

The Hugh Kay Lecture: Are we in a post-Nolan age?



PUBLISHED NOV 12, 2020
BY [GOV.UK](https://gov.uk)

STANDARDS IN PUBLIC LIFE: ARE WE IN A POST-NOLAN AGE?

Thank you, I am very pleased to be doing this - there is a long relationship between CSPL and IBE, we operate in different spheres but have a lot of interests in common.

Today I am going to ask whether we are in a post Nolan age.

In recent months we've heard a new phrase used by academics, commentators, and members of the public who have an interest in public standards. That phrase is a "post-Nolan age".

Similar sentiments appear in messages received by my Committee over the past few months in our public mailbox:

"I feel a great sadness that the moral framework which has guided British public life for the past quarter century appears to be well and truly over", said one email.

"I am not a member of any political party but very concerned at the erosion of democracy and honesty. I fear for my children and their children having to live with the consequences of the lack of public accountability".

These members of the public are concerned by the perception that those in public life no longer feel obliged to follow the so-called Nolan principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership - otherwise known as the Seven Principles of Public Life.

These principles have long underpinned the spirit of public service in this country, and were first formally articulated in Lord Nolan's seminal 1995 report - the first from the Committee on Standards in Public Life, of which I now am the

Chairman.

In this lecture I would like to talk about why the Nolan principles are still relevant, indeed critical, for the health of our public life – both for those in public office and others, who run businesses, why we need effective arrangements to underpin the Principles, why some feel that those arrangements are under pressure and what can be done about it.

Since 1995 it has been increasingly accepted that anyone in public service should act in accordance with the Seven Principles. The Principles apply to Ministers and MPs, all civil servants, local government officials, public bodies, the NHS, agencies as well as private companies and charities delivering services on behalf of the taxpayer.

To a sceptical eye the Principles may appear to be little more than a list of moral generalities that serve no practical purpose.

But this is to miss the scale and scope of their impact. These Principles are not a rulebook. They are a guide to institutional administration and personal conduct, and are given a hard edge when they inform law, policy, procedure and Codes of Conduct.

In their essence, the Seven Principles are there to govern the legitimate use of entrusted power in public life. All of us in public life, whether through democratic election or public appointment, have some degree of power afforded to us on the public's behalf, whether it is the power to make decisions on benefits, to spend money on schools, to legislate to protect public health or to influence debate. This power is lent to us to be used for the good of the public.

This is where the principles take effect. It is a norm in UK democracy that, for example, we expect office-holders to use public funds for the common good, and not to enrich themselves or their families. We expect elected representatives to work for their vision of the common good, rather than acting for their own personal advantage. And we take for granted, that there should be fairness in the decision-

making processes – in areas such as policy, planning, and procurement – that will shape our future.

Imagine a democracy without ethical standards. A political system where there are free elections, but where those elected make decisions solely in the interests of their supporters or paymasters; where public funds are systematically diverted to private purses; or where policy is sold to the highest bidder. Such a corrupt system is not democracy in any real sense. Democracy means more than just an elected dictatorship.

To be elected or appointed and to receive a publicly funded salary may place an individual in public office. But fulfilling the requirements of that office means recognising and upholding the ethical requirements that underpin it.

The Seven Principles, tested regularly through research over the last 25 years, outline this implicit contract between those that govern and the governed, setting the terms for the acceptable exercise of power. And at no other time in our post-war history has this contract been more important, when our government is asking its citizens to live with major restrictions and changes to their daily lives.

Elections and institutions give us a constitutional framework, but the Seven Principles of Public Life define the character of our political system. Lord Nolan's Principles remain as essential to the functioning of our democracy now as they did 25 years ago. They articulate a long-standing model of public life in this country.

At the time of Lord Nolan's report, business had just begun to work in the public sector. Public service delivery models have moved on since then, and even before this pandemic the government spent around a third of public expenditure – over £280 billion a year – on goods or services provided by private companies. Today, in many areas, private companies deliver public services directly, and so in 2013 the government made clear that any organisation delivering services on behalf of the taxpayer is also subject to the Seven Principles of Public Life.

Outsourcing services like healthcare, prisons, transport, education does not mean outsourcing this ethical contract with the public. It does not mean that the Nolan Principles are set aside. Our own research with the public on this issue came back with a really clear message – they did not particularly care whether it was the public or private sector providing the service, what they wanted was common standards.

The Committee has reported twice on public service providers in recent years. We recognise that the application of public sector norms to private sector companies is not without its difficulties. Where does the obligation to the public good sit against a company's legal obligation to its shareholders? Where does the principle of selflessness fit in?

