

*Acting in the public interest:
a framework for analysis*



ICAEW and thought leadership

ICAEW's remit is based on its 1880 and 1948 Royal Charters which in effect established that a public interest perspective will be applied in its work.

As a world-leading professional body, ICAEW provides leadership and practical support to over 149,000 members in more than 160 countries, working with governments, regulators and industry to ensure the highest standards are maintained.

ICAEW Chartered Accountants can be found in all sectors of the economy, have a wide range of expertise and work to the highest technical and ethical standards. Breadth and reach underpin ICAEW's power to convene, bringing together those with a relevant interest to discuss matters of common concern and identify how we can make a valued contribution.

ICAEW's thought leadership work involves evidence gathering, forensic analysis and the development of practical policy proposals and professional guidance aimed at improving how markets work. The Market Foundations programme is seeking to utilise these skills to analyse and challenge some of the assumptions and structures surrounding the basic building blocks on which market transactions are based.

We welcome views and comments on this report and the other themes of the Market Foundations programme. To contact us, please email marketfoundations@icaew.com. For more information on Market Foundations and to download reports, visit icaew.com/marketfoundations

1. Summary: a public interest framework

1.1 PURPOSE OF THIS REPORT

To justify a proposal on the grounds that it is in the public interest is a significant challenge and the concept of the public interest should be used sparingly.

We set out in this report a practical framework for use in respect of proposals which may be, or have been, justified as being in the public interest. It takes a distinctive view of public interest validity as drawing on a pattern of behaviour that builds up reputation over time, as well as information directly relevant to the proposal.

The framework will be useful in determining usage of the concept, in focusing and demonstrating the thought process involved, and in challenging usage by others.

1.2 THE NOTION OF THE PUBLIC INTEREST

In most societies there is a basic presumption that people should be able to go about their own business in their own interests. In the course of this they will interact with other people and influence and be influenced by their activities. However, there are further influences on people's activities: when governments, regulators and others seek to intervene in the public interest.

The form of intervention we concentrate on in this report is usually by organisations seeking to change people's actions through laws, regulations or other methods of persuasion. However, individuals can intervene by taking public interest actions themselves, for example by overriding confidentiality requirements to disclose bad behaviour by others.

The public interest is an abstract notion. Asserting that an action is in the public interest involves setting oneself up in judgement as to whether the action or requirement to change behaviour will benefit the public overall – a far greater set of people than can be interacted with directly. It involves interference in people's ability to go about their business or sometimes, as a positive policy decision, non-interference in the face of alternative actions.

Other terms can be used, largely interchangeably. Examples include public benefit, the public good, and the common good – the latter in the sense of the public having a common purpose, rather than goods to which there is common access. While we use the public interest throughout, the same issues apply to use of these other terms.

Invoking the public interest requires justification of an ability and right to decide what is for the greater good, in the face of a natural suspicion that those proposing an action in the public interest are actually acting in their own interests.

1.3 OUR APPROACH TO THE PUBLIC INTEREST

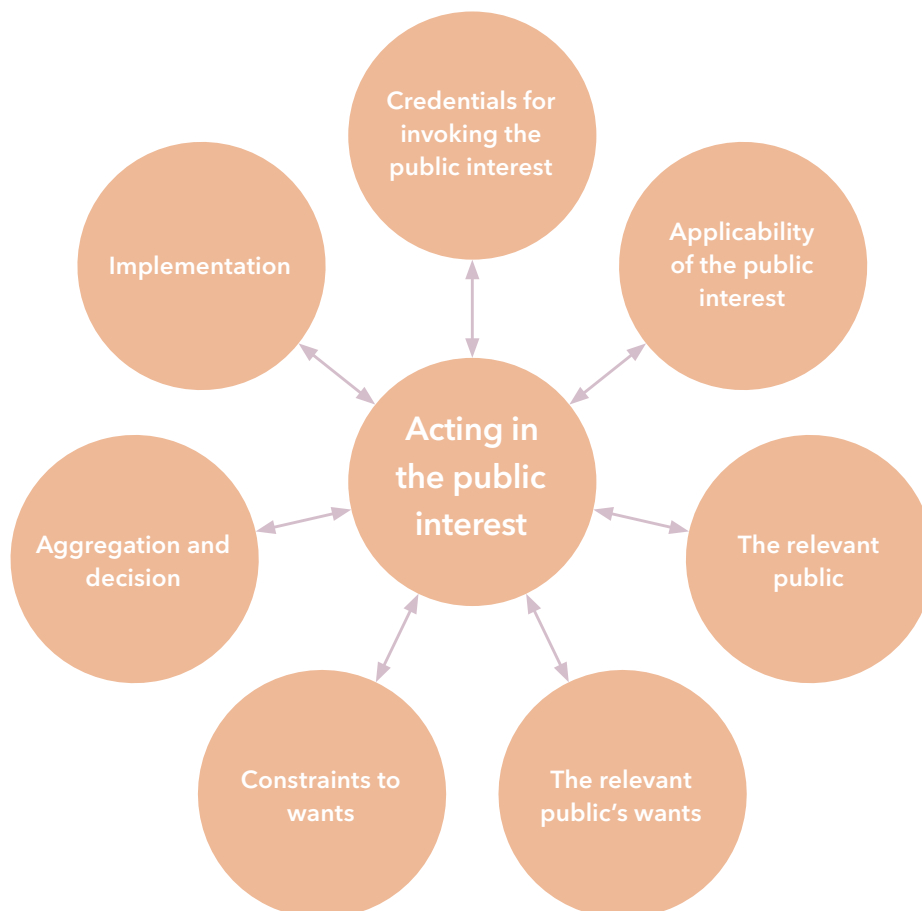
We do not seek to establish a detailed definition of the public interest. There is an infinitely wide set of individual circumstances, which detailed definitions are unlikely to be able to cope with without unintended consequences.

Instead we set out a framework, which seeks to allow for variation in circumstances and public interest meaning. As noted above, it should be of assistance to policymakers and others who claim to be acting, or implementing measures to act, in the public interest, to understand or test what they really mean. It will also help those with a need to assess such actions, to make their own determination of whether the public interest card has been played legitimately. It can be used as part of the decision-making process or as a sense check on the outcome of that process. We expect to evolve the framework in the light of comments received and experience.

Our framework is based around the key issues that need to be addressed by those who are facing the challenge of justifying actions as being in the public interest. The framework covers a number of stages:

- justification of credentials for the right to invoke the public interest;
- identification of whether a matter is actually a public interest matter;
- consideration of who the relevant public are, what they want and whether their wants contrast with needs or other constraints;
- aggregation of sometimes conflicting input and resulting decision; and
- implementation of the desired action.

This report is relevant to the accountancy profession and more broadly. It considers all circumstances in which organisations seek to change people’s actions through laws, regulations or other methods of persuasion. In this context the framework should be useful to anyone as a tool for challenge and relevant to any of the wide range of actions that are asserted to be in the public interest. However, the framework also has a role for individuals considering an action such as disclosure of a matter that would otherwise be confidential, in the public interest. In some circumstances, transparency requirements will be lower for an individual undertaking his or her own action than for an organisation advocating change in others’ behaviour, but scepticism about motive is still appropriate and the same principles and questions can be applied.



The true measure of whether someone is acting in the public interest lies in the confidence of those affected, not those making the pronouncements. Therefore the need for those asserting that they are acting in the public interest to consider actual and perceived threats to fitness to decide, and the application of relevant safeguards, will apply throughout the process. The way a public interest action is determined, and seen to be determined, and the public interest appropriateness of the solution, will influence the acceptance of the measure. This will, in due course, affect the reputation of those implementing the action and that, in turn, will help with future acceptance and implementation.

1.4 THE FRAMEWORK

The stages in the framework interact and the whole process is iterative. The diagram below and the summaries that follow it set out the seven key areas to be considered in making the assessment:

FIGURE 1: PUBLIC INTEREST FRAMEWORK

Credentials for invoking the public interest

Trust in those making assertions that they are acting in the public interest is vital: as a validation; as a motivation to comply; and, ultimately, to reduce the need for evidence to support the assertion.

As illustrated in Figure 1, the elements of the framework interact in this respect: the rationale for invoking the public interest generally involves persuasion and justification, and that justification influences the amount of trust engendered in the relevant public. This, in turn, affects the effectiveness of the persuasion.

People in many societies today are generally distrustful of the motives of those in authority. Indeed, there is academic evidence to support a presumption that invoking the public interest is a smokescreen to disguise self-interested action, whether deliberately or subconsciously

It is helpful, therefore, for proponents of public interest actions to consider what the key threats to trust by the relevant public might be (eg, conflicts of interest) as well as threats to making the right decision (eg, past mistakes).

Safeguards to be applied will generally include measures to improve process and accountability. They could include, for example, transparency of process, impact analysis, feedback enabling learning from past errors, sense checking, and oversight. Publicised undertakings to apply all or some of these can help in their own right, provided they are followed through.

This framework could act as part of the decision-making process, or as part of a sense check to ensure that the process has not produced a perverse end result.

Applicability of the public interest

The use of the concept of the public interest as justification will present a challenge. It should be used only where it needs to be used and where it can be supported - ie, the matters raised in this framework can be addressed satisfactorily.

The public interest is an abstract notion; to argue and be able to hold out that an action (or inaction) is in the public interest can require consideration of a number of complex factors and impose a burden of proof. Flaws in the argument or the outcome can rebound upon the reputation of those asserting that they are acting in the public interest, which will harm acceptance of future matters said to be in the public interest. Alternative means of justification may be preferable, where much of the public is scoped out, or can opt out.

Matters to consider might include ie, the purpose of seeking to invoke the public interest; whether the matter is really intended to be for the benefit of society, as represented by the relevant public - this will involve a wide section of the public, whether they like it or not; whether the locus or remit of those seeking to act in the public interest permit or require a public interest perspective; and whether there are political or other practical considerations that might result in a sub-optimal outcome from a public interest perspective.

Even if the issue is not a public interest matter, the framework may still be useful to those advocating an action that impacts upon a fairly wide group of people, but the justification used should fit the purpose.

It is important to consider whether the likely debate would be about what outcome would be in the public interest. It may instead be that, while the desired outcome is agreed, there are different expectations of what is likely to happen in the future, leading to different views on what actions are needed to achieve that outcome.

The relevant public

The whole of the public must be eligible for consideration in respect of a matter which is asserted to be of public interest, by its very nature. However, as a practical point, there will be large numbers of people whose welfare will not actually be affected by the action.

The relevant public will therefore only be a subset of the whole public: those 'affected'. This will include those whose welfare will be advantaged or disadvantaged, although this is not always clear-cut; also, others with a legitimate interest, for example NGOs, representative bodies and others with a mandate to speak on behalf of people who are affected. Within the relevant public there will also be degrees of impact, which may be relevant in determining how to weight views.

The relevant public will not include those whose interest merely lies in finding something interesting. That is a different meaning of interest altogether.

The relevant public's wants

Having determined who comprises the relevant public, the proponent of the public interest action's first consideration in determining what is in their interest should be what their wants are and whether the action is consistent with those. In some circumstances, fundamental values may be the starting point but popular opinion must be relevant. However, determination of opinion is not easy. First, by its nature, the relevant public in a public interest matter will be broadly based. Second, what people want is complicated: it usually revolves around happiness, which is a subjective notion built around a whole series of factors that often conflict with each other, those of other people and those of other cultures. Wants therefore tend to conflict. Third, interests can coincide with those of others and interest groups will be created. Inevitably some will have a public interest perspective and some not. Some are more articulate or otherwise better at making themselves heard than others and expressed opinion will not necessarily be the same as actual opinion.

Having sought out representative opinion from the relevant public, it can be helpful to apply a sense check. A rational imputation of wants will consider: what would we expect the relevant public to want standing in their shoes? Intelligence and creativity have an important role to play in making the assessment too. Sometimes it may be difficult or impossible to gather opinion and a theoretical assessment will be the only option. This does impose a greater burden of proof of ability and right to decide, as the assessment will inevitably be challenged by those with different views.

Constraints to wants

The relevant public's wants may be incompatible with a public interest outcome for a number of reasons. The overall impact of individual wants may be a sub-optimal outcome through the effect of one person's activities directly affecting another's, or through what the public think they want being distorted by incomplete or wrong information. Common goods and services and other externalities and public goods result in a different marginal cost-benefit to individuals than to society as a whole, especially taking qualitative issues into account. Overriding values may arise, for example, from seeking to lead a change in attitudes. Finally, when trading current against future effects, people tend to discount the latter very heavily in their minds.

As a result, the relevant public's wants may need to be adjusted. However, the assertion that 'we know better' is rightly open to challenge and there will be an onus on those asserting an action to be in the public interest to explain why they know better.

Aggregation and decision

Those determining a public interest action need to apply, and be seen to be apply, judgement to information gathered about individual wants. There may be a series of measurement issues to overcome, including: quantification; interaction; weighting; and how to maximise the end result when there may be several acceptable solutions.

A logical approach is needed to determine what outcome would be in the public interest, or in instances where there is a range of potentially positive outcomes, what would be most in the public interest. A decision based on a rational basis of calculation will assist transparency but is easier said than done. Use of informed intuition and impact analysis of costs, benefits and probabilities may be relevant, although this will at least partially depend on the nature of those determining a public interest action.

Implementation

If a proposed public policy action is in the public interest, it follows that it is in the public interest for that action to be implemented, and implemented effectively. This requires post-decision action by those charged with implementation, following consideration of how best to do it. That in turn depends on three key aspects. First, how will those affected actually be expected to react to the changes being implemented, given human nature? Is it even clear (especially in an international context) what the 'right' thing to do is? Many public policy initiatives have foundered because they are based on perceptions of how people should react, rather than how they actually do behave. Second, are those affected able to be assured that the advocate of the action can be trusted to make a decision in the public interest? This is considered under the first element of the framework but is also relevant here as people's perception of motives will affect that reaction. Third, practicalities: what remit and authority does the advocate have, and what education, publicity and support tools will be available?

The answers to these questions will all inform the decision on the relative degrees with which persuasion is balanced with outright requirements. Reaction needs to be anticipated in assessing the various combinations of 'carrot, stick or sermon' that may be needed.

1.5 FEEDBACK

This report is issued as much to stimulate debate to evolve the framework further as to propose solutions: ICAEW welcomes comments on the analysis in this report and the proposed framework. In particular, readers are invited to give their opinions on the set of assertions summarised at the end of the report. Comments will be taken into account in deciding on ICAEW's future work in this area.

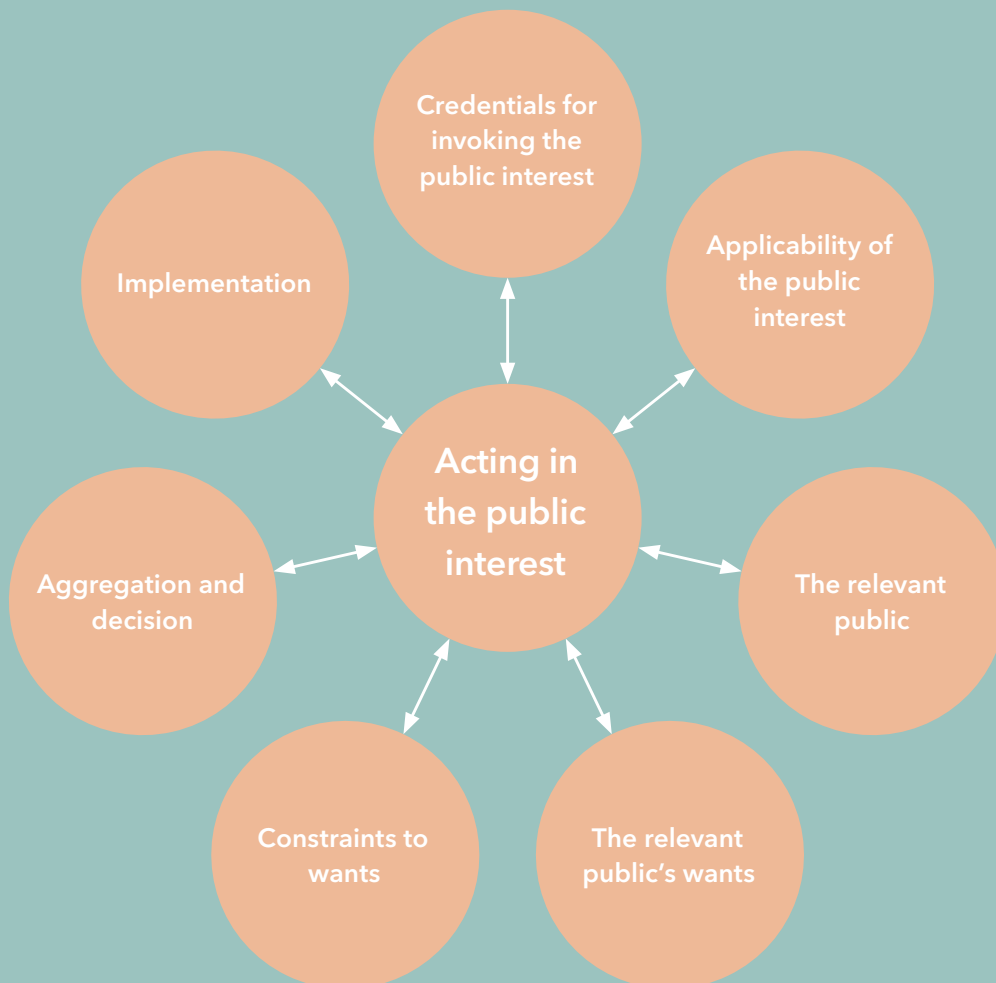
2. Introduction

People use the phrase 'in the public interest' to justify a wide range of policy proposals and actions. However, it is often unclear what they mean by this and what others are supposed to make of the claim.

What issues are involved in using and applying the concept of the public interest?

How has the concept evolved?

How is the concept relevant to professions?



2.1 CONCEPTS OF THE PUBLIC INTEREST

There are at least two concepts of the public interest:

- One concept applies the words literally: the public interest is thus anything of interest to the public. However, matters that are for the public benefit are not necessarily the same thing as matters which the public finds interesting. We do not regard the degree to which a matter is thought 'interesting' as indicative of something being a public interest matter and do not dwell on this concept.
- Instead we focus primarily in this report on a different usage of the concept - when governments, regulators and others intervene in the public interest in the course of people going about their own business in their own interest. Freedom to act in accordance with one's own wishes is a key public want and interference with that needs a clear justification.

