant considerations when providing advice or making decisions; or frustrate the implementation of policies once decisions are taken by declining to take, or abstaining from, action which flows from those decisions.

What does this mean in practice?

This is constitutionally perhaps the most important part of the code. A Civil Service that lies to the public or to Parliament must clearly be reckoned to be a failed institution. Civil servants must refuse to take part in any activity that involves telling lies to anyone, or involves misrepresentation to Parliament.

Officials should not bend to ministerial or other pressure to give credence to scientific illiteracy or conspiracy theories. They should aim to communicate what reputable journalists refer to as 'the best obtainable version of the truth'. If a Minister or Spad wants to stray beyond this then they should take personal responsibility for their statement.

Hannah Arendt tells a story about Georges Clemenceau who was asked, after the end of the war, who had been responsible for starting it. He replied: "I don't know. But I know for certain they will not say that Belgium invaded Germany."

Officials may not, in particular, transmit to Parliament an answer to a Parliamentary Question or any other information which they believe to be inaccurate or misleading. But officials are not under any obligation to correct a Minister's misrepresentation, whether deliberate or otherwise.

(There may be exceptions to the above rules if national security is threatened, but these are never of concern to the vast majority of civil servants.)

Is this part of the Civil Service Code ever breached? I think the problem is not that officials fail to tell the truth, but some of them are adept at failing to tell the whole truth, and maybe nothing but the truth. I deal with these issues in part 2.2.7 above (institutional integrity) and chapter 3 - political impartiality.

2.4 Personal Impartiality

The Civil Service Code has separate advice on 'impartiality' and 'political impartiality'. In order to highlight the difference, I refer to them as 'personal' and 'political' impartiality.

The code says this on personal impartiality:

> **You must**: carry out your responsibilities in a way that is fair, just and equitable and reflects the Civil Service commitment to equality and diversity.
>
> **You must not**: act in a way that unjustifiably favours or discriminates against particular individuals or interests.

What does this mean in practice?

The public expect both Ministers and their officials to deal equally with everyone, and with every organisation, without prejudice, favour or disfavour. This simple but vital concept has a number of useful consequences.

First, it enables you to ask appropriate questions, however grand the person or organisation with which you are dealing. For instance, an enquiry into the financial standing of a multinational can often be less rigorous than a similar enquiry of a small firm. But large firms and substantial charities can go bust (remember *Kids Company*), so you should never take anything for granted. Ask a carefully targeted question and then decide whether further questions are necessary. Take particular care if you have heard a critical rumour or comment. There can be smoke without fire, but the two are usually closely associated.

Second, it is your defence against the senior or public figure who might otherwise expect you to give them priority, or rubber stamp some sort of application. You must never allow queue-jumping, nor must you ever refrain from asking a pertinent question, whoever you are dealing with.

It is of course perfectly reasonable to 'fast track' some work for a senior person who has a genuine need for it to be done quickly. But you must be sure that you would do the same for anyone else with a similar need, and that they are not jumping ahead of someone whose needs are just as great, but who is less well connected.

Incidentally, the vast majority of senior/public figures understand perfectly well that they have to receive the same treatment as everyone else. If they get stroppy then (a) they believe that everyone should be receiving better treatment (if they are right then you should improve the service to everyone), or (b) they are trying to hide something (never allow yourself to be bullied into dropping a potentially important line of questioning), or (c) they are simply pompous (in which case don't favour them, but don't set out to punish them either).

Third, it is your defence against anyone, including journalists, who might ask you to give them advice and information that you have not given to others. If possible, of course, you should be free with information. But there are no circumstances in which you should give information or advice to one person that you would not give to anyone else that asked a similar question.

Political Impartiality

This complex subject has a chapter to itself:- see chapter 3.

2.5 Appointment on Merit

The Civil Service Code says that civil servants must be appointed on merit on the basis of fair and open competition. This is what it means in practice:-

It is fairly straightforward to arrange a level transfer (i.e. without a significant pay rise) of an official from one job to another. But the need to avoid nepotism and favouritism means that you need to take great care when appointing someone from outside the Civil Service, or promoting someone from within it. The basic rules for these appointments are as follows.

- All such appointments must be made on the basis of fair and open competition.
- All prospective applicants must be given equal and reasonable access to adequate information about the job and its requirements, and about the selection process.
- All applicants must be considered equally on merit at each stage of the selection process.
- Selection must be based on relevant criteria applied consistently to all the candidates.
- Selection techniques must be reliable and guard against bias.

You therefore cannot appoint someone to a job without an advertisement and competition, even if you believe them to be ideally or uniquely suitable. There are limited exceptions, such as for temporary appointments and inward secondees, but you should take a close look at the relevant guidance, and consult your HR team, before attempting to make use of such exceptions.

The Civil Service Commission's Recruitment Principles[6] contain the latest interpretation of the basic principles discussed above.

How to Choose the Right Person

Some departments seem to think that 'fair competition' means that almost recruitment competitions and/or interviews should use standard questions, often delivered remotely and assessed by some computer or algorithm. This strikes me as dangerous nonsense as candidates will present with quite different strengths and weaknesses and these need to be individually explored.