Nevertheless, business leaders increasingly recognise that they have responsibilities that go beyond mere shareholder value alone. Public standards and business ethics are rarely if ever in conflict. Both form the basis of sound decision-making and good corporate governance. Governments and businesses that assess evidence objectively, that make decisions on the basis of long-term goals, and those that are not swayed by the temptations of personal advantage at the expense of collective gain, are more likely to succeed in the longer term than those who do not.

Our reports pressed government to do more to clarify and demand high standards of conduct for businesses operating in the public sector and set out how businesses aiming to supply government could demonstrate that they are living up to those standards.

High profile contract failures – and the subsequent impact on the public – continue to make the case for shared ethical standards.

And as government demands these standards from business, business should also ask the same of government. High standards are mutually beneficial. Public standards make the UK a more attractive commercial environment. Where the Seven Principles underpin proper process and procedure, government decisions are predictable and trustworthy.

Businesses can plan long-term investment in the knowledge that government decision-making rests on sound ethical foundations and can, if necessary, be challenged in strong and independent courts. An issue of central importance in my view.

Low public standards should, therefore, be as worrying to business as they are to my Committee. I noted with interest very recently – and this adds weight to the post-Nolan argument – that Moody's downgraded the UK's credit rating and I think in part due to "the weakening in the UK's institutions and governance".

So what are those structures and institutions that constitute the British standards regime?

The Guardian's breaking of the 'cash-for-questions' scandal prompted then Prime Minister Sir John Major to ask Lord Nolan to examine the arrangements that govern standards of propriety in public life. Nolan concluded that although a vast majority of those in political life and public office were of exemplary moral standing, it was not enough to rely on personal character, and that procedures for enforcing standards needed strengthening.

And so began what Professors David Hine and Gillian Peele have called quote the "long march of the Committee on Standards in Public Life". Over the past 25 years, the following regulatory mechanisms have been established and evolved:

The House of Commons and House of Lords Commissioners for Standards, to set and oversee published Codes of Conduct;

A Ministerial Code, owned and published by the Prime Minister, supported by the Independent Adviser on Ministerial Interests;

The Independent Parliamentary Standards Authority, which separated expenses from the House Authorities to support MPs and protect the taxpayer;

The Electoral Commission, which ensures the fairness of our

elections, and aspects of whose work are currently being reviewed by my Committee;

An independent Commissioner for Public Appointments, to ensure that ministerial appointments to public boards are made fairly and on the basis of merit, rather than patronage;

A statutory Civil Service Commission, to regulate appointments and act as an appeal mechanism for civil servants who want to raise concerns against the Civil Service Code.

And a number of significant reforms have been made to address lobbying and improve standards in local government, accompanied by a necessary revolution in the transparency of party funding, ministers' appointments on leaving office, and MPs' expenses and second jobs.

Cumulatively, there is no doubt that Hine and Peele were correct to call these changes a "profound transformation of the landscape of British government" over the last 25 years.

I would also like to recognise the role of the free media in all this. While there may be concerns about some excesses, their role in uncovering and highlighting standards issues is vital for scrutiny and helping to ensure ethical conduct. I can recall myself when I first became the head of MI5 a wise colleague advising not to do anything I would be embarrassed to see in the Sunday papers. A free media is a useful safeguard.

But if this process of institutional innovation has succeeded in implementing Lord Nolan's vision, why are there voices today who worry that we are living in a post-Nolan world?

It was the renowned business theorist Peter Drucker who coined the famous aphorism that "culture eats strategy for breakfast". The business world has long been aware that in organisations, behaviour is shaped by culture at least as much by codified structure as by policy.

Lord Nolan would have agreed. His wise report advocated greater education about standards recognising that though formal regulation was essential, high public standards were

ultimately a question of organisational culture and, critically, of personal responsibility.

“Culture” is not easy to define. On a personal note over the past 7 or so years, since I have been working in the private sector, I have lost count of the number of meetings that discussed culture programmes and their complexities. But we can recognise it when we see it. High ethical principles will be integrated into everyday decision-making processes. Innovation will seek to translate the principles into new contexts, rather than leave them behind. There will be adherence to norms, procedures, and processes of good governance with trusted outcomes. And of course, visible ethical leadership – the right tone from the top is an essential element of any culture transformation.

The post-Nolan accusation is that our public culture is changing for the worse. Quite simply, the perception is taking root that too many in public life, including some in our political leadership, are choosing to disregard the norms of ethics and propriety that have explicitly governed public life for the last 25 years, and that, when contraventions of ethical standards occur, nothing happens.