Acting, or appearing to act, in the public interest is not a general requirement for all or indeed most actions by individuals or organisations, however, some are required to do so as a result of their remit and others choose to do so through, for example, a sense of duty, or as a means of enhancing their reputation and influence. As a result, the phrase 'in the public interest' is used by governments, politicians, regulators, lobby groups, professional bodies, journalists, activists, businesses in the public eye, academics and others to justify a wide range of policy proposals and actions that affect more than a small circle of people. In addition, individuals will sometimes override normal convention (for example confidentiality of private dealings) because they believe that override to be in the public interest.

ICAEW is one of the professional bodies in that list, both in its own conduct and intentions and in its representations to governments and other regulators. An understanding of the concept and how it is used is therefore critical to ICAEW directly, as well as to governments, other regulators and others advocating an action in the public interest, and to the public whose interest is taken to be promoted by so many in their name.

2.2 USAGE OF THE PUBLIC INTEREST

A brief trawl of the internet via a website search engine picks up numerous references to action or inaction being justified 'in the public interest'.

PANEL 2.1: EXAMPLES OF USAGES OF THE PUBLIC INTEREST

- "Not in the public interest" to release picture of pub killer.¹
- 'The primary objective of the Subordinate Legislation Act 1992 is to reduce the burden of regulation on the Tasmanian community. The Act aims to ensure that only effective, efficient and necessary subordinate legislation is made and that, in cases where it imposes a cost or burden on the Tasmanian community, it is justified as being in the public interest.'²
- 'Preventive detention of a person in the public interest is justified and courts cannot interfere with it unless there are "exceptional" circumstances, the Supreme Court has said.'³
- 'Not in the public interest to reopen the dispute between Western Cape Judge-President ... and the judges of the Constitutional Court.'⁴
- 'Sector consolidation may be against the public interest in many circumstances.'⁵
- 'The High Court on Sunday ordered law enforcers not to requisition private vehicles except in the public interest.'⁶

These examples alone cover such diverse areas as privacy, regulation, security, legal proceedings, competition, and government powers.

But, for all its usage, do we know what people mean when they talk about ‘the public interest’? Do they know what they mean? Do they have enough knowledge to decide what action is best in the public interest? Is it just a smokescreen to justify self-interest? How can a presumption that this is the case be countered?

ICAEW’s Market Foundations thought leadership programme looks at conditions necessary for market efficiency, in which individuals, as buyers and sellers, make their own decisions and go about their own affairs. Sometimes intervention is necessary to achieve specific requirements by society, to correct faults in markets, and to create an infrastructure where none would otherwise exist.⁷ One of the key conditions necessary for markets to be effective is trust and this extends to those intervening in markets in the public interest. This report builds on academic and other writings on the subject, and seeks to promote debate on the use of a notion used to justify so much, enhancing confidence in markets and elsewhere: not all of society operates within market structures at all times, but the public interest as a concept is no less important in non-market areas.

While the report looks at public interest from a general perspective, there is a discussion of the position of the accountancy profession, and ICAEW in particular, in a number of chapters, by way of illustration.

Terms other than ‘the public interest’ can be used, largely interchangeably. Examples include public welfare, the public good, and the common good – the latter in the sense of the public having a common purpose, rather than goods to which there is common access.⁸ While we use the public interest throughout, the same issues apply to use of these other terms.

There are a number of areas where more work would be useful: this is a wide-ranging topic and this report looks at many of the areas covered at a relatively high level.

2.3 APPLICATION OF THE PUBLIC INTEREST

We do not seek to produce a detailed definition of the public interest. Where there are specific definitions used, they tend to be for a very particular purpose other than determining whether an action is or is not in the public interest.

PANEL 2.2: EXAMPLE OF DEFINITION OF PUBLIC INTEREST FROM A SPECIFIC PERSPECTIVE

A policy position paper by the International Federation of Accountants (IFAC) takes a broadly utilitarian approach to the public interest, defining it as ‘the net benefits derived for, and procedural rigour employed on behalf of, all society in relation to any action, decision or policy’.⁹ Throughout the rest of our report we refer to the need for transparent process but regard that as a means to an end rather than part of the end in itself. Therefore we would not include ‘procedural rigour’ within a definition. However, as IFAC observes in its paper, the sources used in determining the definition included ‘IFAC’s own body of documents, which ultimately govern the mission of the organization. These reflect IFAC’s orientation on matters concerning regulation, governance, and the marketplace for accounting and audit.’¹⁰ In other words, the definition reflects IFAC’s own perspective, as, among other things, a standard-setter.

As discussed through the rest of this report, the range of variables is great and we suggest that the public interest is heavily context driven (even within an organisation such as ICAEW) and a fixed detailed definition would be unable to keep up with future developments. An example of a similar view from the UK Government is a comment in the consultation paper accompanying the draft Defamation Bill 2011: '... in view of the very wide range of matters which are of public interest and the sensitivity of this to factual circumstances, attempting to define it [the public interest] in statute would be fraught with problems.'¹¹

More relevant than a detailed definition, in our view, is the outcome: that actions asserted to be in the public interest are, and can be, assessed as being in the public interest. This can take time: a measure aimed at long-term benefit will need to be assessed over the long term. However, for people or organisations to assert that they act in the public interest is of little value: indeed it can be dangerous to their reputation if they make such an assertion but fail to deliver. It is far more important and of more lasting value that others can see that they actually do act in the public interest.

Accordingly, this report addresses how the public interest is applied and, how it is perceived to be applied too.

2.4 THE PROBLEM

The public interest is an abstract notion. Advocating something as being in the public interest involves setting oneself up in judgement as to whether an action or requirement to change behaviour will benefit the public overall – a far greater set of people than can be interacted with directly. It involves interference in people's ability to go about their business, or sometimes, as a positive policy decision, non-interference in the face of alternative actions.

While levels of trust in others vary from country to country,¹² international surveys have confirmed that people in general have become significantly less trusting over the past 50 years.¹³ We believe that people are likely to presume that those advocating an action 'in the public interest' are acting in their own interests and that the advocates will need to demonstrate that this is not the case.

In the next chapters we therefore argue that those seeking to advocate an action as being in the public interest need to balance competing popular preferences, cost benefit analyses, opinion polls, constitutional requirements and underlying values.¹⁴ They will also need to weight opinions for the degree to which people actually have, or should have, an interest in the issue. Having made these considerations, they will need to demonstrate that they have done this objectively, competently and proportionately. This includes individuals considering an action – such as disclosure of a matter that would otherwise be confidential, in the public interest. Principles of proportionality suggest that disclosure requirements would be lower for an individual undertaking his or her own action than for an organisation advocating change in others' behaviour, but scepticism about motive is still appropriate and the same principles and questions can be applied.

2.5 A FRAMEWORK

We set out a framework based around the key issues that need to be addressed by anyone advocating and justifying actions as being in the public interest. Although in some areas we focus, as a professional accounting body, on matters close to home, the framework is widely drawn and should provide a useful tool for anyone advocating or challenging public interest actions. This can be a wide range of people: as illustrated in Panel 2.1, 'the public interest' is used for many purposes.

The true measure of whether someone is acting in the public interest lies in the confidence of those with a legitimate interest in the matter, not those making the pronouncements. Therefore, the need for the public interest advocate to consider actual and perceived threats to fitness to decide, and the application of relevant safeguards, will apply throughout the process.

The way a public interest action is determined, and seen to be determined, and the public interest appropriateness of the solution, will influence the acceptance of the measure. This will, in due course, affect the reputation of the advocate of the action. This, in turn, will help with future acceptance and implementation. Thus, the stages in the framework interact and the whole process is iterative. The key areas to consider when using the public interest as a justification, can be summarised in the diagram in Section 1.4 and at the beginning of each chapter.

2.6 PROFESSIONAL PUBLIC INTEREST RESPONSIBILITY

An exposition by Lord Benson on the attributes of a profession suggests that these need to include:

- control by a professional governing body;
- standards of education;
- ethical and professional rules and standards;
- a public benefit outlook to the rules and standards;
- disciplinary action;
- reservation of work to those with adequate training, standards and disciplines where needed for public protection;
- transparency to assist in fair and open competition;
- independence of thought and outlook; and
- leadership in the profession's field of learning.¹⁵

A further analysis has summarised these as, broadly, covering: systematic theory; authority; community sanction; ethical codes; and culture.¹⁶

There are potential public interest aspects to all of these, but the degree to which underlying professional behaviour is or is not ethical underpins the outcome of all of them. This is sometimes reflected in discussions on the public interest in professional codes of ethics.

For example, the notion of a public interest responsibility for the accountancy profession is accepted widely. The Code of Ethics of the International Ethics Standards Board for Accountants (IESBA) notes: 'A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. Therefore a professional accountant's responsibility is not exclusively to satisfy the needs of an individual accountant or employer.'¹⁷

It does not take long to find codes or standards of conduct in non-accountancy professional bodies pledging similar allegiance to the public interest.

PANEL 2.3: EXAMPLES OF PROFESSIONAL REFERENCES TO THE PUBLIC INTEREST

- 'A practitioner shall ... regard the practitioner's duty to public welfare as paramount'¹⁸
- 'The purposes of the Association are ... to apply the knowledge and experience of the profession to the promotion of the public good ...'¹⁹
- '... the public interests and the maintenance of professional standards must be the primary consideration'²⁰

Why do professions accept a public interest responsibility and make such a great play of it? In many minds it will be to disguise the restrictive nature of professions: 'all professions are a conspiracy against the laity'.²¹ It is certainly used to justify the privileges that attach to the profession and unifies the members in the protection of reputational capital - a profession's strongest selling point.²² Indeed, many would argue that this duty and the behavioural standards that go with it are what distinguish a profession from a trade. The need for standards that are 'higher than the law requires' also reflects the information asymmetry and difficulty in judging the quality of the end product, that is in the nature of much professional work.²³

PANEL 2.4: ICAEW AND ITS PUBLIC INTEREST ROLE

ICAEW's connection with the public interest can be traced specifically to its foundation. The accountancy profession in the UK arose initially as a result of the need for people to deal with the aftermath of unsuccessful joint stock companies in the nineteenth century. In particular, the Joint Stock Act 1844, Companies Act 1862 and the Bankruptcy Act 1869 meant that the work of the accountant would have to be relied upon by many people: 'it is of the utmost importance that the trustee whom they [the creditors] are authorised to call in aid should, if an accountant, be a person of integrity, and belong to some recognised body in whom the creditors can place confidence'.²⁴

Use of the title 'accountant' then as now in the UK, was not protected by law and there had been much concern expressed that, for example, accountancy was 'a field where abuses and extravagances are far from infrequent'²⁵ or 'there is no other profession which can so speedily metamorphose fraudulent bankrupts into respectable members of the community'.²⁶

The provincial societies of accountants that ultimately combined to form ICAEW were established to allow people using the services of accountants, to be able to have confidence in the integrity and ability of the accountants they chose.

For example, the objects of the Society of Accountants were reported as 'to promote, in every way, the complete acquisition of those branches of knowledge which are essential to the practice of an accountant; to decide upon matters of professional usage or courtesy; to advance generally the efficiency and character of members of the profession, and to guard those vast public interests which are now annually committed to the skill and honour of the accountant.'²⁷ In this context the 'vast public interests' were directly related to the founding purpose – giving people the means to be able to have confidence in the integrity and ability of their accountants. This was an early example of 'public interest' being used in a narrow, context-specific manner.

ICAEW's 1880 Charter, granted at the time of the initial merger of a number of these societies, picked up this thread, stating: 'That the said societies were not established for the purposes of gain nor do the members thereof derive or seek any pecuniary profit from their membership but the societies aim at the elevation of the profession of public accountants as a whole and the promotion of their efficiency and usefulness by compelling the observance of strict rules of conduct as a condition of membership and by setting up a high standard of professional and general education and knowledge and otherwise ...

[it] would also be for the public benefit if the members thereof were incorporated as one body as besides other advantages such incorporation would ... tend to gradually raise [the profession's] character and thus to secure for the community the existence of a class of persons well qualified to be employed in the responsible and difficult duties often devolving on Public Accountants.'²⁸

The 1948 Supplemental Charter, which among other things extended ICAEW's operation beyond public practice into industry and commerce, expressed similar sentiments, albeit using slightly different terminology: 'That the Institute being desirous of furthering the aforesaid objects and of serving the public interest desires that ... a new Royal Charter should be granted to the Institute supplemental to the Original Charter ...' and 'The principal objects of the Institute are:

- (i) to advance the theory and practice of accountancy, finance, business and commerce in all their aspects, including in particular auditing, financial management and taxation;
- (ii) to recruit, educate and train a body of members skilled in these arts;
- (iii) to preserve at all times the professional independence of accountants in whatever capacities they may be serving;
- (iv) to maintain high standards of practice and professional conduct by all its members; and
- (v) to do all such things as may advance the profession of accountancy in relation to public practice, industry, commerce and the public service.²⁹

Given that professional accountants, whether in business, public practice or the public sector, are heavily involved in the economic allocation of resources, the accountancy profession remains something in which the public is, or at least should be, interested. We believe that it is right and proper to read the Charters as accepting that a public interest perspective should be adopted as part of the consideration for ICAEW's continuing status.

2.7 THE EXISTENCE OF A PUBLIC INTEREST

It is useful initially to consider the arguments from some as to whether the concept of the public interest exists at all.

One analysis of the public interest holds that there are four different public interest theories:

- normative (public interest can be determined based on an ethical standard);
- abolitionist (which can be summarised as 'there are just individuals');
- process (public interest is determined from the outcome of, for example, predetermined due process or calculations such as 'the sum of interests'); and
- consensualist (what is in the public interest is determined by debate leading to agreement).³⁰

There is a view that the whole concept is 'slippery, value-laden and vacuous'.³¹ There is also a view that society cannot be considered to be a separate entity (the 'abolitionist' theory): 'There is no such thing as society, there are individual men and women, and there are families.'³² Reinforcing this is the argument that notions such as 'good' and 'value' (relevant to the 'normative' theory) can only pertain to living organisms (ie, individual people) rather than some disembodied aggregate of relationships. Where 'common good' is regarded as something different to individual good, that can mean 'the good of some taking precedence over the good of others, the latter being treated as sacrificial animals'.³³

However, asserting that there is no such thing as society, or even that there should not be a concept of the public interest separate from the interest of individuals, is not the same as asserting that there is no such thing as the public interest. Even those concerned that any notion of social responsibility would actually undermine the operation of free societies, generally accept that this is not the same as advocating a complete free for all: for example company directors in many countries have a fiduciary duty to shareholders but also need to comply with the rule of law (including 'ethical custom').³⁴ What is legal is not always the same as what is 'right', but the 'rule of law' is a wider concept than merely having legal authority to take action.³⁵ There is a recurring notion in writings of even those attracted to *laissez-faire*, that it is in the interest of individuals for there to be a form of structure to protect the ability of individuals to be individual. In our view, though different people and cultures will come up with different outcomes, as a concept there is a clear perspective of a collective good that can be applied, that is different from that of a number of individuals.

Thus we do not subscribe to the abolitionist theory as such, though it is a useful reminder that there is a public interest in people being able to go about their business. In other words, non-interference might well be the public interest outcome. Where there is a case for an action, values, process and opinion all have a role to play in determining a public interest action, so the pragmatic solution would combine all of the above theories.

2.8 HISTORICAL PERSPECTIVE ON THE PUBLIC INTEREST

Considering the concept from a historical perspective shows a gradual evolution of what the notion involves.

2.8.1 THE TERM 'THE PUBLIC INTEREST'

Although the concept has been considered for thousands of years (see below), the phrase 'the public interest' seems to have come into use during the seventeenth century. The French satirist Regnier is said to have argued in 1609 that the public interest is something governments invoke to justify unjust or illegal action, though he actually used the phrase 'raison d'état'.³⁶ In England, the 1624 Statute of Monopolies, while considered to be discussing public interest matters in concept, used the phrase (for patents not in the public interest) 'generally inconvenient'.³⁷ Similar references of being 'inconvenient to the Commonwealth' appear in patent letters at the same time.³⁸ However, by around 1670, the Lord Chief Justice of the King's Bench of England was referring, in an essay on access to ports, to wharves being 'affected with a public interest'.³⁹

2.8.2 EVOLUTION OF ACTING WITH THE PEOPLE IN MIND

The notion of acting with the interests of the people in mind existed long before that, but it has evolved - changing but building on past ideas, as society has evolved.

In times of absolute dynastic rule where the interests of the ruler were paramount, acting in the interests of the people was, perhaps, a pragmatic measure to minimise trouble. Cyrus the Great of Persia, ruling some 2,600 years ago, is asserted by the ancient Greeks to have believed that a ruler should 'understand how to govern people so they might have all the necessities of life in abundance and might all become what they ought to be'.⁴⁰ The implicit rationale for this was to achieve approval, and thereby stability, and make ruling an empire that much easier: 'after Cyrus died, his sons immediately quarrelled, cities and nations immediately revolted, and all things turned to the worse'.⁴¹ Confucius, around the same time, (considered further below in Panel 6.5) sought to build stability through using morality as the basis of law.