Another problem is that fear of being perceived as unfair, and in particular discriminatory, means that recruiters are often reluctant to spell out exactly what attributes they **don't** want, as well as what they do want. There is, for instance, plenty of room for shy, retiring, academic individuals in some parts of the Civil Service, but many Whitehall and other jobs require staff to be friendly, self-starting, clear communicators and so on. These attributes need to be spelt out and appraised, or else you will end up appointing an ineffective genius - great at completing

[6] https://www.civilservant.org.uk/library/2018-civil_service_commission-recruitment_principles.pdf

crosswords but quite incapable of making decisions or managing fellow humans with all their faults and frailties.

Much further practical advice can be found in my *Leading and Managing Policy Teams* - Part 3 of my *Senior Civil Service Survival Kit*.

2.6 Accountability

It would be easy enough for civil servants to ignore all this stuff about honesty, integrity and so on if it were not for the fact that they were accountable in some way for their behaviour. But what does 'accountability' mean?

It is worth stressing, up front, that accountability means being held to account, scrutinised, and being required to give an account or explanation. It does not imply having to accept advice or instruction. Indeed (with the exception of Civil Service lawyers', doctors' etc. professional bodies) none of the bodies to whom we are accountable can actually discipline or dismiss us. Their power is merely to criticise and shame us.

True accountability is nevertheless very powerful because it causes decision makers to think hard about the range of decisions and behaviours that are available to them, and the fairness, appropriateness and proportionality of each choice. Jonathan Haidt refers to this as *exploratory thought*, and argues (I think correctly) that effective accountability has three vital elements:

- Decision makers learn before forming any opinion that they will be accountable to an audience.
- The audience's views are unknown.
- The decision maker believes that the audience is well informed, and interested in both fairness and accuracy.

Civil servants unfortunately learn very quickly that both they and their Ministers are accountable in many different ways but (with the exception of the courts) their audiences (including Parliament) are seldom well informed and interested in both fairness and accuracy.

Accountable to Whom?

Individual civil servants are principally (and privately) responsible to Ministers who are in turn accountable to Parliament. A small number of the most senior officials are, as Accounting Officers, also directly responsible to Parliament for their stewardship of public funds. Apart from this, however, civil servants are collectively accountable, alongside our Ministers and in a multitude of ways, for the performance of their department and its compliance with the law.

Accountability to Parliament

Accounting Officers are accountable direct to parliament for their, and their departments', **stewardship of public funds** etc. including:

- **regularity** which means the requirement for all expenditure and receipts to be dealt with in accordance with the legislation authorising them, any delegated authority and the rules of Government accounting
- **propriety** which is a further requirement that expenditure and receipts should be dealt with in accordance with Parliament's intentions and the principles of Parliamentary

control, and in accordance with the values and behaviour appropriate to the public sector - see below.
- **value for money** (VFM), and
- **effective management systems.**

Parliamentary scrutiny takes place through evidence gathering by the Public Accounts Committee (the PAC) (assisted by the National Audit Office - the NAO) and other Select Committees. Accountability also occurs through Parliamentary Questions/Answers and debates, correspondence with MPs, and the Parliamentary Commissioner for Administration - the "Parliamentary Ombudsman".

But Parliamentary scrutiny unfortunately seldom meets any of Jonathan Haidt's tests listed above. Parliamentarians love *'naming and shaming'*, and the parliamentary spotlight too often moves frequently and unpredictably. The views of MPs, when they do get involved in one of our issues, are often highly predictable, driven by party-political considerations, and not least the governing party's need to support the Prime Minister.

Also, although Parliamentarians cannot of course be expert in many of the areas in which they are asked to form judgements, they seldom draw on sufficient, expert, outside advice. They are also not skilled in questioning those who appear before them (who - unlike MPs - often prepare for hours or days in advance of their appearance).

All this in turn means that most Parliamentary reports are politics-driven, or at least driven by a desire to look good by criticising Ministers, or criticising officials who can neither argue back nor point to bad Ministerial decision-making. It is no wonder that most PAC reports, and many Select Committee reports, have very little long term impact.

Accountability to the Public

Departmental performance and behaviour are scrutinised by the media, other interested bodies and individuals through the medium of annual reports, correspondence etc. with the public, press notices and briefings and consultation processes. These are all very important mechanisms but none of them fully meet all of Jonathan Haidt's tests.

It is occasionally useful to remember that we are not under any duty to respond to all media interest. Although we should generally aim to be free with information, there is no need to engage with media that will use their relationship with us merely for entertainment or to boost circulation.

Accountability to the Courts

Judicial Review is a very effective way of holding officials and Ministers to account; a reason, no doubt, for JR's growing popularity. Only Judicial Review meets all three of Jonathan Haidt's tests of effective accountability, summarised above**.**

Audit

There is one other essential set of safeguards in the form of audit processes backed up by incorruptible management assisted by careful selection processes when senior civil servants are appointed from outside the Service. The National Audit Office, the Civil Service itself, and the

Civil Service Commissioners, are thus themselves an integral part of the structure of accountability.