But if someone acts in ways that breaks the rules or violates the principles, they should be answerable for their conduct. Many are questioning if this is still the case today. In fact the Nolan principles are there in part to underline that those in office have ethical responsibilities which they should comply with, even if they can get away with not doing so – ‘doing the right thing even if no one is watching’. However, the nature of partisan Parliamentary politics can mean that the issue becomes not whether someone acted correctly or not, but whether there is the political will to deal with it.

It would be remiss at this stage not to mention – as again Lord Nolan noted 25 years ago – the commitment of the vast majority of public servants to the highest standards of conduct. Our public sector culture is a positive one. This pandemic has caused some concerns, but it has also demonstrated the overwhelming dedication of our nurses, our doctors, police, local government officials, civil servants and

MPs to a public service ethos, often under intense stress and strains. And I would add that many in the private sector have shown similar dedication.

And having taken a step back, it's unrealistic to think there has never been a scandal-free 'golden age' of British politics. Winston Churchill's financial arrangements as a Member of Parliament would today raise many questions. "Cash for questions" and "sleaze" dominated in the 90s, party funding and expenses were the standards issues of the 00s, and lobbying concerns in the 2010s. Governments of all stripes have faced accusations that they are bending the rules to their advantage. Research carried out by my Committee from 2002 to 2014 revealed that the British public perceived standards in public life as low and declining. But then again research in the 1940s found the same.

The "post-Nolan" analysis also ignores some of the considerable successes of the last 25 years. The Principles are embedded in most public sector institutions, and there are now well-established regulators able to consider standards issues in a particular context. MPs' expenses are now transparent. Parliamentary commissioners of standards in the Commons and the Lords have considerable powers of investigation and a range of sanctions. The public appointments regime is hugely developed in comparison to 25 years ago when a 'tap on the shoulder' was the norm. The National Audit Office is scrutinising government Coronavirus contracts as we speak. The Principles themselves have been consistent since 1995 while practice has been flexible and has changed and developed. In many areas of public life, those seeking to act that breach the Principles of Public Life will come up against formidable institutional obstacles.

Nevertheless, there are reasons for real concern. And I'd like to give some examples.

There can be little doubt that the handling of Richard Desmond's proposed scheme to redevelop the Westferry Printworks knocked public confidence in the fairness of the planning system and as far as I am aware there has been no independent investigation into conduct concerns that the

Ministerial Code had been breached.

The bullying allegations made against the Home Secretary were investigated by the Cabinet Office but the outcome of that investigation has not been published, though completed some months ago. There may be legal complexities underlying this but those have not been made clear and this does not build confidence in the accountability of government.

In both cases, it is not necessarily the outcome of the investigation that is the problem. Rather, it is the fact that the process for dealing with allegations of ministerial impropriety are not transparent or independent, so accountability is limited. In its current state, there is little reason for the public to trust this process and its outcomes.

And other parts of our standards regulation are under pressure too – namely our public appointments regime, as the independent Public Appointments Commissioner recently made clear in his evidence to the Public and Constitutional Affairs Committee. Lord Nolan was clear that Ministers should retain the final say on who to appoint but that it is not “necessary or desirable to make affiliation a criterion for appointment”. It is not unusual or wrong for governments to want to appoint people who share their views; and political activity is not a bar but cannot be a reason for appointment. Merit must be at the heart of the system, not cronyism or patronage. A fair and open appointment process for leaders of organisations and public bodies is necessary for public trust in our institutions – and also to attract talented people to these important roles.

Public expenditure is back in the spotlight. The suspension of normal procurement rules has exposed the public purse to an unprecedented level of risk. Process-free procurement creates the opportunity for cronyism and distrust. It is no surprise that allegations are rife that contracts are awarded to those with political ties to the government. These may be unfounded, but without proper process the public won't know. I am therefore pleased that the National Audit Office is, quite rightly, looking at Coronavirus procurement.

And finally, governments past and present have been too easily tempted to disregard the norms of democratic accountability. Proper scrutiny and debate may be perceived as a hindrance but our parliamentary processes undoubtedly improve the quality of government decision-making and the laws that are passed. The principle of ministerial accountability underpins the legitimacy of office and cannot be substituted for the firing and hiring of senior civil servants. Mounting public disquiet is not without foundation.

It's not the role of my Committee to investigate alleged breaches of the rules, and I'm not drawing conclusions in any of the cases alluded to in this list – but nor is this list exhaustive. Taken together, these issues lead some to believe there is a culture of impunity seeping into British governance.

It's possible for politicians to say that the judge of whether they have acted appropriately is the electorate – 'let them judge, and if they don't like what we've done, they can kick us out.' That populist reading of the character of the constitution and its system of accountability effectively claims impunity for government actions from anything other than the ballot-box. The accountability of ministers to Parliament, the regulations governing the use of special advisors, the clarity about who is taking which decisions on the basis of what judgments about the evidence, adherence to the normal rules of political practice – all that can fall by the wayside in the name of electoral mandate.