The Mediterranean republics needed a more complex notion of society and those who administered it. Plato, around two hundred years after Cyrus, argued that public officials should place the interests of society above their own⁴² and Aristotle noted that society comprised communities which come together for the sake of some good: effectively the well-being of the citizens.⁴³ Cicero picked up on the stoic thesis of the common or shared good and moral consensus.⁴⁴ The Romans even had a notion that the 'populus' could exist as a distinct legal entity able to make decisions with a single voice.⁴⁵

The later influences of Islam and Christianity added further ideas of what outlook to take. There were potential conflicts between reason, based on human knowledge and logic, and religious revelation, in which values were presented as a given. In the Islamic world the Asharite view generally came to prevail, in which reason should be subordinate to the Quran and the Sunna.⁴⁶ In Europe, Christian beliefs were combined with those of Plato and Aristotle. Roman stoicism was moderated by Christian thought, Augustine believing that the state should apply mercy as a moral example. Aquinas considered that laws should be: grounded in reason; intended to foster the common good ('bonum commune'); made by the whole people or their 'vice-regent'; and duly promulgated. Scholastics combined reason and revelation, but argued that duties, principles and divine order prevail over rights, obedience and political rule.⁴⁷

Stability remained a core aim. In Europe a mercantilist paternalism evolved which ensured stability through giving certain protections for the greater public through, for example, apprenticeships, setting of wage rates, control of prices and quality of staples, and use of common lands.⁴⁸

None of these early philosophies are arguing for individual rights: more a common good, determined by leaders, albeit perhaps based on a generally accepted framework. Frederick the Great, ruler of Prussia from 1740 to 1786, set this out in a basic theory of politics, including: 'The sovereign is the first servant of the state ... one demands that he work efficiently for the good of the state ... a prince who governs personally ... can guide all matters towards the end which he has set for himself.'⁴⁹

Society remained relatively simple and rural well into the nineteenth century, even in the UK, so the paternalist model survived with it albeit, in England at least, that: the protestant reformation and the English Commonwealth resulted in the influence of the state eclipsing that of the church; and certain accepted obligations such as the poor laws, were gradually replaced by specific legal requirements.⁵⁰

The paternalist model gradually came under pressure from the 'enlightenment' and the industrial revolution. The former was a late seventeenth and eighteenth century movement involving thinking that, among other things, promoted individual rights (eg, Grotius), individual motivation (eg, Mandeville), scientific method (eg, Bacon) and rationalism (eg, Descartes).

2.8.3 THE VICTORIAN ERA

The industrial revolution in the UK resulted in significant changes from the perspective of acting for the public good. Industrialisation created an increased demand for capital and an urbanised workforce. The former popularised joint stock companies with ownership and management divorced. These were arguably the first large non-establishment structures and opened the way to a more pluralist society.⁵¹ This, and the move into towns, replaced the land-based society with a more rootless one based on money, free of ingrained duties. Mercantilism effectively gave way to capitalism, which drew on enlightenment notions of increased individualism and self-interest and notions of progress and political representation. In essence, the industrial revolution saw 'the substitution of competition for the medieval regulations which had previously controlled the production and distribution of wealth'.⁵²

The resulting laissez-faire environment of Victorian Britain could be argued to have done away with the notion of a public interest, other than compliance with the rule of law. However, it became apparent that there needed to be interventions in markets. These resulted in, for example:

- roads - roads were needed for the economy but turnpike trusts could not afford to maintain them and the last ones ended around the time of the 1888 Local Government Act. Gradually local and later national authorities took up construction and maintenance;
- railways - high infrastructure investment costs and competition led to expensive duplication in some areas and monopolies in others: the 1873 and 1888 Railway and Canal Traffic Acts sought more regulation of collaboration agreements and carriage rates;
- the telegraph - too much infrastructure was needed for private companies to complete a full network and the result was a nationalisation into the Post Office in 1870;
- utilities - water and gas supply were largely municipalised in the late 1800s to provide the high investment required to ensure adequate health and supply standards;
- housing - the government passed various acts to address the worst areas of housing unfit for habitation or to improve or demolish existing houses, including for example the 1890 Housing of the Working Classes Act;
- education - the 1870 Elementary Education Act established a framework to require basic education, as a workforce was needed capable of remaining at the forefront of technology; and
- civic amenities - local authorities increasingly developed civic enhancements as public goods, building on civic pride and the need for improved conditions.⁵³

Thus the protection of the public interest changed from being, at least notionally, something intrinsically built in to underlying duties and values, to something needing to be addressed by intervention in the theoretically free market state: 'protected laissez-faire'.

We can summarise the purpose of Victorian-era interventions markets as being to:

- ensure certain minimum living standards; or
- create 'goods' that the public desired but would not pay for directly; or
- create an infrastructure considered necessary in a wider context to enhance the economy.

These limited interventions, among other things, sought to provide a stable platform for people to go about their business.

The role of public opinion in directly influencing or framing public interest actions is discussed in Panel 6.1.

2.9 CHAPTER SUMMARY

In most societies there is a basic presumption that people should be able to go about their own business in their own interests. In the course of this they will interact with other people and influence and be influenced by their activities. However, there is a further influence on people's activities: when governments, regulators and others seek to intervene in the public interest.

The public interest is an abstract notion and this chapter looks at its historical development. Advocating something as being in the public interest involves setting oneself up in judgement as to whether an action or requirement to change behaviour will benefit the public overall – a far greater set of people than can be interacted with directly. It involves interference in people's ability to go about their business or sometimes, as a positive policy decision, non-interference in the face of alternative measures.

This requires justification by advocates of an action, that they have an ability and right to decide what is for the greater good, in the face of a natural suspicion that those proposing the action are actually acting in their own interests. In this context this chapter also considered why professional bodies accept a public interest responsibility.

Other terms can be used, largely interchangeably. Examples include public benefit, the public good, and the common good. While we use the public interest throughout, the same issues apply to use of these other terms.

We do not seek to establish a detailed definition of the public interest. There is an infinitely wide set of individual circumstances, which detailed definitions are unlikely to be able to cope with, without unintended consequences.

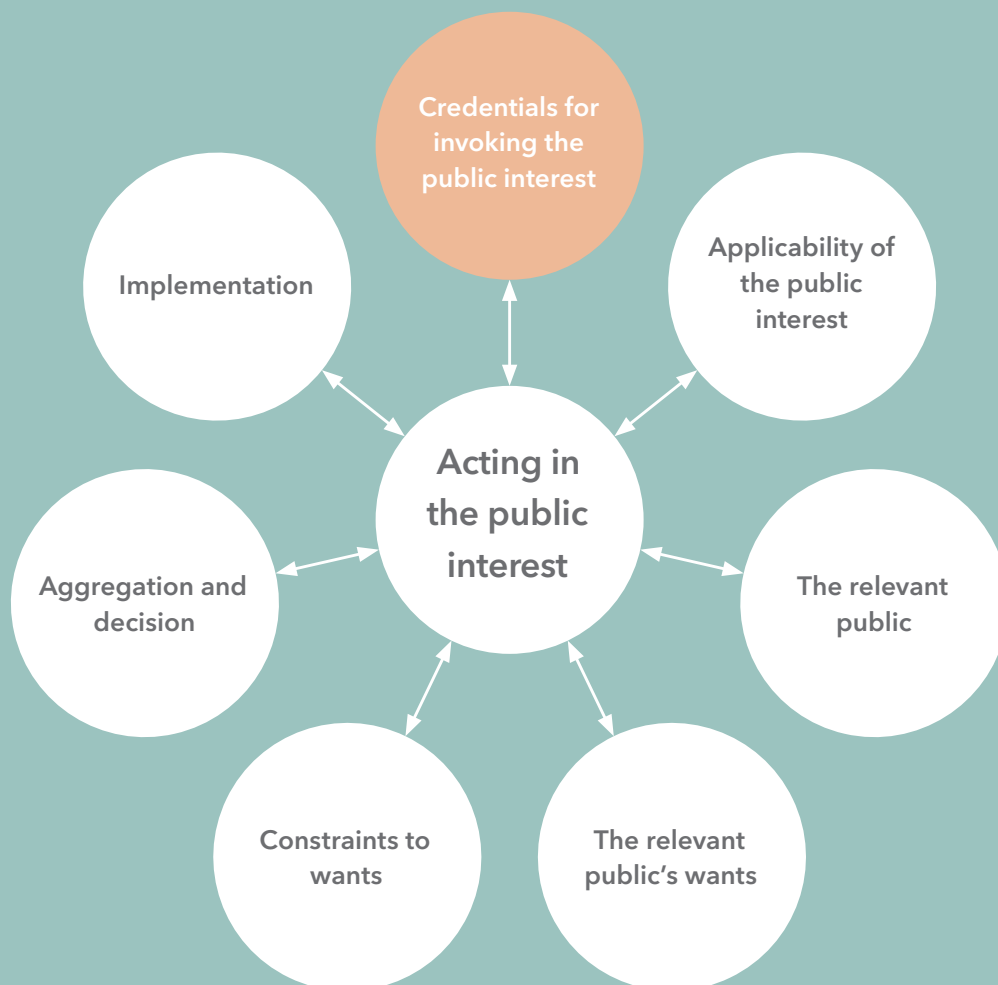
We set out a framework for discussion, based around the key questions that need to be addressed by those advocating or challenging public interest actions. Our considerations do not just focus on the accountancy profession: the framework should be useful for anyone as a tool of challenge and relevant to any of the wide range of actions that purport to be in the public interest. It can be used by those proposing an action as being in the public interest, as part of the decision-making process or as a sense check on the outcome of that process.

The true measure of whether someone is acting in the public interest lies in the confidence of the relevant public, not those making the pronouncements. Therefore the need for the public interest advocate to consider actual and perceived threats to fitness to decide, and the application of relevant safeguards, will apply throughout the process. The way a public interest action is determined, and seen to be determined, and the public interest appropriateness of the solution, will influence the acceptance of the measure. This will, in due course, affect the reputation of the advocate of the action. This, in turn, will help with future acceptance and implementation. Thus, the stages in the framework interact and the whole process is iterative.

3. Credentials for invoking the public interest

Perception as to whether someone can be trusted to be acting in the public interest is vital.

The general public in many societies increasingly mistrusts those in authority. What contributes to that mistrust and what can be done about it?



3.1 THE IMPORTANCE OF TRUST

A public interest action, by its nature, will be likely to have a wide impact and therefore we believe the existence of credentials to invoke the public interest argument is important.

The perception of those potentially affected as to whether someone can be trusted to be acting in the public interest is vital. As noted previously, we believe the opinions of relevant others are far more of a validation than the opinions of those who assert that they are acting in the public interest. Those others will only believe the assertion if they have trust. To have trust in someone, at least for the purposes of this report, is to have faith that a statement they have made will hold to be the case, without the evidence to back that up. The more any evidence that exists points towards an abuse of that trust, the more likelihood there is of a suspicion of further abuse going forward and the more evidence is needed to counteract that.

The motivation of those affected to comply, or at least not seek legal redress, will also be impacted by whether they trust the motives and/or capability of the originator of the action that is said to be in the public interest. Such trust can change over time even without actions by the originator: some actions are designed with long-term benefit in mind; others reveal their real impact only after some time.

3.2 ACTUAL AND PERCEIVED THREATS TO TRUST

3.2.1 PAST ACTIONS AND CONFLICTS OF INTEREST: REASONS TO BE MISTRUSTED

A key factor to consider in making the decision as to what action will be in the public interest, will be whether there are any particular factors that might cause others to doubt its efficacy.

The general public in many societies has an increasing presumption of mistrust in authority. In addition, regulators or other proponents of a public interest action may be the subject of a specific scepticism about their motives, as a result of past events. This may be caused by, for example:

- past failure to prevent a problem seen to be within its purview, through poor judgement, ineffectiveness or a tendency to appease others. This has been suggested of a number of financial services regulators, in the light of the recent banking crisis;
- past behaviour seen to be inconsistent, hypocritical or Machiavellian. An instance of this is the recent UK MPs' expenses scandal;
- fear of corruption, for instance as a result of bribes from lobbyists; and
- potential conflicts of interest. Instances of this would be professional bodies arguing for a 'closed shop' or regulators empire-building to justify their existence.

The personal prejudices and circumstances of those making the decision may conflict with those of the relevant public. For example, people building up investments as a pension fund will be interested in long-term investment performance. The fund manager, on the other hand, is often remunerated on short-term performance or on league table positions, which tend to concentrate on short-term performance.

Many organisations deal with the issue by prohibiting conflicts of interest, although whether this is always realistic is debatable. An alternative approach recognises that they will exist in real life but they must be managed to ensure that the outcome is not subverted by what should be irrelevant personal circumstances. Safeguards need to be established by the advocate of the action, such as for example, a review by someone not in a conflict position. This 'principles based threats and safeguards approach' discussed further below in the context of self-assessment and building trust, is that taken by the ICAEW Code of Ethics.⁵⁴

PANEL 3.1: ICAEW AND ADDRESSING CONFLICTS OF INTEREST

ICAEW and other codes of ethics include guidance on how professional accountants themselves should deal with a number of types of conflicts, including conflicts between the interests of various parties, and a conflict of values: that is conflict between the requirements of different fundamental principles. An instance of the latter is the UK competition policy example referred to in Panel 8.3.

What is less transparent, and most pertinent to the consideration in this chapter, is how relevant standard-setters and professional bodies deal with potential conflicts in the setting of standards and professional requirements. At ICAEW, major policy issues affecting the public interest are usually made taking into account, depending on the scale of the matter and/or whether there is a major change in policy, relevant committees or boards representing members (and in some cases others) and the main Council. However, such structures are not always fully representational in the sense that, say, a democratic proportional representation process might be. It is important, therefore, to consider how different interests are prioritised and reconciled. The development of impact analysis and publicising feedback on responses, considered further below, is part of this process.

3.2.2 SELF-INTEREST OF THOSE MAKING THE DECISION: PUBLIC CHOICE THEORY

The motives and/or self-perceived infallibility of those who assert that they are acting in the public interest is a key consideration as they can lead to abuse of trust.

PANEL 3.2: EXAMPLES OF SELF-INTEREST MOTIVATION

- Government was once described as ‘an institution which prevents injustice other than such as it commits itself’.⁵⁵
- ‘Public service is my motto’ was stated by no less a public benefactor than Al Capone, who argued – conveniently ignoring the murders and other side effects – that his Prohibition-busting activities gave the public what they wanted, so he must be acting in their interests.⁵⁶

Public choice theory points out that the general self-interest incentives from the market place continue to apply to people in the public and regulatory sectors: they may seek to act in the general interest but do not suddenly become political eunuchs.⁵⁷ Thus politicians and regulators will be susceptible to expanding their own domain and lobbying from interested parties with something to offer in return.⁵⁸

In practice the decision maker may weight decisions in favour of those in the best position to affect the decision makers’ own interests. This can be in a negative sense – the weighting factor assigned would be based on the ability of the individual to retaliate against the decision maker and others, and the likelihood that he/she would do so.⁵⁹ Or, it can be in a positive sense, from the decision maker’s perspective, in terms of what the decision maker wants. For example Stigler’s ‘economic theory of regulation’ argues that demand for legislation comes from those (usually interest groups) who would benefit from it.⁶⁰ Supply comes, ultimately, from the incumbent government which is seeking to maximise political support, as the government’s aim is to stay in office. It follows that regulation arises not so much in the presence of market imperfections, but where a coercive group is able to offer the decision maker something worthwhile.

A further illustration of the continuing need for vigilance is provided by research which indicates that observed phenomena support the supposition that politicians tend to act in their own interests rather than the interests of the wider public. It looked into accounting standards development in the US and concluded that the accounting theories used to justify the standards as being in the public interest usually follow the decision on the accounting, rather than the other way around. In other words the theory does not drive the standards but is the result of political intervention to provide a public interest excuse.⁶¹

This may be as a result of subconscious bias – there is research in, inter alia, auditing, showing that given the same information, people will reach different conclusions subconsciously favouring their own interests.⁶²

By and large producers operate in smaller, more focused and influential groups than consumers. As ‘the law of diminishing returns relates to group size’⁶³ it follows that producer protection, or at least protection of those with well organised interest groups (considered further below) will prevail over the consumer’s interest. Research on environmental policy in a number of countries, albeit limited in nature, has given support to Stigler’s theory, suggesting that electoral concerns have a significant influence on environmental policy.⁶⁴

3.2.3 ERRORS

In addition to making the ‘wrong’ decision as a result of self-interest, we can all make mistakes, and that applies even to those who seek to serve the public interest. For example, some have argued that US accounting standard-setters have moved away from conservatism towards mark-to-market accounting, without considering how managers could and would react, partly leading to Enron’s illusory profits.⁶⁵ There continue to be arguments about whether this form of accounting contributed to the 2008 banking crisis or not.⁶⁶

Even when not applying a consequentialist approach, in which, in essence, the end justifies the means, consideration of the expected, and later the actual, impact is informative and conducive to good decisions.

Learning, and being seen to learn, from experience is an important part of explaining and justifying a decision. Past errors, new information or changes in values can contribute to a need to change views.

3.3 A THREATS AND SAFEGUARDS APPROACH

We have put forward a hypothesis that those advocating an action ‘in the public interest’ should assume that they are being presumed to be acting in their own interests and will need to seek to demonstrate that this is not the case. We have noted above that there can be a variety of specific or general causes why people might particularly have cause to doubt the public interest argument. There can also, depending on, for example, remit and authority, be different reasons why the public interest needs to be invoked in the first place.

We referred above to an approach adopted in many professional accountancy codes of ethics, known as the principles based threats and safeguards approach. In essence, a framework is provided to allow the professionals to determine likely potential threats to compliance with the ethical principles and what safeguards can be applied to address these. If there are no effective safeguards, the work should not be undertaken.

A similar approach can be followed here, with advocates of public interest measures considering threats and safeguards by asking themselves a number of key questions.

First, when analysing threats to belief by the relevant public that our action is in the public interest:

1. Is our remit and authority consistent with what is being proposed?
2. Are there specific past or present circumstances which could cause doubt about our motives?
3. Is there anything that would compromise objectivity?

Second, when considering what safeguards might be applied to counter suggestions of self-interest:

4. Have lessons been learned from past specific events that suggested the public interest was not being pursued? What changes have been, or can be, made to counter these - for example different procedures, personnel, changed remit, independent oversight? Have these been explained?
5. Have we been clear about the consequences for us and those associated with us of the action proposed, favourable or otherwise?
6. Have we followed a reasonable and transparent process in making the decision on what is the best public interest outcome and how to implement it?
7. As an important sense check on the process, do we really understand our rationale for deciding what action we favour and why it is in the public interest? Can we explain it and why it is relevant and proportional to frequency and impact of the issue in question - proportionality becoming particularly important in societies where the extent of intervention and regulation is often questioned?

ICAEW, as part of a campaign for better regulation, commissioned a review of economic literature on regulation, which noted a number of concerns about the effects of regulation on economic efficiency.⁶⁷ This highlights the need for safeguards such as impact analysis, engagement with relevant people and on-going monitoring and evaluation.

3.4 SAFEGUARDS

3.4.1 IMPACT ANALYSIS

One method of assessing that all relevant factors have been weighed up, and demonstrating that this has been done, is impact analysis (or effects analysis⁶⁸), of which a subset is also known as cost benefit analysis. Governments and other regulators seek increasingly to apply this when considering changes in laws and regulations. It is not a recent phenomenon, cropping up, for example, in the US Flood Control Act of 1936 which asserted a responsibility to act where 'the benefits to whomsoever they may accrue are in excess of the estimated costs ...'⁶⁹

It is in principle a variant on utility theory, following the same logic of assessing the positive or negative value of an action to those affected. It therefore suffers many of the same problems, for example:

- the tendency to quantify disregards or pays insufficient attention to effects whose magnitude is not well understood and overemphasises effects more readily expressed in monetary amounts; and
- cost quantification is often provided by those responsible for implementation, who therefore have an interest in exaggerating the costs.⁷⁰

The scope of what can be included in costs and benefits (for example the extent to which indirect costs and benefits should be included) is also susceptible to being engineered, depending on whether those performing the assessment are subjectively supportive of, or opposed to, the measure.⁷¹

PANEL 3.3: CONTINGENT VALUATION MODEL

Some of the issues described above can be dealt with by using a contingent valuation model (CVM). Such models ask about people's willingness to pay for, or willingness to accept, a proposed measure, 'contingent' on their being in the real situation. Thus, for example, the results to the question 'how much would you pay to receive a certain non-monetary benefit?' can quantify people's perception, at least, of the value of that benefit.

CVM copes with proposals and actions beyond historical experience, allows for supply and demand uncertainty, and allows for passive use values - the satisfaction that something merely exists, or is being preserved for others in the future. However, it does have disadvantages. These include, for example: the hypothetical willingness to pay overstates real willingness - people tend to assume hypothetical events will happen in the future; a tendency for willingness to accept exceeding willingness to pay;⁷² and a distortive effect if benefits cannot be restricted to those who pay - the 'free rider' problem which depresses willingness to pay.

Generally recognised national measures such as Gross Domestic Product suffer similar problems with over-emphasis on monetary measures,⁷³ so valuation of costs and benefits is not easy, even at a country level.

In practice a more simplistic approach tends to be followed, often considering only one option – ‘should we do this or not?’, rather than ‘which of several possibilities is best?’ – and simplifying the non-quantifiable benefits and costs where information is difficult to come by. For example, it has been observed that in studies of the effects of air pollution, the outcome measure has largely been limited to mortality, for lack of easily available information on associated non-fatal illnesses.⁷⁴

Impact analysis also tends to look at gains and losses on a composite basis rather than in terms of the effects on individuals. Again, the same issues arise that have been considered previously, for example:

- How to determine preferences and of whom?
- How to weigh?
- How to allow for externalities?
- How to allow for future effects?
- How to allow for potentially many alternatives?

Simplified models can be constructed where the gains and losses are not precisely quantified but are assessed in terms of, for example, being large, medium, small, or nil. These at least require the matter to be thought about.

It has been argued that an intervention in the public interest is justified if it produces social gains in excess of social losses so that it would be possible for winners to compensate losers, even if they actually do not. However, this does not take into account distributional issues, or that many attributes have no means of comparable measure. The problem remains, therefore, how to weigh up the gains and losses against each other.⁷⁵

Impact analysis is an invaluable tool to assist decision-making and to demonstrate the appropriateness of the decision to others. However, there needs to be a clear rationale as to how gains and losses can be assessed in practical terms, and how they will be weighted and compared.

There are a number of ways in which those proposing a public interest action can assess performance in situations where one measure will not do. Examples include the balanced scorecard and the Calvert Henderson quality of life indicator. The first of these was designed to measure success from management and operational viewpoints.⁷⁶ The second is seeking to consider the state of a series of indicators of general well-being – examples being education, employment, health, income, safety, recreation.⁷⁷ However the principles behind these and other models illustrate that there are ways of assessing and being seen to assess, on a systematic and supportable basis, circumstances where a whole series of indicators need to be considered that do not necessarily add together.

3.4.2 TRANSPARENCY AND ACCOUNTABILITY

An obvious safeguard against the advocate of a public interest action acting in a self-interested manner is transparency of the decision-making process and accountability for those decisions. This also helps to ensure that past errors are learnt from. This is supported by, for example, the UK's Information Commissioner's Office which notes in its discussion on the Freedom of Information Act that the public interest will favour 'accountability and good administration' and that 'there is a presumption ... that openness should be regarded as being for the public good'.⁷⁸ The key reasons for the latter view include:

- further understanding and debate of the issues of the day; and
- promotion of accountability and transparency of public authorities for decisions taken.

We are not suggesting unlimited transparency: there must be some limits on openness, even in the public interest. An example is legal professional privilege, where there is a public interest in ensuring access to justice and a fair trial.

The extent to which accountability operates will vary with, for example, the political system and the identity of the public interest proponent. Properly functioning markets are an accountability mechanism through market reaction. If, for example, there were competing regulators the market itself would, in theory, over a period of time, weed out those regulators who were ineffective, or whose regulations were unjustifiably costly and prohibitive. However, such a structure is not always in place. In a democracy ultimate accountability is generally in public, to the public, and the public delivers its verdict on a government at the ballot box – a variation on the market forces argument. Public choice theory, considered above, suggests that this can, of course, generate an industry in making actions appear to be in the public interest even if they are for other purposes.

Early twentieth century UK public administration is said to have been concerned to maintain 'bureaucratic neutrality, accountability, professionalism, and responsiveness'.⁷⁹ These concerns have continued to be expressed, albeit in a rather more formal sense. For example, in 1994 the UK Government set up a 'Committee on Standards in Public Life' to make recommendations to ensure 'the highest standards of propriety in public life'. The Committee continues to operate but is most noted for setting out a set of principles, known as the 'Nolan Principles', requiring selflessness, integrity, objectivity, accountability, openness, honesty and leadership.⁸⁰ The Committee benchmarks these principles against standards of conduct in the public sector, in essence acting as a surrogate for the market.

3.4.3 OVERSIGHT OF THE DECISION-MAKING PROCESS

For regulatory bodies and other proponents of public interest actions, accountability to the public via the ballot box, even if considered a reliable process, is not usually an option. So an alternative assessment mechanism is needed. A form of oversight body will often be the solution. It has been suggested, for example, that self-regulatory bodies can be more efficient than, say, governments as they have more relevant information, but they also have less of an incentive to take regulation seriously. The best solution in such circumstances might be supervised self-regulation, where the external oversight body ensures audit and accountability.⁸¹

However, oversight itself can have problems. Without actual and apparent independence on the part of those operating the oversight, it has no credibility as a means of public oversight. However, too much independence runs other risks. An investigation into behaviour in boardroom oversight indicated that having too many independent elements in the non-executive function can:

- result in a breakdown of trust with those being overseen, leading to reduced communication;

- divert executive time to ‘influencing activities’; and
- lead to the independents making decisions based on heuristic thought tied to readily available information. Insider expertise becomes underutilised.⁸²

There are other concerns:

- such bodies can seldom be truly representative in the sense that a parliament elected by universal franchise can be. This means that individuals involved will be acting on behalf of the relevant public, rather than representing it. Where that public includes elements with different perspectives (for example an international public) it is important to ensure that those perspectives are not completely omitted.
- the oversight process may become treated as an end in itself, with concern for due process compliance distracting attention from the underlying purpose of ensuring that decisions are in the public interest. The accountability of the overseer itself needs to be considered carefully to ensure that someone can apply a sense check to the outcome of the process – something that this framework can assist with.

PANEL 3.4: EXAMPLES OF OVERSIGHT IN THE ACCOUNTANCY PROFESSION

IFAC

IFAC was set up by an international group of accountancy bodies to, among other things, create international standards in key areas of ethics, audit and professional education. However, there were inevitable concerns that the involvement of professional bodies might not result in the standard setting being independent, so, following a 2003 review of governance arrangements, in 2005 a new oversight arrangement was set up which created the Public Interest Oversight Board (PIOB).

PIOB consists of individuals from regulatory, academic and other environments who are independent of the accountancy profession. The intent is that by providing independent oversight, the PIOB works to eliminate the perceived conflict of interest caused by the profession setting its own standards, while ensuring that accountability, transparency, and responsiveness to stakeholder needs are present throughout the entire process of standard setting.⁸³

ICAEW

ICAEW’s model is just that discussed above: supervised self-regulation. The accountancy profession in the UK undertakes much of its own regulation, but is subject to independent oversight of that regulation by the Financial Reporting Council (FRC). The compositions of the various functions that comprise the FRC, and the funding of the operation, are set to ensure that there is good input from the profession, but that it does not have a majority decision-making ability.

Within ICAEW, a system of expert committees oversees ICAEW’s output and consultations on positions taken. The input from these seeks to ensure that our views on matters can face challenge from outside stakeholders and reflect changing thought and external developments. For example, in the 1920s ICAEW strongly argued that ‘secret reserves’ were ‘in certain cases desirable and in many cases essential’ and that including profit and loss accounts in statutory accounts was likely to ‘do more harm than good’.⁸⁴ This reflected views at the time that transparency was not given a high priority by society. However, society’s views have changed, and so has ICAEW’s stance, to presume in favour of disclosure.

3.4.4 UNDERTAKINGS TO APPLY SAFEGUARDS

Publicised undertakings to apply all or some of the safeguards referred to above can help to create ex-ante trust in their own right. However, it is important that they are followed through. If seen to be nothing but a public relations exercise, such undertakings would harm trust more than if no undertaking were given in the first place.

3.5 CHAPTER SUMMARY

Trust in those making assertions that they are acting in the public interest is vital, as a validation, as a motivation to comply, and, ultimately, to reduce the need for evidence to support the assertion.

People in many societies today are generally distrustful of the motives of those in authority. Indeed public choice theory provides academic evidence to support a presumption that use of the public interest is a smokescreen to disguise self-interested action, whether deliberately or subconsciously. It is helpful, therefore, for those proposing a public interest action to pre-empt doubt by considering what the key threats to trust by the relevant public might be (eg, conflicts of interest) or for that matter threats to making the right decision (eg, past mistakes).

Safeguards to be applied by the proponent of a public interest action will generally include measures to improve process and accountability. They could include, for example:

- transparency of process;
- impact analysis;
- feedback enabling learning from past errors;
- sense checking; and
- oversight.

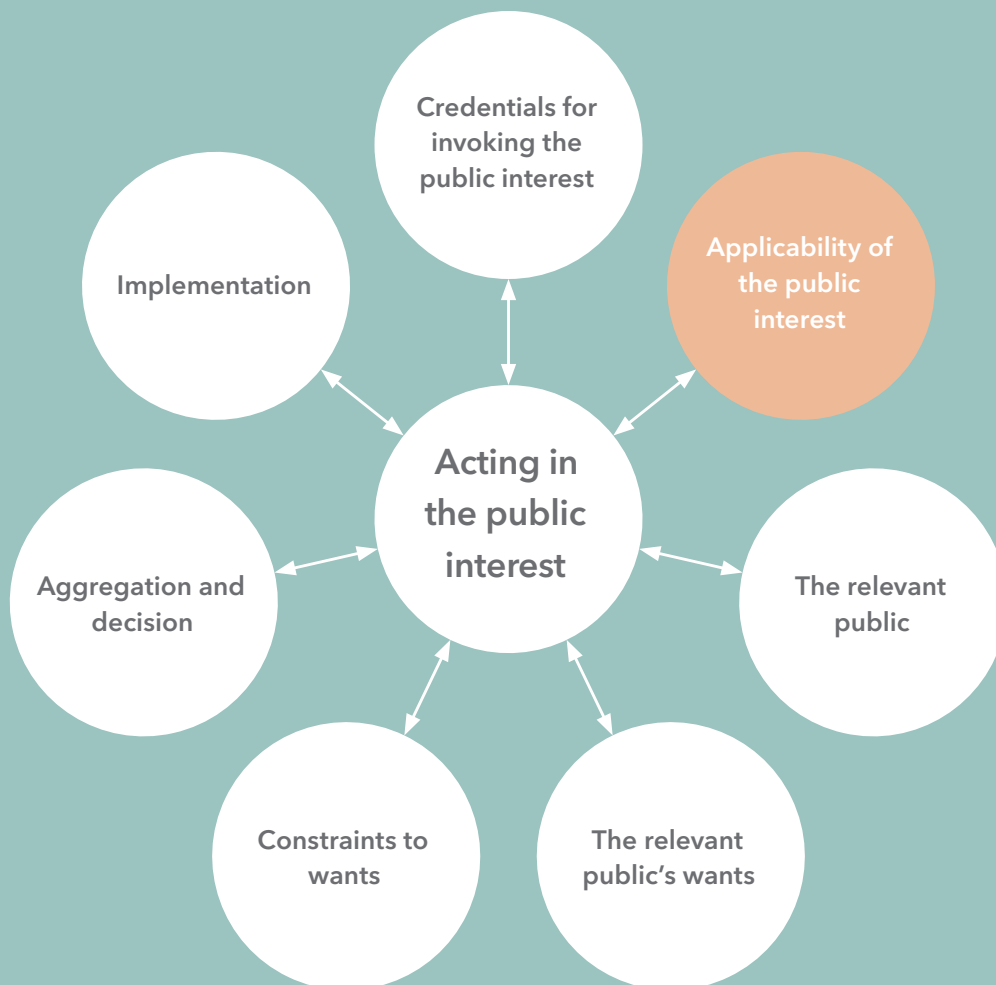
Publicised undertakings to apply all or some of these can help in their own right, provided they are followed through.

The proposed framework could act as part of the safeguard process itself, or as part of a sense check to ensure that the process has not produced a perverse end result.

4. *Applicability of the public interest*

Those who advocate an action as being in the public interest need to consider and balance a complex set of factors. They also need to be able to demonstrate that the action actually is in the public interest.

What makes an issue a public interest matter? Should it be a public interest matter?



4.1 WHETHER THE MATTER NEEDS TO BE A PUBLIC INTEREST ISSUE

The use of the concept of the public interest as justification will present a challenge. It should be used only where it needs to be used and where it can be supported by addressing satisfactorily the matters raised in this framework.

Most decisions that people make in their lives are not decisions that need to be considered as 'in the public interest'. They will be for their own benefit or the benefit of a set of people to whom they have obligations, examples being colleagues, friends, family, employers, shareholders, or constituents.

We argue in the rest of this report that, for an advocate to assess and then put forward that an action is in the public interest involves consideration and balancing of a complex set of factors. It also imposes an onus to demonstrate that the action actually is in the public interest. If this proves not to be the case and the rationale is not supportable, reputation – or, perhaps in the case of an individual overriding confidentiality, legal protection, will suffer. If the concept is used unnecessarily, it can appear self-righteous.

4.2 WHAT THE PURPOSE AND JUSTIFICATION ARE IN INVOKING THE PUBLIC INTEREST

An organisation's remit may mandate public interest actions, but in terms of explaining that something is in the public interest, the rationale will generally be that:

- the matter is considered to be one which merits a public interest consideration;
- the public, or relevant sections of the public, or those who act on their behalf, need to buy in to the argument: trust is slowly gained but rapidly lost.

There are a number of reasons why this might be seen as important to those responsible for a public interest action:

- to improve the chances of a policy being implemented (considered later);
- to persuade, if the power and responsibility to implement lie elsewhere;
- to justify or defend, if the power lies 'in-house' but there is a responsibility to account for the actions; and/or
- to obtain feedback for internal use: the views of others in asserting that someone is acting in the public interest are more important than those of the individual(s) or organisation concerned. It is, therefore, important to reflect on what could be done better and seen to be done better.

It is important to consider whether the likely debate would be about what is in the public interest: it may be about different expectations of what is likely to happen in the future. An illustration of this is given in Panel 7.5.

4.3 WHETHER IT CAN BE SAID TO IMPACT UPON, AND BE FOR THE BENEFIT OF, THE PUBLIC AT LARGE

Something that is a public interest matter will, by its very nature, involve a wide section of the public, whether they like it or not: a wider element than can be dealt with by direct one-to-one discussion.

For example, there might be a proposal for a village to build a community hall. It follows that it is for the benefit of the village as a whole, rather than individuals directly, for all of the individuals in the village to get involved in fund raising. However, it can hardly be considered to be a public interest matter: first, most of the public is excluded from the matter by scope; second, those affected can be interacted with directly; and third, people are ultimately entitled not to cooperate, although they may not be popular.

As noted in Panel 5.1, it would pass the charitable public benefit test, but that is approaching it from the perspective of whether charitable status is permissible, not what the best way is to argue for the existence of the hall.

By contrast, proposals that affect, say, air quality or corruption in government must be public interest matters: they will affect at the very least a large proportion of the populace, who cannot all be spoken with directly, and who do not have a right of opt-out, regardless of the circumstances.

4.3.1 DISCLOSURE IN THE PUBLIC INTEREST

The UK's National Union of Journalists' Ethics Council and the UK Press Complaints Commission, in its Editors' Code, have drawn up detailed definitions of the public interest, used to justify overrides of a presumption of privacy. Both of these include (among other things) the phrase 'There is a public interest in the freedom of expression itself'.⁸⁵

However, the concern, as with other areas, is that public interest is being used as a justification for self-interest - which in this case would be that publicity sells newspapers and advances journalists' careers. Courts have often been required to intervene and in English law a significant amount of case law has been built up about press coverage and the public interest. This has included, for example, the relatively recent Reynolds v Times Newspapers and Jameel and Others v Wall Street Journal Europe cases. These both considered qualified privilege, which is a potential public interest defence against defamation allegations, and seeks to balance freedom of expression with the right to reputation.