If that is the world we are in, then we really would be 'post-Nolan'. But we should recognize how much of our public life would also have changed. This affects not only those in politics: it remodels the framework within which civil servants and a whole range of public officials operate and leaves them without grounds for questioning the basis on which decisions are made, policies developed or contracts awarded. A populist reading of government responsibility erodes the independence of the administration and the quality of public service delivery – and often does so intentionally. It makes them wholly subordinate to politics.

This is like turning football into a game where the rules are

set by the crowd. While the crowd is certainly sometimes right, giving it direct authority over the game and its rules changes the game fundamentally. It also raises questions as to how far the crowd is being manipulated in ways they do not themselves recognize, by whom, and for what purposes. And it obscures the distinction between those who can make most noise, and the interests of the public at large.

So if there are genuine and valid concerns underlying the post-Nolan allegation, what is to be done?

Maintaining standards in public life – like maintaining standards in business – takes sustained work. Sorry to say that there is no silver bullet. But nor am I shaking my head in despair.

An expectation of adherence to high standards of conduct applies, in the UK, both to public officials and to those in elected office. For public officials, standards of conduct can be laid down as a condition of employment and thus are more readily enforceable. In this way the system for officials is analogous to arrangements in the private sector. But it's more complex for those in elected office who owe their positions to the democratic choice of their electors. (And I suppose I should add that it is even more complex for Members of the House of Lords like me who are neither employed nor elected, but let us not stray into that particular thicket!)

It remains the case, however - in politics, public service, and business - that ethical standards are first and foremost a matter of personal responsibility. Everyone - from ministers and Chief Executives to junior staff and officials - must choose to uphold in their everyday work the ethical values their organisations proclaim. Culture programmes can encourage good practice, and regulators can encourage compliance, but ultimately high public standards are a decision for the individual. Few systems are sufficiently robust to constrain those who would deliberately undermine them.

The position for the government itself is more problematic. Ministers have a responsibility to abide by the Ministerial Code, which is partly a guide to standards and partly an

instruction manual on Cabinet government. The Prime Minister specifically mentions standards in public life in the Code's foreword. But enforcement of the Code lies ultimately with the Prime Minister. This can leave the Prime Minister in an invidious position, faced with the dilemma of how to avoid political damage on the one hand, and how to maintain standards of conduct on the other.

The Prime Minister has an Independent Adviser on Ministers' Interests but the Adviser currently has no independent power to initiate investigations and, even when an investigation is undertaken, no ability to publish the outcome. My Committee has previously called for more independence to be afforded to the Adviser and I continue to believe that this may be a necessary step. Current arrangements quite clearly fall short of the normal processes of standards regulation. In no other area - including parliament - is the investigatory process so limited and politicised. Whilst sanctions must remain in the hands of the Prime Minister, as ministers are exclusively political appointments, there is no reason for the investigatory process to be so. We will be looking at these arrangements as part of our latest review in order to ensure high standards of transparency and accountability, and such a change would also free Prime Ministers from their current uncomfortable dilemma while still leaving them with the power to take action, or not, as they judge necessary.

There are weaknesses and unfinished business in the standards structures which is why my Committee is keen to hear from business, the public and those who work for the public, in our current landscape review, Standards Matters 2. The strength of the Committee - and probably why it has lasted as a rather strange quirk of the constitution - is in hearing from all sides on tricky issues, assessing the evidence and suggesting improvements.

CSPL is not a regulator. We are part of a complex machinery of checks and balances where our role is to monitor that machinery, improve it and identify areas where it's deficient. But the spate of concerns expressed about adherence to our standards framework and the Seven Principles of Public Life should not be ignored.

The government's ability to lead the country through the Coronavirus crisis will be strengthened, rather than undermined, by an adherence to high standards. You can't fight a pandemic if people do not trust the government. A clear commitment to Honesty, Objectivity and Accountability, and Leadership as outlined in the Nolan Principles, would seem to me a good place to start if you want to maintain public trust.

There are many reasons to doubt that we are truly post-Nolan. We are not at a point where we have lost trust in nurses, teachers, council officers or benefits staff. We may be cynical about politics, but few people believe their own MP to be corrupt.

This turbulent and divisive time in our national life – and overseas – will eventually have to come to an end. Politicians of all colours will need to focus on ways to bring a divided public with them. This will undeniably involve looking for the common ground and common standards.

The Nolan Principles, far from being a thing of the past, provide the standards and tools we need to find a clear route through.

Thank you.

Press release distributed by Media Pigeon on behalf of GOV.UK, on Nov 12, 2020. For more information subscribe and [follow us](#).

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