Underlying qualified privilege is what was summarised in the Reynolds case as 'whether the public was entitled to know the particular information'. The Jameel case positioned the level of entitlement as somewhere between prurient interest and necessity.⁸⁶

The Reynolds case established a number of factors to consider when determining whether 'qualified privilege' applied - that is, when the public interest can be applied as a defence against defamation actions. These have now largely been included in the UK's draft Defamation Bill 2011⁸⁷ and cover:

- nature and context of publication;
- seriousness of imputation;
- extent to which matter is of public interest;
- information known before publication and anything known about its reliability;
- extent of claimants' views before publication;
- extent of verification of accuracy;
- timing of publication and need for urgency; and
- tone of the statement.⁸⁸

In other words, something that is of public interest is something that is for the benefit or detriment of the public, not something that is merely fascinating to the public. The UK Information Commissioner's Office guidance on the Freedom of Information Act similarly observes that the distinction needs to be borne in mind.⁸⁹

The issue of overriding contractual or professional obligations of confidentiality to report, for example, fraud or other illegal acts, similarly requires a series of factors to be considered. The UK Public Interest Disclosure Act indicates that the matters to be considered in order to determine whether confidentiality should be breached include: whether members of the public are likely to be affected; whether corrective action is being taken; possibility of repetition; the gravity of the matter; the presence of a general ethos of disregarding the law; reliability and quality of information available and the degree of suspicion; and legal protection for breach of duty of confidentiality.⁹⁰

4.4 WHETHER THE REMIT IS WIDE ENOUGH TO REGARD IT AS A PUBLIC INTEREST MATTER

One of the issues for the advocate of a public interest action to consider, particularly for an organisation, is what authority there is and whether the advocate's remit extends to the issue. This especially applies where the intent is to apply the decision rather than act as a force of influence on others. A public interest perspective may be mandated by remit and encouraged by structure. This explains why the matter is said to be a public interest issue, but the onus to explain why the particular action is the right public interest one remains.

Alternatively the remit scope may be very narrow (as in the village example above). In such circumstances a public interest perspective would seem over-complicated and indeed slightly vainglorious.

While a remit may pass the test of being sufficient for an action to be a public interest matter, it does not follow that all matters considered within such a remit will automatically be public interest matters – see ICAEW example in Panel 4.1 below.

PANEL 4.1: ICAEW AND PUBLIC INTEREST MATTERS

As noted in Panel 2.4, while ICAEW's charters do not mandate it to adopt a public interest perspective, ICAEW accepts that it should be adopted as part of the consideration for our continuing professional status. This is particularly noticeable in: (i) making large parts of our technical guidance on interpretation of legal and regulatory matters available to all, free of charge; and (ii) representations to governments and others on policy matters.

However, not all matters addressed by ICAEW are public interest matters. For example, membership fees are a matter between ICAEW and its members. Following the village analogy in Section 4.3, this involves a fixed number of people, who can be communicated with and who have the right to opt out. This is not a public interest matter.

The IESBA and ICAEW codes of ethics, among others, discuss the concept of 'public interest entities' (PIEs). Different authorities take different views as to what constitutes a PIE for the purposes of ethics codes. The IESBA and ICAEW codes specifically include companies with a listing on a recognised stock exchange but other entities which have a 'large number and wide range of stakeholders'⁹¹ can be seen as PIEs at a given point in time – organisations and individuals can move in and out of the categories of PIEs and stakeholders. The concept of a PIE exists in the code for a specified purpose (that of deciding which set of auditor independence requirements need to be complied with) and it is therefore narrower in scope than what we might consider to be an entity in which there is a public interest. However, the rationale is related to our argument previously about the use of the public interest concept: a PIE will generally have a wider range of stakeholders than can be communicated with directly and therefore a set of standards that places a greater emphasis on perception is required.

The codes also consider matters that individuals might address in terms of acting in the public interest, in particular overriding presumptions of confidentiality where instances of bad behaviour have been discovered or at least suspected. Confidentiality is a fundamental principle as, without it, there would be insufficient trust in the accountant to enable him or her to do their job. However, where the law permits, the codes note that there can be circumstances where that principle can be overridden to allow disclosure in the public interest.

ICAEW has supplementary guidance on this issue, noting that (in line with UK legislation) examples of situations where disclosure might be regarded as being in the public interest include: a criminal offence; a miscarriage of justice; matters where health and safety are endangered; and damage to the environment.

In terms of matters to consider when determining whether or not a disclosure is justified in the public interest, examples given include similar matters to those referred to in 4.3.1 above in the context of breach of professional confidentiality, as well as the availability of legal protection for breach of duty of confidentiality. Critically though, the guidance cautions that each situation needs to be considered on its own merits.⁹²

4.5 PRACTICAL LIMITATIONS ON THE OUTCOME

ICAEW's Crisis Without a Legacy programme of policy summits has developed a triangulation doctrine: recognition that at a practical level, international public policy decisions need to balance the demands of international public interest, market forces and popular opinion.⁹³ This highlights that there may be political or other practical reasons why what might be the optimum public interest outcome cannot be delivered.

Where such considerations do affect the outcome, long-term reputation is likely to suffer less by acknowledging that there are practical considerations which have changed the outcome, rather than contrive an argument that the sub-optimal (from a public interest perspective) outcome is actually in the public interest.

4.6 USE OF THE FRAMEWORK FOR NON-PUBLIC INTEREST MATTERS

Even if the issue is not a public interest matter, the framework may still be useful to an advocate of an action that involves a wider range of people than can be communicated with directly. However, the justification used should fit the purpose. Other alternatives might include, for example:

- acknowledgement that the matter is for the benefit only of a few, but obtaining agreement from those disadvantaged by including compensation in the arrangements; or
- arranging the matter as something that people can opt in to or opt out of.

4.7 CHAPTER SUMMARY

The use of the concept of the public interest as justification will present a challenge. It should be used only where it needs to be used and where it can be supported by addressing satisfactorily the matters raised in this framework.

The public interest is an abstract notion; to argue and be able to hold out that an action (or inaction) is in the public interest can require consideration of a number of complex factors and it imposes a burden of proof on the advocate of the action. Flaws in the argument or the outcome can rebound upon the reputation of the advocate, which will harm acceptance of future matters asserted to be in the public interest. Alternative means of justification may be preferable, where much of the public is scoped out, or can opt out.

Matters to consider when deciding whether to use a public interest justification include:

- the purpose of seeking to invoke the public interest;
- whether the matter is really intended to be for the benefit of society, as represented by the relevant public - this will involve a wide section of the public, whether they like it or not;
- whether the locus or remit of the advocate of the action permits or requires a public interest perspective; and
- whether political or other practical considerations are likely to result in a sub-optimal outcome from a public interest perspective.

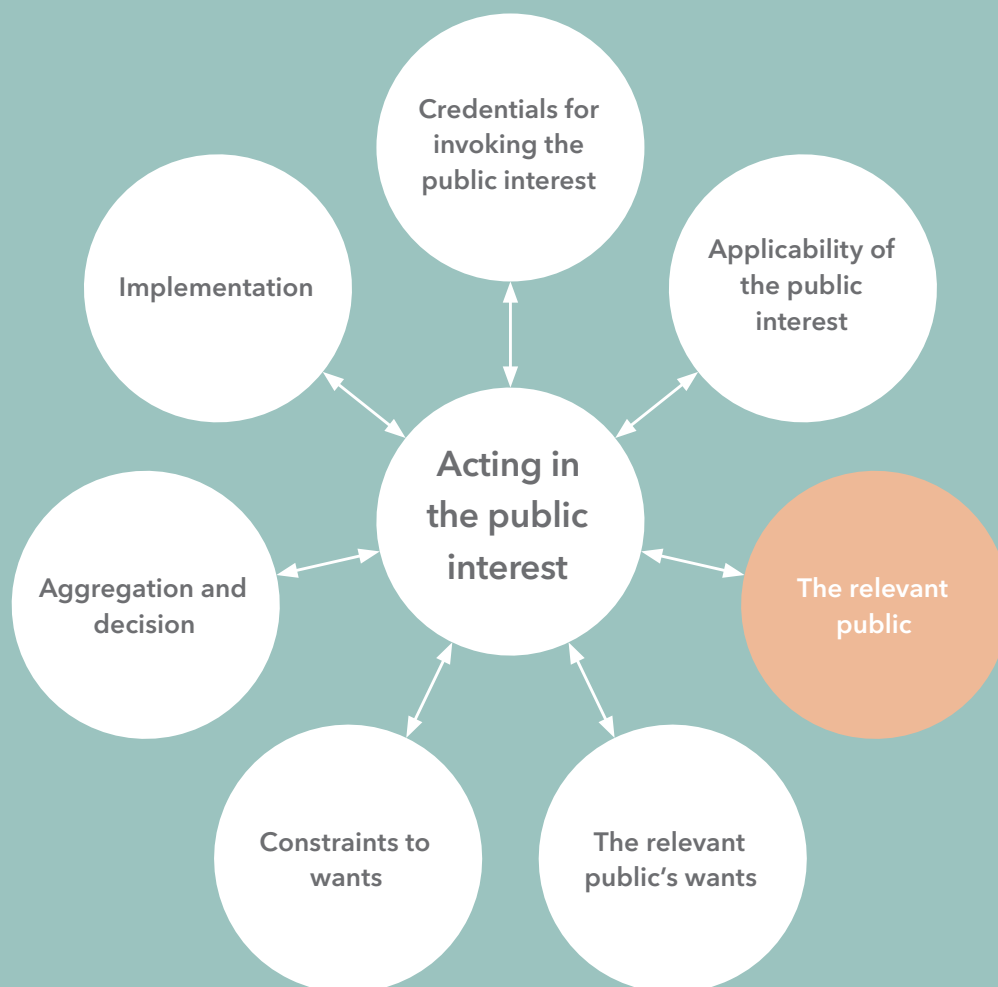
Even if the issue is not a public interest matter, the framework may still be useful to those advocating an action that impacts upon a fairly wide group of people, but the justification used should fit the purpose.

It is important to consider whether the likely debate would be about what is in the public interest: it may instead be about different expectations of what is likely to happen in the future.

5. The relevant public

Consideration of the public interest must mean being open to taking into account the interests of the global public.

However, as a practical matter, not everyone will actually be affected by the matter at hand. Who is relevant to be taken into consideration? Who is not relevant?



5.1 SCOPE

In our view, the whole of the public must be eligible for consideration in respect of a matter which is asserted to be of public interest, by its very nature. However, as a practical point, there will be large numbers of people whose welfare will not actually be affected by the action.

To argue that the public interest is being considered must mean that the interests of the whole public are being taken into account, that is to say, everyone in society, and we start with the view that society should be considered in terms of the global community as a whole (discussed further below). Any lesser consideration needs a caveat. For example, just because a regulator's remit requires it to concentrate on the interests of investors does not make the consideration a public interest one, even if a lot of the public have investments: it makes it an investor interest consideration, even though others may benefit peripherally. This high hurdle is not proposed through any desire to deem matters that affect only a few people as not being in the public interest. It is more that, as discussed previously, to argue that something is a public interest matter imposes a considerable burden of proof on the proponent of the action and other arguments might be more appropriate.

PANEL 5.1: CHARITIES AND PUBLIC BENEFIT

There are differing views as to the nature of 'the public'. For example, the Charity Commission for England and Wales requires charities registered with it to have charitable aims that are for the public benefit and to report on how they do benefit the public. The Commission does permit restriction of benefits to a section of society under certain circumstances: 'The restriction must be reasonable and, if it is, then it is accepted that society as a whole benefits by helping that section of society.'

'The public benefit' is not defined but guidance is given about the nature of the restrictions, examples including:

- preserving an endangered species, which would be regarded as acceptable as it is intended to benefit everyone;
- provision of a village hall would be reasonable, provided it was available to all - although in practice only those locally would be likely to benefit;
- provision of benefits for women would be reasonable assuming the aims were, say women's health issues; and
- provision of a bridge for Methodists only would not be reasonable as the restriction would have no justification based on special need.⁹⁴

Our proposal above of a need for potentially unrestricted scope would suggest a narrower acceptance of what a public interest matter is than the Charity Commission's public benefit test. The village hall example was discussed further in Section 4.3.

Having started with an unrestricted scope, in practice not all of the public will actually have an interest in the matter at hand. Therefore, as a practical measure in terms of working out who actually needs to be considered, the 'relevant' public needs to be determined. The relevant public will include:

- those who benefit or are disadvantaged; and
- others who might have a legitimate interest.

5.2 DEGREES OF EFFECT

In practice it is not usually necessary for the advocate of a public interest action to consider the detailed effect on the whole population of the world or their views. Everyone may have an opinion but the extent to which that opinion needs to be considered will vary: in many cases it will be clear that only certain people will be affected. However, often there will be different degrees of effect and ignoring those who are not affected is different from ignoring those who are marginally affected. An airport, for example, might be located in one local authority area, its flight paths may directly affect the citizens of a different area, its facilities could be used by businesses and passengers from a whole region, and, arguably, its general environmental impact would be on a much wider area still. People in these different areas are clearly affected to different degrees and that will contribute to their being likely to have completely different perspectives on whether the airport should be expanded. Whose interest is to be considered?

- Everyone with an opinion?
- Everyone who might be impacted?
- Everyone who will be impacted?
- Those who are significantly and directly impacted?
- Those to whom there is a legal responsibility?

If some who might be affected are ignored altogether, then the public interest has not been considered. That does not mean to say that some weighting cannot be applied. This is considered further below.

PANEL 5.2: ICAEW AND THE RELEVANT PUBLIC

We have suggested above that, to say that the public interest is being considered must mean that the interests of the whole public are being taken into account. ICAEW's version of the Code of Ethics includes additional explanatory wording to that of IESBA: 'Acting in the public interest involves having regard to the legitimate interests of clients, government, financial institutions, employers, employees, investors, the business and financial community and others who rely upon the objectivity and integrity of the accountancy profession to support the propriety and orderly functioning of commerce.'⁹⁵

In practical terms, neither ICAEW nor its members can solicit the opinions of everyone in the world so the key word there is 'legitimate': who is likely to have (or should have) a reasonable interest in the matter at hand?

For ICAEW itself, its members are those to whom it, as an organisation, is most directly accountable. However, there is a much wider set of people that both ICAEW and its members will often need to consider. As is evident in the discussion in Panel 2.4 on our history and objectives, a prime purpose for our existence is the maintenance of high standards so that those who rely on the work of ICAEW Chartered Accountants can have confidence in the work they do. All members of ICAEW, therefore, have an interest in what their fellow members do: each has a duty to other members of the body to act in a way which preserves their collective reputation – a powerful requirement given its importance.

Similarly, there can be other people with a direct interest in the work of our members, rather than that of ICAEW itself. This will vary by type of work. For example, for audit work the investors and the regulators that governments have set up to safeguard their interests have a direct interest in one way or another. On a more indirect basis everyone has an interest in the smooth functioning of capital markets that quality audits facilitate.

In other areas, there is less rationale for, say, regulators of a specific type of work, to be directly relevant. For example, to whom does a professional accountant in practice, advising a private company, or one working in business owe a duty to, other than his or her client/employer and his or her fellow professionals? The answer, based on the background to the profession discussed above, would always seem to include the general public. However, is this wider duty any more specific than to comply with the law and the Code of Ethics?

Occasionally a conflict may arise: a former ICAEW president has observed that there is an argument that 'members can't have a public interest role because they work for clients and, like commercial businesses, are motivated by seeking to generate income'. However, he also noted that this argument fails to recognise that 'it is the attitude of mind that chartered accountants bring to their work, rather than public spirited deeds, that ensures they are acting in the public interest'.⁹⁶

5.3 GEOGRAPHICAL EXCLUSIONS

Geographical remit issues may also narrow the range: for instance while governments have to bear in mind international relations, when they say 'the public interest' they are usually not going beyond the public of their own country, to whom they are accountable. An example of this perspective is a definition of the public interest, albeit caveated that the public interest is a 'mercurial concept', in a report on legal services regulation in the UK: 'an aggregation of the individual and corporate interests of everyone **within a given territory** within which it must be the role of government and its agencies to arbitrate as and when those interests conflict or collide'.⁹⁷

This simplifies matters where the government deems itself to be able to determine what is in the national interest - discussed further in Section 9.2.1. Strictly though, in a world increasingly given to global interaction, a public interest defined by borders would not be the whole public of the world: it should be considered to be the national interest rather than the public interest. The approach to analysis would be similar but it helps to be clear to avoid confusion.

5.4 INTEREST AND OPINION

The relevant public will not include those who are only interested in the sense of finding the subject fascinating. That is a different sense of interest and not directly what the public interest, in the sense of being for the greater good, is about.

That is not to say that popular opinion is not relevant: it is and is considered further below. However, that is about the public's thoughts on a matter that is a public interest matter, not about whether the public's interest makes it a public interest matter.

The ICAEW Code of Ethics specifically refers to consideration of legitimate interests (Panel 5.2). In addition, standards such as those of IESBA, in their codes of ethics refer to perception of a 'reasonable and informed third party'.⁹⁸

5.5 REPRESENTATIVES

Who is considered to be relevant may not be obvious, particularly if that set is not the whole public. It is important for there to be transparency to ensure that those who might have been omitted from consideration, but believe they are relevant, have the opportunity to explain why.

In addition, there can be a difference between those who 'can' affect something and those with a legitimate interest in affecting it. The latter have a theoretically stronger case and this needs to be considered carefully, although the boundaries can blur. For example, charities or lobby groups can often be set up by someone with no obvious direct interest at all, but if they attract enough support from those who are affected (which is different from merely purporting to speak for them), they become their representatives and thus relevant in their own right.

5.6 CHAPTER SUMMARY

The whole of the public must be eligible for consideration in respect of a matter which is asserted to be of public interest, by its very nature. However, as a practical point, there will be large numbers of people whose welfare will not actually be affected by the action.

The relevant public will, therefore, only be a subset of the whole public: first, those whose welfare will be advantaged or disadvantaged, although this is not always clear-cut; also, others with a legitimate interest, for example NGOs, representative bodies and others with a mandate to speak on behalf of people who are affected. Within the relevant public there will also be degrees of impact, which may be relevant in determining how to weight views.

The relevant public will not include those whose interest merely lies in finding something interesting. That is a different meaning of interest altogether.

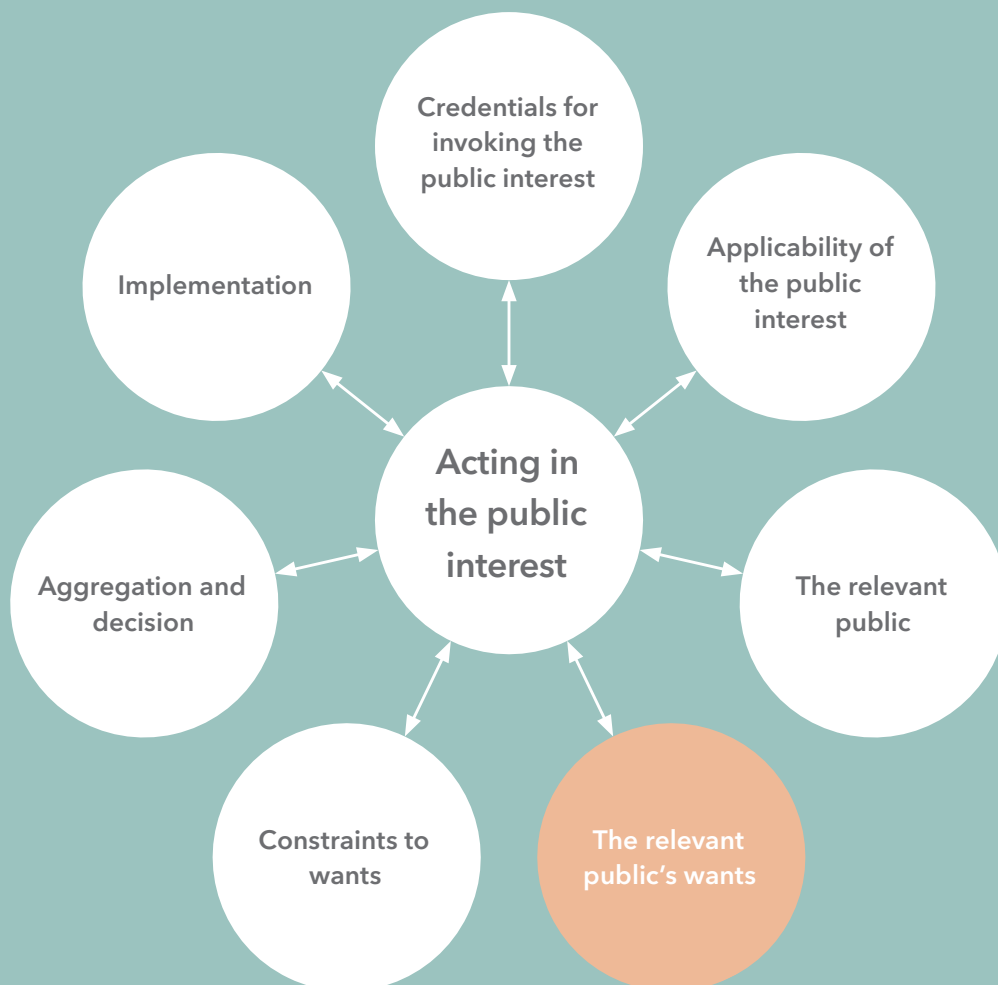
This chapter also considered who the relevant public can be from ICAEW's perspective. Depending on the circumstances, those most directly affected will often include: members; clients and employers; investors; and regulators. It can include the whole of the public where, for example, the smooth running of capital markets is concerned.

6. *The relevant public's wants*

Public opinion must be relevant in considering what is required in the public interest. However, different people arrive at decisions applying different sets of values and perspectives and there will not be a uniform view.

What are the roles of public opinion, public needs and public wants?

How are the relevant public's wants and needs best assessed?



6.1 PUBLIC OPINION

In our view, the starting point in any public interest consideration is what the relevant public wants. Popular opinion must be relevant in considering what is required in the public interest. We argue that the public interest is not an absolute value, but a variable that depends, among other things, on points of view. Different people arrive at decisions applying different sets of values and perspectives and there will not be a uniform view. The 'weight of public opinion' is another way of saying 'the majority view' and, particularly in a democracy, the view of the majority must prevail to avoid dictatorship by the few.⁹⁹ There will be occasions when that view needs to be tempered or adjusted: the public's wants may be based on incomplete or erroneous information and there may be other constraints to those wants that need to be taken into consideration (indeed sometimes core values may need to be the starting point). These are considered in Chapter 7 but overriding wants needs to be transparent and justified. In the long term, the actual wants may become aligned with the 'adjusted wants' but if not, reputation and ultimately remit to act will suffer.

PANEL 6.1: HISTORICAL PERSPECTIVE ON PUBLIC OPINION

Public opinion, which might extend beyond those with an immediate interest, has waxed and waned in importance in terms of influencing policy.

From a European perspective it rose in importance during the seventeenth and eighteenth centuries due to a number of factors:

- the abolition of censorship as a result of, for example, the lapse of the Licensing Order in England in 1689;
- the decline of individual royal or aristocratic patronage; and
- the rise in literacy among the middle classes in particular, who congregated in coffee houses, salons and reading circles.¹⁰⁰

The rise in public debt in, for example, France in the eighteenth century meant that the public had to be taken note of.¹⁰¹

Views have also differed, affected no doubt by the differing natures of the surrounding societies, as to whether popular opinion was something that should be used to shape policy or moulded to appreciate policy. The latter is considered further below.

Condorcet, for example, favoured education to avoid the 'philosophical errors' that he thought were responsible for 'all errors in government and in society'. Metternich saw only 'preposterous folly' in considering public opinion. Canning, on the other hand, believed it was 'a power more tremendous than was perhaps ever yet brought into action in the history of mankind'.¹⁰²

In the long term, all governments are accountable to public opinion but the widening of the electoral franchise in many countries over the nineteenth and, particularly, twentieth centuries, to create more democratic institutions brought more immediacy to the role of popular opinion in shaping government policies.

6.2 PUBLIC NEEDS AND WANTS

Previously we considered a historical perspective on the development of the public interest. This evolved into a set of state interventions to ensure certain basic standards that allowed people to go about their business. There has been no shortage of writings at least touching on the extent and role of interventions needed. The recurring requirements can be summarised thus:

- defend the right to pursue material self-interest without unnecessary restriction,¹⁰³ including allowing forms of combination through, for example, corporate forms;¹⁰⁴
- defend life, liberty and property¹⁰⁵ including intellectual property rights;¹⁰⁶
- protect private interests by uniting to insure, more effectively, life, health, liberty or possessions;¹⁰⁷
- arbitrate in conflicts;¹⁰⁸
- enforce minimum standards of, for example competition¹⁰⁹ or professionalism;¹¹⁰
- promote openness to allow individuals to make appropriate decisions;¹¹¹ and
- promote stability and openness to pluralism, which necessitates a conducive political structure.¹¹²

This is not inconsistent with the causes of the historical interventions considered in Chapter 2.

However, these are but a part of what people want. One strand of argument as to what motivates people has been advanced over a lengthy period of time to be 'happiness', albeit with slightly different use of words:

- Aristotle argued that the common interest was an interest in the attainment of a good life.¹¹³
- Bentham, over 2,000 years later, observed that people are driven by two masters, pain and pleasure. Thus individuals gain utility where something 'tends to produce benefit, advantage, pleasure, good, or happiness (all this in the present case comes to the same thing) or (what comes again to the same thing) to prevent the happening of mischief, pain, evil, or unhappiness'.¹¹⁴
- A much more recent analysis argues along related lines: happiness is the sole goal of human activity 'because it is our overall motivational device'. What makes us happy is a combination of subjective factors: good family relationships; a sound financial situation; work; a trustworthy community; freedom from chronic pain and mental illness; and personal liberty.¹¹⁵

Government policy tends to concentrate on material prosperity and freedom, which fits in with eighteenth century suggestions that the whole point was the achievement of 'a great and prosperous society'.¹¹⁶ A more recent consideration broadened this out to the 'realisation of social and political goals of the community at large'¹¹⁷ which might mean something different, if society's goals are other than greatness and prosperity.

Indeed, the above analysis suggests this is not what people concentrate upon exclusively. Thus measures of, for example, Gross Domestic Product, do not tell the full story.¹¹⁸ The issue is complicated by our material wants being relative and our desire for things that matter as security, being able to trust, and having good relationships, which are not easy to measure.

6.2.1 WHAT MATTERS TO PEOPLE

There are a number of models listing around half a dozen or so factors that matter to people in terms of determining their happiness.

One example suggests the following factors:

- family relationships, such as marriage quality and stability;
- financial situation;
- work, that is having some, having some control and being fulfilled. Unemployment and fear of that is negative;
- community and friends, which relates to trust;
- health, where positive health does not matter so much but chronic pain and mental illness are severe negatives;
- personal freedom, where higher local democracy helps; and
- personal values, such as religious belief, concern for others, and having attainable goals.¹¹⁹

Another lists:

- economic well-being;
- political freedom;
- personal freedom;
- social mobility;
- health; and
- safety.¹²⁰

The UK government consulted at the end of 2010 on how to measure national 'well-being'. The consultation suggested that this would include subjective measures around satisfaction, happiness and purpose, as well as more conventional objective measures. The report on the responses indicated findings in line with the models above: 'The results show that while different things matter to different people, and vary at different stages of life, there are some common themes. These include:

- the importance of our health to our well-being;
- the importance of having adequate income or wealth to cover basic needs;
- the environment around us, and the need to connect with other people – whether partners, children, wider family, the community (local, national, faith and online), or work colleagues'.¹²¹

These various models and findings can be summarised as: material and physical security; relationships; health; freedom; and value beliefs. These make an interesting comparison with the purposes of the state interventions in Section 6.2 above. Combining the two seems to suggest that wants and needs could be summarised as:

- freedom to go about your affairs;
- defending private interests;
- defending health and basic living standards; and
- preservation of core values.

In short, at a wider level what people want is complex and cannot necessarily be presumed.

6.3 COMPATIBILITY OF THE ACTION WITH OVERALL PUBLIC WANTS

There is an argument that matters of public interest should be restricted to significant issues pertaining to society – for example, one 'articulation' of the public interest in connection with (but not restricted to) legal services regulation: 'The public interest concerns objectives and actions for the collective benefit and good of the current and future citizens **in achieving and maintaining those fundamentals of society that are regarded by them as essential to their common security and well-being, and to their legitimate participation in society**'.¹²²

The goals under consideration at any point may not be strategic: they can be quite detailed, for example minimising inconvenience. It is useful as a sense check to consider how the specific wants fit in with the public's overall apparent wants, as discussed above.

PANEL 6.2: THE NEED FOR MORE £5 NOTES

A small example of where intervention might have been for the greater good but in a detailed context is from 2007, when the Governor of the Bank of England commented on the shortage of £5 notes in circulation in the UK.¹²³ This is widely attributed to the fact that cash is now largely drawn from bank ATMs. Banks, to minimise cost, stock the ATMs with £20 and £10 notes, but the net effect is that there are relatively few £5 notes in circulation, leading to people having to carry larger numbers of coins around than they would like. Here is an instance where rational self-interest has led to public inconvenience.

6.4 ESTABLISHING REPRESENTATIVE OPINION

As noted in Chapter 5, the whole of the public may not be relevant to the issue in question.

Where there is a narrow range of people with legitimate interests (for example in most private companies) or the issue is a very simple, specific one, such as the example of the £5 notes above, the determination of what they want is quite easy. However, where the relevant public includes all or most of the public at large, and the issue is a more widely drawn one of furthering the public interest in general, what they want has been shown to be quite complex and perhaps not always understood by governments and others taking public interest decisions.

6.4.1 EXPRESSED OPINION

One of the key problems in ascertaining opinion lies in distinguishing what relevant opinion actually is from what it appears to be. Those seeking to assess what relevant public opinion is cannot know it instinctively. They must, therefore, seek out such opinion, which is costly and takes knowledge and effort both on the part of those seeking the opinion and those delivering it. Inevitably, therefore, the opinion on which they will be seeking to act upon will not be complete. It will be expressed opinion, rather than actual opinion, and there are potential problems with this.

First, some groups and individuals are more articulate or otherwise better at getting their opinions expressed than others through, for example, well-organised lobbying, or the attraction of the mass media to particular types of story. Some matters will unite groups of individuals with common economic, geographic or political interests, for example. Lobby groups will advance the interests of those who are well funded and organised. Some issues can be, in effect, a narrow zero-sum game: a contest for gain between one group and another. At the other extreme, issues can impact very widely, beyond the group(s) involved, and be of a public interest nature. A distinction can be made between different types of groups:

- common interest groups, that are wholly inward looking;
- representative common interest groups, that also represent the interests of their own members, but others outside of these groups may also obtain the benefits; and
- surrogate common interest groups, that represent the interests of those beyond their membership, albeit not necessarily everyone.¹²⁴

Common interest groups will tend to resist change where their members benefit from the status quo (for example trade unions seeking to maintain restrictive practices) and thus slow down a society's ability to benefit from technological and other change. It has been suggested that smaller groups will have disproportionate impact as they can organise themselves better, with social, as well as economic interest cohesion.¹²⁵

Matters which primarily benefit lobby groups' own members are less likely to merit public support than those which primarily benefit the public at large.

PANEL 6.3: WEISBROD'S PUBLIC INTEREST RATIO

Weisbrod's 'public interest ratio' sought to measure the effect of lobby groups' benefit. The ratio is calculated as external benefit divided by external plus internal benefit.¹²⁶ For example, at one extreme, a labour union in a 'closed shop' factory campaigning to improve safety issues in that factory, would have a very low ratio - there is no external benefit, only benefit to its members. A small rambling group campaigning to re-open a pedestrian bridge that was used by many others, would, if successful, be likely to benefit mostly people outside its own group, so, based on numbers affected, there would be a small internal benefit but a much larger external benefit. However, Weisbrod's ratio does not allow for the size of the group concerned: it actually tends to flatter small groups. It also does not take into account any qualitative factors attributable to the respective groupings, so should be treated with caution.

Another matter to address is to ensure that the selection of opinion sought is not biased, consciously or otherwise, towards those groups or individuals most likely to agree with the intentions of the advocate of the public interest action. As noted previously, public choice theory suggests that those responsible for public interest actions may well have their own motivations, and a pre-determined idea of what they would like the outcome to be.

PANEL 6.4: ICAEW AND ASCERTAINING RELEVANT OPINION

In the context of individual members, expectations of those with a direct interest are usually made relatively clear by the client or employer. The potential problem is with potential conflicts between these duties, and wider duties to the general public, considered in Panels 3.1 and 4.1.

For ICAEW, in common with other regulatory and/or representational bodies, ascertaining and weighting appropriate opinion, as opposed to just expressed opinion, is a challenge. Consultation has to be not just reactive to those best organised to lobby, but, using existing knowledge and skills, proactive in terms of seeking out others likely to be affected, in particular where gaps exist in the knowledge and skills. ICAEW does this through, for example: trying to collect and balance out input from its committees and boards; publicising activities; organising events for those likely to have an interest; and initiating direct contacts with its members and other relevant persons.

ICAEW's Code of Ethics includes a requirement to maintain confidentiality as a fundamental principle. However, it allows this to be over-ridden in a number of circumstances, including when disclosure is in the public interest. However, it recognises the potential differences between actual and expressed information, counselling that 'In deciding whether to disclose confidential information, relevant factors to consider include ... whether all the relevant information is known and substantiated, to the extent it is practicable. When the situation involves unsubstantiated facts, incomplete information or unsubstantiated conclusions, professional judgement shall be used ...'¹²⁷

6.5 ENSURING CONFLICTS WITHIN THE RELEVANT PUBLIC ARE NOT OVERLOOKED

The 'consensualist' approach referred to earlier could be taken as suggesting that something can only be in the public interest if everyone agrees with it – what has also been called a collective concept of the public interest.¹²⁸ However, we believe that this is too narrow a perspective and would discount many actions which are for the greater good, even though not everyone agrees with them. There are inevitably variations between what different individuals want, both in terms of their underlying moral values, and in priorities between values because they often conflict with each other. For example, whether the end justifies the means, or the means justifies the end. A further source of differences is the variation in cultural values, particularly, though not exclusively, across international boundaries.

PANEL 6.5: EASTERN AND WESTERN PHILOSOPHIES

There is a considerable amount of literature focusing on the differences between western and Chinese philosophy. The latter is often equated with Confucianism, although this is just one element of Chinese philosophy. There are a number of other philosophies which blend into the whole, deriving from the 'Hundred Schools of Thought' period. These include, for example:

- Mohism, which is similar to democratic centralism in that leaders embody and enforce a consensus moral judgement;
- Daoism, which tends more towards the value of utility but is pluralist rather than individualist, so societies make the choice; and
- Xunxi, a version of Confucianism, which inter alia advocated suppressing rival voices in the interests of social order and economic distribution.¹²⁹

For our purposes the issues can be illustrated and considered concentrating on Confucianism.

Western philosophers tend to focus on the individual as an autonomous and rational being. This follows Greek philosophy which requires reasoning and analysis, but also incorporates notions from Christianity such as individual souls and an individual quest for salvation. Confucianism focuses on harmonious relationships in which reciprocity and obligations to individuals or groups take precedence over individual rights or obligations to a wider abstract notion of the public good. Examples of differences of view on certain actions that this might result in include: payments to smooth things out; nepotism; employer loyalty; gift giving; personal relationships; investments in related firms; and profit versus stability.¹³⁰

It has been suggested that arguments for human rights will not work within a Chinese moral-conceptual framework. Western rationalism requires recognition of different points of view provided they are seriously reflective. The Chinese character for 'rights', used on its own, does not have the western sense of human rights: it implies power.¹³¹

In considering how to determine opinion, the likely impact of the decision across cultural and other boundaries needs to be considered by the advocate of a public interest action. If there is feedback missing from sections of the relevant public that are likely to take a different view, the decision itself will be open to challenge unless reasonable efforts have been made to fill the gap.

6.6 THEORETICAL APPROACH TO ASSESSING WANTS

It is useful to consider what steps have been taken to determine what the relevant public wants. Sometimes it is not possible to establish what people want with any reasonable degree of certainty. An option is to establish a theoretical approach by 'standing in their shoes' - a use of the 'veil of ignorance' concept referred to further in Section 7.4.1, although the latter is more about standing in everyone's shoes. This can open up accusations of bias or being out of touch and significant transparency is needed, as discussed previously.

Empirical evidence alone does not always give a full picture: there is a role for intelligence and creativity. The theoretical approach acts as a useful sense check on the advocate's assessment of opinion, even where information seems to have been gathered comprehensively.

6.7 CHAPTER SUMMARY

Those responsible for a public interest action have first to determine who the relevant public are. The next consideration in deciding what is in their interest should be what they want and whether the action is consistent with that. In some circumstances, overriding values may be the starting point but popular opinion must be relevant. However, determination is not easy. First, by its nature, the relevant public in a public interest matter will be broadly based. Second, what people want is complicated: it usually revolves around happiness, which is a subjective notion built around a whole series of factors that often conflict with each other, those of other people and those of other cultures. Third, interests can coincide with those of others and interest groups will be created. Inevitably some will have a public interest perspective and some not. Some are more articulate or otherwise better at making themselves heard than others and expressed opinion will not necessarily be the same as actual opinion.

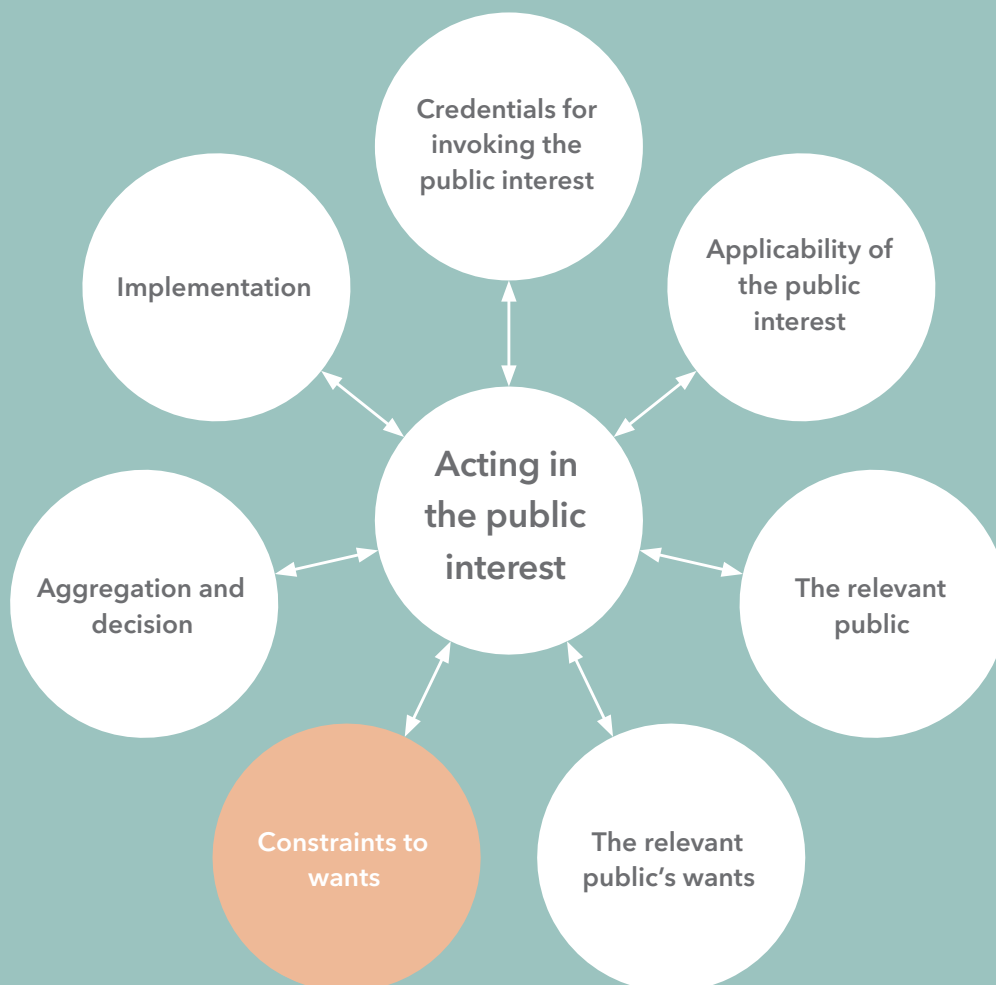
Having sought out representative opinion from the relevant public, it can be helpful to the advocate of a public interest action to apply a sense check. A rational imputation of wants will consider: what would we expect the relevant public to want standing in their shoes? Intelligence and creativity have an important role to play in making the assessment too. Sometimes it may be difficult or impossible to gather opinion and the theoretical assessment will be the only option for the advocate. This does impose a greater burden of proof of ability and right to decide, as the assessment will inevitably be challenged by those with different views.

7. Constraints to wants

Those determining the best public interest action may have to act on behalf of the stakeholders by exercising independent judgement in their interests, rather than being a proxy to represent their views.

How can allowance be made for the impact of self-interest, misinformation and externalities in considering apparent wants?

Are there overriding values that should be applied?



7.1 SELF-INTEREST AND MISINFORMATION

Having ascertained the relevant public's wants, that is obtained the stakeholder input, those determining the best public interest action may have to act on behalf of the stakeholders by exercising independent judgement in their interests, rather than being a proxy to represent their views.¹³² There may be grounds for overriding the relevant public's wants. These grounds are discussed below but when wants are overridden, it is incumbent on those responsible for a public interest action to explain the rationale clearly.

7.1.1 CAN THE SUM OF INDIVIDUAL ACTIONS GIVE THE WRONG ANSWER?

In determining whether it is in the public interest to go beyond the existence of the basic 'protected laissez-faire' infrastructure referred to previously, we need to consider whether everyone acting on their own according to their own interests, can result in an outcome which is clearly sub-optimal from a wider perspective. In short, we believe that the sum of the parts can sometimes add up to a net position that can be seen not to be for the greater good.

PANEL 7.1: ACTING IN ONE'S OWN INTERESTS

The notion that people act in their own self-interest is long established.

Egoism is a fundamental feature of Sophist, Epicurean and Skeptic views of man.¹³³ In the sixteenth century, Machiavelli not only recognised this but sought to use it to hold Florentine society together.¹³⁴

Hobbes, writing in the seventeenth century in a time of turmoil, argued that allowing unrestricted self-interested actions results in 'war of everyone against everyone'. He argued that, unlike creatures such as ants and bees, mankind is incapable of acting sociably 'without any coercive power' as we are given to, for example, a desire for pre-eminence and any agreement to common action is by artificial covenant rather than natural tendency. Therefore there needs to be 'a common power, to keep them in awe, and to direct their actions to the common benefit'.¹³⁵

Adam Smith, a century later, conceded that an individual generally 'neither intends to promote the public interest, nor knows how much he is promoting it'. However he held that markets generally delivered beneficial effects, noting 'It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest.' Although he is generally advanced as a champion of absolute free-marketers, this point is also a key argument of those that hold that the public interest is not necessarily served by merely allowing individuals to do their own thing: people make decisions to suit their own interests. Smith observed that mankind had charitable traits that would temper the effect of self-interest interaction.¹³⁶

However, he also took the point about the need for vigilance, arguing that: 'The interests of dealers ... is always in some respects different from, and even opposite to, that of the public ... The proposal of any new law or regulation of commerce which comes from this order, ought always to be listened to with great precaution, and ought never be adopted till after having been long and carefully examined, not only with the most scrupulous, but with the most suspicious attention.'¹³⁷

Our desire for pre-eminence apart, there are a number of other reasons why the sum of individual decisions might not equate to the common good.

What people consider to be in their own interest is determined by a whole set of values acquired over time. For example: need or desire for tangible gain; notions of rights and obligations; and moral values of right and wrong.

However, the public may:

- not have all the facts;
- be swayed by emotion rather than logic; and/or
- have been influenced by individual charisma.¹³⁸

Thus there has to be a concern that individuals may not be able to take the 'right' decision for themselves, even if considering only their personal perspective. A perfect market, in which everyone makes rational decisions, assumes: rational behaviour; no transaction costs; perfect information; enough decision makers and goods that one decision does not distort the market; and freedom of decision-making and market entry. In practice these conditions rarely apply, for the following reasons:

- Lack of full understanding
To make a sensible decision, people have to have knowledge of an issue and understanding of the consequences. In some instances the issue can be so specialised or apparently remote that individuals are unable, or unwilling, to make a rational decision. A slightly extreme, though illuminating example is a prospective limited nuclear test ban treaty where a first-hand understanding of the consequences would be rather too late: 'if the consequences ever arose to make the public capable of evaluating their interests in the subject, most of them would not be present to do so.'¹³⁹
- Cost of information
The acquisition of information does, in practice, have a cost, whether in time, energy or money. Indeed it has been argued that perfect information and perfect rationality are incompatible as that cost can profitably be used elsewhere.¹⁴⁰ Because of this cost, or as a result of fraudulent or anti-competitive behaviour, information can be incomplete, resulting in moral hazard and adverse selection.¹⁴¹
- Human behaviour
Human beings do not necessarily act rationally. We are, for example, prone to over-discounting the impact of future events, and are often capable of suppressing rational thought in favour of emotion – a point played on by politicians in particular – and influence through charisma. Sir Robert Peel commented that 'Public opinion is a compound of folly, weakness, prejudice, wrong feeling, right feeling, obstinacy and newspaper paragraphs.'¹⁴² Human behaviour is discussed further below.

As a result of these factors, action by individuals in their own interests may result in collective harm.

PANEL 7.2: EXAMPLES OF INADVERTENT COLLECTIVE HARM

- In some cultures, carrying on the family name is so valued as an objective that male offspring are very much preferred to female offspring. As it is now possible to know, before the birth, what the sex of the child will be, there is a tendency to terminate female births with the result that the ratio of males to females becomes disproportionate. Thus, the likelihood of being able to carry on the family name is actually diminished for people as a whole.
- The use of antibiotics to treat relatively minor bronchial infections has a short-term beneficial effect for the individual patient but, taken together, millions of individual usages of antibiotics decrease their effectiveness from the perspective of the public as a whole, for more serious infections.
- Traffic lights restrict the ability of the individual to proceed through often empty intersections at will. However, without them there can be chaos for all.¹⁴³

In each case a restriction on the ability of individuals to do exactly what they want when they want is seen to benefit everyone in the long term, although this may not always be so: the traffic light example above was based on the effect on the urban grid system in Manhattan during power blackouts. However, a different experience is discussed in panel 9.1.

In terms of whether the relevant public's individual wants need to be adjusted to arrive at an overall outcome that can be considered to be for the greater good, the considerations above act as an overall sense check for the advocate of the public interest action. Is there reason to suppose that the public has been misinformed or misled? Does the interaction of individual actions produce an undesirable result as a result of interactions when aggregated?

7.2 EXTERNALITIES AND PUBLIC GOODS

7.2.1 ESTABLISHING HOW PUBLIC GOODS AND OTHER EXTERNALITIES SHOULD BE DEALT WITH

The existence of externalities and public goods is a further factor that can result in individual wants not producing a result that is for the greater good overall.

For public goods such as roads, most of which are funded by public taxation regardless of individual use, market rationality tends to result in people underestimating their cost. We assume the obligations can be passed to others while we retain use of the good:¹⁴⁴ marginal use does not result in marginal costs to the individual. Examples include common pasture, where individuals will tend to overgraze their own animals, even though it diminishes the pasture and thus the wealth of the village as a whole, and overfishing in international waters, which eventually exhausts the fishing stock.¹⁴⁵ Environmental issues such as pollution, overexploitation of natural resources, and depletion of wildlife also derive from their being treated as common property resources.¹⁴⁶ Again, it requires some sort of central authority to address these issues, although as discussed below, there are ways of pushing them into the individual domain.

7.2.2 CAUSES OF EXTERNALITIES

Externalities result in sub-optimum resource allocation because there is no clear economic effect on those potentially using the resources, of their usage or not. Some activities are externalities because the market does not deal with them. An example is pollution, where the cost is borne by the public as a whole rather than the polluter. This can be addressed by governments through direct regulation such as required actions or prohibitions, or internalising the activities to the market through mechanisms such as taxation, subsidies, and market-mirroring schemes such as emissions trading.^{147 148}

Other externalities arise through the general public's choice. Sometimes this emerges through practicality. An example is defence where it would be difficult to work out how to charge for it on a user-pays principle, and there is also the free-rider problem: how would those within a country who do not pay, be excluded from benefit? If they are not excluded, why should others pay?

Sometimes goods and services become common for social purposes. Governments and other relevant authorities need to balance economic efficiency and social cohesion. This is particularly important in the context of public services ie, those which are provided from the public purse rather than being recharged to users, and which thus become externalities to those users. Public opinion, shaped by slow-moving forces such as social institutions and collective memories, has been attributed as a key cause of ensuring that welfare states survive global pressures.¹⁴⁹ Opinion differs on the extent to which there should be public goods, even within one country. For example, in Belgium, there have been seen to be different views between the Dutch and French speaking populace as to what should be included within such services, the latter consistently expecting higher levels of universal service.¹⁵⁰

What there seldom seems to be within a society is a coherent debate on this, items instead being picked off and argued about on a case-by-case basis.

It follows that those advocating or assessing a public interest measure may need to consider:

- not only how to deal with common goods or services, but also
- what relevant factors should be treated as common goods or services.

From the perspective of a public interest action, externalities can feature even where there do not appear, on the face of it, to be common goods or services. We have already noted that measures such as Gross Domestic Product do not tell the full story because of the omission of qualitative characteristics of what people actually want. They also do not consider the overall social effect of the apparent output, indiscriminately mixing output that satisfies needs, output that satisfies 'needs' generated artificially through, for example, advertising, and social costs such as accidents, wars and litigation.¹⁵¹

PANEL 7.3: ICAEW AND EXTERNALITIES

Common goods are not a particularly key issue in the context of accountancy professional conduct, although some professional activities are designed to achieve what could be regarded as positive externalities. For example, ICAEW and some other professional bodies comment on matters that are wider than those immediately relevant to their members and make some thought leadership and guidance material free to all, in order to raise standards more generally in the economy. Another perspective would be that they do this to enhance their own reputation and thus that of their members, and that this work does not fall to be treated as an externality.

ICAEW's thought leadership work covers, among other areas, financial reporting and sustainability, both areas in which accounting for externalities is a key challenge and opportunity.

It was noted above that people will tend to discount the severity and probability of future downsides, when the prospect of an upside is more immediate. The same can hold true in reverse. ICAEW and other professional bodies that seek to follow a public interest perspective will sometimes find that such a perspective requires a long-term view to be taken, that can result in short-term disadvantages. With the time discounting referred to, it is not always natural to accept definite short-term sacrifices for potential longer-term gains. Ultimately, the equation has to be that the long-term maintenance of trust in the profession is in both the public interest and the interests of members.

7.3 TIME EFFECTS

Two issues arise. First, balancing immediate concerns against future impacts. Human nature discounts the severity and probability of future downsides, when the prospect of an upside is more immediate.¹⁵² More positively there is an argument for putting greater weight on the needs of the present based on probability: present needs are concrete, whereas there are many possible futures so the force of future interests is diluted by their contingency.¹⁵³ This does not mean that future interests can be ignored. There is an increasing call for development to be sustainable, which has been defined as, for example: 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs.'¹⁵⁴

PANEL 7.4: EXAMPLE OF GUIDELINES TO DEAL WITH THE FUTURE

The US National Academy of Public Administration applies four principles:

- 'Trusteeship' - an obligation to protect future interests;
- 'Sustainability' - no generation should deprive future generations of a quality of life comparable to that currently experienced;
- 'Chain of obligations' - each generation's priority is the living and succeeding generations, which recognises the 'concrete current interests' argument above; and
- 'Precaution' - actions posing a realistic threat of irreversible harm should be avoided in the absence of a compelling, countervailing need.¹⁵⁵

The second issue is about different expectations. The world's affairs are increasingly inter-related, people's reactions and behaviours are complex and often difficult to predict and events occur beyond anyone's control. In short, the future is uncertain. As decisions about the public interest often involve predicting the future, there will inevitably be different views. What is often seen as a debate about what is in the public interest might actually be an agreement about what is in the public interest, but a disagreement about what reactions to particular measures will be.

PANEL 7.5: MANAGEMENT OF NATIONAL DEBT: DIFFERENCES OF OPINION

An example of this is the on-going global debate about how to manage government debt which, particularly in the western economies, increased significantly after the financial crisis. Some governments believe that more expenditure will stimulate growth, which in turn will generate more government income and thus debt, at least as a proportion of economic output, will reduce. Others do not believe that this will happen and that reducing net government expenditure directly is the best solution. This debate, although often heated, is not really about what the public interest objective is - the management of government debt within the ability of the economy to sustain it. It is about how to achieve that and the differences arise because of different expectations about how people will react and what will happen in the future.

7.4 OVERRIDING VALUES

As well as misinformation and externalities, a third reason why the apparent wants of the relevant public may need to be adjusted is the existence of core values to be adhered to regardless of short-term wants.

A recurring theme of behavioural writing is, as discussed further below, that we are all motivated by selfishness.¹⁵⁶ This, however, is not incompatible with the notion that we have values over and above financial gain.

These include charitable traits. This was recognised by, for example, Adam Smith, whose market society effectively institutionalised self-interest (panel 7.1). However, in *The Theory of Moral Sentiments* (which actually preceded *The Wealth of Nations*), he argued that the impact of such a society was tempered by a trait in man such that: 'there are some principles in his nature, which interest him in the fortune of others, and render their happiness necessary to him, although he derives nothing from it except the pleasure of seeing it.'¹⁵⁷

Maintenance of values and personal gain can go hand in hand. People are greedy for esteem, so flattery, avoidance of blame, pride (in, say, being charitable), compassion and praise are as relevant to their desires as reward. Esteem is not just something awarded by others: self-esteem is also regarded as important, though views differ as to whether this is a universal human motive or a relatively recent Western cultural imperative.¹⁵⁸ Self-esteem will be fed by the individual's view on how they are complying with their own values.

Needs vary with level of subsistence, the hierarchy moving from lower order physiological and safety needs at a subsistence level, through belongingness and love, to higher order esteem and self-actualisation wants at better standards of living.¹⁵⁹ However, these needs, which can be grouped into existence, relatedness and growth, might not operate as a strict hierarchy.¹⁶⁰ Indeed people have sacrificed vital interests to principles throughout history as subsistence interests can encapsulate morally heavyweight values, making the sacrifice of vital interests in their pursuit sometimes entirely appropriate.¹⁶¹

7.4.1 BASIS OF DETERMINING VALUES

Choices involve judgement and judgement involves values. As noted above, what people want is influenced by underlying moral values but different, and sometimes conflicting, ethical principles result in different sets of values. Some of the key philosophical approaches to determining these include:

- Virtue - which would require an action in keeping with a chosen characteristic;
- Consequentialism - which requires consideration of the expected consequences rather than the means, and the maximum greatest well-being;
- Duty - which is based on the rights of others; and
- Justice - which focuses on fairness.¹⁶²

A notion which combines the concepts of fairness and self-interest is that of the veil of ignorance.¹⁶³ This poses a test that requires those imposing the action to consider whether they would still agree with that action if society's roles were to be refashioned and redistributed so that the persons making the decision do not know whether they would be the imposers or those being imposed upon. In other words, what would you decide if personal bias could be completely removed?

Ultimately it is the underlying values adopted that set the boundaries for what is right and what is wrong, what ends and means to those ends are acceptable and what are not.

7.4.2 CONFLICTS BETWEEN VALUES

While it is reasonable to suppose from the above that upholding basic values is important to people, there may be circumstances when this will be compromised, either knowingly or not. People have the capacity for rationalisation or self-justification: the ability to argue that an action that happens to be self-interested actually has some higher motive, or has been forced on one by external factors.¹⁶⁴

Other examples of potential conflicts, where personal values will come into individuals' determination of what is 'right', include:

- individual liberties or general order;
- individual or group rights, for instance in planning decisions;¹⁶⁵
- justice compared to family or other obligations; and
- altruism and sympathy for others against self-interest.

The sorts of conflicts considered above will inevitably result in trade-offs. Bringing those that need to be considered out into the open will help to encourage debate and to flush out self-justification.

Values can change over time, attitudes to slavery being an obvious example. The change is often a result of far sighted ideas advocated by political or other leaders. Those ideas are frequently only accepted by the public as good ideas after they have been implemented in the face of initial resistance.

Examples of changes in attitude over time include:

- the shift in US stance away from isolationism at the end of the 1930s;
- the increased acceptance of disclosure of information about public companies in recent decades;¹⁶⁶
- as referred to previously, ICAEW's own support in the 1920s, for the existence of hidden reserves and objection to a profit and loss account being published in the accounts.¹⁶⁷

7.4.3 TRANSPARENCY

There is a clear role for the application of overriding values but the public whose wants are being overridden deserves to understand that this is the case and where the overriding values are coming from.

PANEL 7.6: ICAEW AND CLARITY OF VALUES

On the face of it, within the accountancy profession these underlying values are, unusually, laid out for all to see. Many codes of ethics, including those of ICAEW and IESBA, are based around five fundamental principles: integrity; objectivity; professional competence and due care; confidentiality; and professional behaviour. All other guidance derives from these.

However, there are societal values behind these principles. In particular, the determination of how to behave with integrity is based on a series of underlying moral values and motives.¹⁶⁸ These need to be acceptable to the societies in which ICAEW and its members operate. These are less clear, particularly in an international context, although the codes do include some further discussion on the fundamental principles. The discussion on integrity, for example, refers to being straightforward and honest, also that it implies fair dealing and truthfulness.¹⁶⁹ Further work is being done in this area: for example ICAEW's on-going Market Foundations thought leadership work and a paper by the Fédération des Experts Comptables Européens, which has been exploring the need for further guidance on integrity in professional ethics.¹⁷⁰ In addition, ICAEW is carrying out work with the TEEB coalition (The Economics of Ecosystems and Biodiversity¹⁷¹) which addresses the importance of ecosystem services and the value of biodiversity to the economy. This work highlights the problems of defining and agreeing values that underlie the necessary ethical frameworks, and throws up the challenge of adjusting the public's wants or even overriding them legitimately with replacement values.

7.5 CHAPTER SUMMARY

The relevant public's wants may be incompatible with a public interest outcome for a number of reasons:

- the overall impact of individual wants may be a sub-optimal outcome through the effect of one person's activities directly affecting another's, or through what the public think they want being distorted by incomplete or wrong information;
- common goods and services and other externalities, which result in a different marginal cost-benefit to individuals than to society as a whole, especially taking qualitative issues into account;
- overriding values arising, for example, from seeking to lead a change in attitudes; or
- over discounting of future effects compared to current impact.

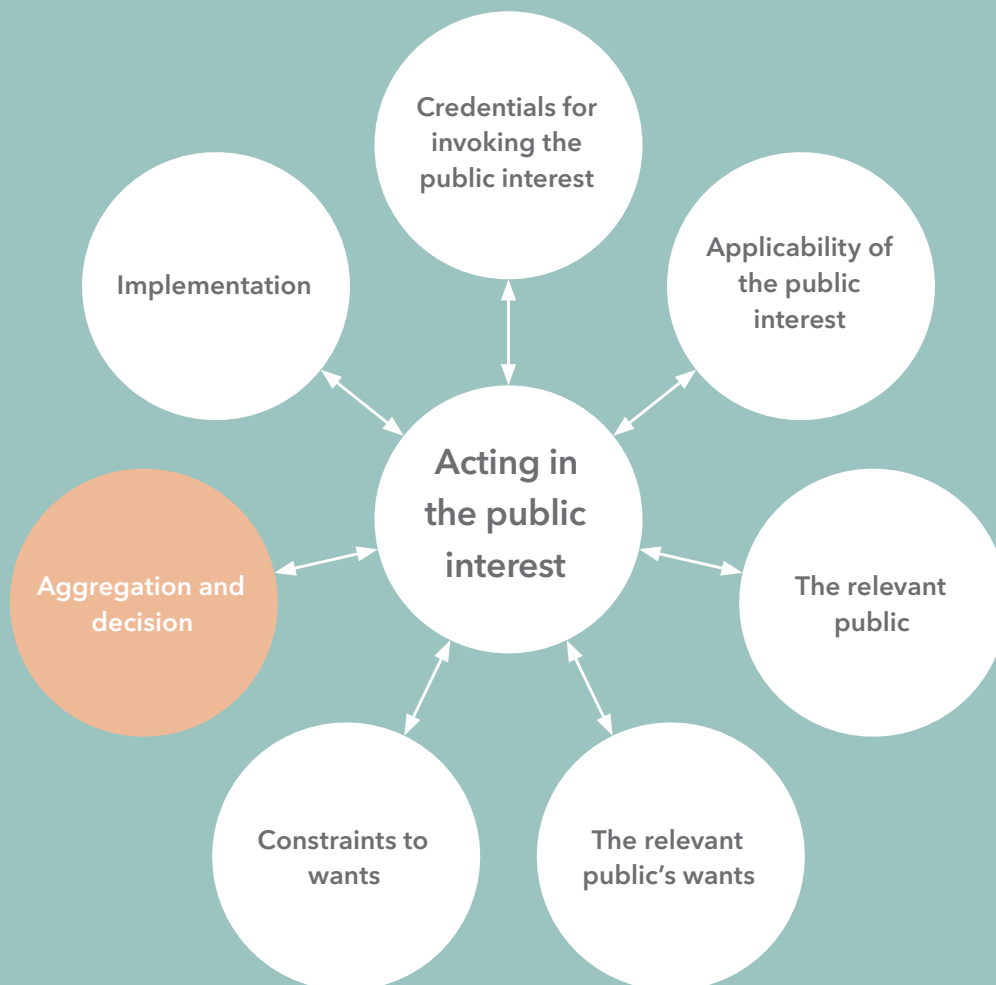
As a result the relevant public's wants may need to be adjusted. However, a 'we know better' attitude is rightly open to challenge and there will be an onus on advocates of public interest actions to explain why they know better.

8. *Aggregation and decision*

Those responsible for a public interest action need to adopt a process for decision-making which can be explained and justified.

How are decisions to be made practically, given conflicts and other constraints?

What are the roles in decision-making of calculation and 'intuition'?



8.1 BASES OF ASSESSMENT

Those responsible for a public interest action need to adopt a process for decision-making which can be explained and justified. There are frequently a number of alternative outcomes, of which more than one can be justified as being in the public interest.

A number of models to address the decision can be used.

8.1.1 DECISION BY RATIONAL CALCULATION

Rational decision-making will generally be based on some sort of system of calculation. For example, Bazerman's six-step approach advocates:

- define the problem;
- identify criteria and objectives;
- weight the criteria;
- generate alternatives;
- rate the alternatives on each criterion; and
- compute the optimal decision to arrive at an expected value for each alternative.¹⁷²

Such forms of decision-making lend themselves to transparency of process, an important consideration in terms of justifying use of 'the public interest' and, in principle, they avoid emotional override. However, they are often easier set out in theory than implemented in practice. Consider the issues with one calculation approach, utility. Utility is the 'amount' of satisfaction that someone derives from some action, such as the consumption of goods or services.

The usage of 'utility' in relatively modern times is generally credited to Jeremy Bentham. His principle of utility argues that: the best action is the one that brings the greatest utility;

- the greatest utility is what is good; and
- good is whatever brings the greatest quantity of happiness - although he later recognised that the latter two sometimes conflicted.¹⁷³

John Stuart Mill took a similar line but, more concerned with restricting the boundaries of central authority as a principle, he argued that intervention should be restricted to ensuring that harm to others is prevented.¹⁷⁴

Either way, while utilitarianism is a simple principle, it gives rise to a whole series of philosophical and practical questions: What do people want? What authority does or should government and others have to set policies to achieve greater utility? Do individuals act in a way that the sum of individual interests does achieve the greatest utility? How do you measure and aggregate individual utility?

Some of these have been considered previously. This part of the section addresses a few of the practical issues involved in determining 'the greatest happiness', given a number of options to choose from.

8.1.2 DECISION BY INTUITION

Making decisions by what seems to us as intuition, has also been called 'fast thinking'.¹⁷⁵ What is actually happening is that an automatic sub-conscious mental process has been invoked which recognises patterns, draws on past experiences and which balances various actions and goals (and prejudices) against each other. Thus many of the processes considered in the Bazerman approach noted above are being undertaken, but in a less structured and objective manner. Decision-making by intuition can have some advantages: speed; intrinsically taking into account what we really care about; and a greater incentive to implementation.¹⁷⁶ It is also a useful short cut when common sense can be applied and the proposed outcome is not going to be disputed. There is some empirical evidence suggesting that calculation may sometimes be inferior to intuition in making good judgements.¹⁷⁷ How often do we do an objective assessment, come up with a 'best' answer and then decide that it is not what we really want to do? This may be because our objective assessment has caused us to focus too much attention on relatively unimportant criteria, or because we have subconscious learning processes that can be interfered with by attempts at explicit learning.

However, decision-making by intuition also has drawbacks. It is difficult to switch off and the past experiences we are drawing on may not actually match the current circumstances.¹⁷⁸ Other traits of human nature that lead to illogical decisions are considered later. In particular these include an over-reliance on emotion (or even craving) and a lesser likelihood of realising that information or alternatives are inaccurate, irrelevant or missing. In addition, of particular relevance to this study, it is difficult to demonstrate how the process has been applied and is difficult to apply in group situations, where different members of the group arrive at different intuitive outcomes.

A combination of bases - informed intuition - is considered below.

8.2 BASES OF OVERCOMING MEASUREMENT PROBLEMS

8.2.1 MEASUREMENT

The fundamental principle of measuring utility is that that utility is the sum of individual interests. Therefore one could set out formulae to calculate utility.

PANEL 8.1: UTILITY CALCULATION EXAMPLE

(a) for an individual

$$r = a_1x_1 + a_2x_2 + a_3x_3 + \dots \pm a_nx_1x_2x_3\dots, \text{ where}$$

- r is the overall measure being maximised (for example wellbeing or happiness);
- x_1, x_2 etc are the satisfactions gained from the different factors that contribute to the overall measure (examples being economic well-being, health, or safety);
- a_1, a_2 etc are weighting factors applied to each of the satisfactions; and
- $a_nx_1x_2x_3$ is an interactive factor that allows for the fact that some combinations of factors may change overall satisfaction in a way that is not just the sum of the parts.

(b) for the public interest

$$R = \sum Y_i/Y r_i, \text{ where}$$

- r_i is the individual interest for each person being considered; and
- Y_i/Y is a weighting factor being allocated to each of those individuals.¹⁷⁹

Like impact analysis, the theory behind measurement in this manner is relatively easily set out but the underlying concepts are often difficult to quantify.

8.2.2 ENDS AND MEANS

On the face of it utilitarianism is concerned with the outcome, so intent is irrelevant. However, in terms of decision-making, utility will often need to be based on expected outcome, in which intent may be relevant.¹⁸⁰

Other ethical decision-making models are concerned more with the means as they are based on behaving according to a set of moral principles, such as Kant's adherence to a set of duties or Plato's concern for good 'character'.¹⁸¹ This need not necessarily be a polarised conflict between what is pragmatic and what is 'right', as the utilitarians' consequences may include how people feel about the means used and adverse consequences may affect the discharge of a duty or character trait (considered further below).

8.2.3 SUBJECTIVITY AND INCOMMENSURABILITY

To measure requires quantification, at least to some extent. Some measurements typically lend themselves to quantification, examples being income, expense or time. However, others do not, for example contentment, or inconvenience. Without some sort of quantification, issues of incommensurability arise.

PANEL 8.2: EXAMPLES OF INCOMMENSURABILITY

An example facing individuals might be when looking for a new car: how do you compare the respective merits of more luggage space, lower fuel consumption and air conditioning? Quality cannot be measured realistically without a generally accepted definition or standard to assess it against and that is not always available.

An example with wider impact is the current debate in the UK over proposals to build a new rail link (known as 'High Speed 2') from London, through some unspoilt and attractive countryside in Buckinghamshire, to the English Midlands and later the North. Here a balance needs to be struck between a loss of amenity and a large amount of disruption for some, against timesaving and potential economic benefit, for others. Here there are issues of subjectivity, incommensurability, weighting if quantification can be achieved, potential conflict of values and different expectations about potential benefits. This latter point in particular is an illustration¹⁸² that, even where there is agreement as to what the public interest objective would be, there can still be disagreements as to what the consequences will be. In this instance it might be agreed that in the public interest the decision will be based on whether the economic benefit to the country exceeds a certain amount, but there are highly variable opinions as to what extra economic activity the new line would produce, and where.

PANEL 8.3: UK COMPETITION POLICY AND THE PUBLIC INTEREST

A further example of multiple aims that cannot easily be compared by measurement is UK competition policy.

For many years assessment of the acceptability of takeovers and monopolies was based on a rather generic 'public interest' test. The Fair Trading Act 1973 went a little way towards specifying the matters to be considered, stating:

'In determining ... whether any particular matter operates, or may be expected to operate, against the public interest, the Commission shall take into account all matters which appear to them in the particular circumstances to be relevant and, among other things, shall have regard to the desirability -

- (a) of maintaining and promoting effective competition ...;
- (b) of promoting the interests of consumers, purchasers and other users of goods and services ... in respect of ... prices ... quality and ... variety ...;
- (c) of promoting ... reduction of costs ... development and use of new techniques and new products, and ... new competitors into existing markets;
- (d) of maintaining and promoting the balanced distribution of industry and employment in the UK; and
- (e) of maintaining and promoting competitive activity in markets outside the UK on the part of producers of goods ...'¹⁸³

This wide variety of aims potentially conflict. For example, helping compete abroad can sometimes be assisted by allowing the establishment of a large 'national champion' reducing competition at home. No guidance was given as to how these matters should be balanced but in principle it should be possible to work out, at least in money terms, the net gains and losses to the national economy.

In the UK Enterprise Act 2002, public interest was directly preserved only for media mergers, where guidance was given that matters such as accurate presentation, free expression of opinion and plurality of views – ‘to the extent reasonable and practicable’ – would be considered.¹⁸⁴ In other cases the public interest test was replaced by and large, with a pure competition-based test, although the Secretary of State (that is, the UK government) retained the power to intervene in cases where the public interest merited it.¹⁸⁵ This effectively seemed to be saying that it is up to the government to determine the public interest, which is consistent with our observations in the next chapter on government authority.

8.2.4 INTERACTION

Decisions as to what someone should do, cannot usually be made in isolation: it is often the case that one person’s actions will influence those of others.

Game theory works on the premise that to every action there is a reaction by other ‘players’. The reaction can, in principle, be predicted by considering the rules of ‘the game’ although it has been noted that in some circumstances there are no rules: a freewheeling game. In such circumstances it has been suggested that the premise should be that a player does not get out of the game more than he or she puts into it.¹⁸⁶ If the likely reaction is not what is desired, then either the initial action needs to be changed, or a more lateral approach applied: change the players, change the rules, enlist allies, tie people in or change the added value. Commercial examples of these sorts of behaviour include subsidising the costs of products which then need expensive consumables, long-term exclusivity contracts, and adding quality to the product.

One key problem with game theory is that it presupposes rational, informed behaviour by the other players.¹⁸⁷ As discussed further below, this is not necessarily the case.

8.2.5 WEIGHTING OF INTERESTS

From a public interest perspective the key aspect is not the weighting that one individual undertakes between his or her collection of interests, but how the interests of different individuals, groups and even societies, are weighted. It can be argued that there should be no weighting at all: ‘the good of any one individual is of no more importance, from the point of view ... of the universe, than the good of any other’.¹⁸⁸ However, this does not recognise that people have varying needs, abilities and relative interests in an issue, hence the caveat: ‘unless ... there are special grounds for believing the more good is likely to be realised in the one case than in the other.’

This inconvenient but real issue causes problems: ‘the most common and most durable source of factions has been the various and unequal distribution of property’, which has been interpreted also to include abilities. ‘Those who hold and those who are without property have ever formed distinct interests in society.’^{189 190}

In practice, weighting is applied in a wide range of decisions. Politicians, for example, will at least in theory, tend to have more regard to poorer/disadvantaged citizens when determining taxation and social spending policies. This can be defended up to a point on utilitarian grounds as the marginal value of one pound is greater for a poor person than a well off one. A counter-argument would be that if this is taken to the extreme, taxation/benefits would continue until everyone had the same income, reduce incentive and thus reduce the overall pot.

Within the UK accountancy profession, such discussion as there is in the profession's codes and other writings implies that 'the public interest' has a sense of 'majority satisfaction': some situations arising where part of the public would be satisfied at the expense of other parts.¹⁹¹

'National security' is often a trump card applied although even here other interests cannot be completely dismissed. An example of this is a seventeenth century English court case which decided that the King could remove vital minerals from a private individual's land as the taking was considered to 'extend to the defence of the whole realm, in which every subject hath benefit'. It was also ordered that the King should restore the land afterwards.¹⁹² In this instance, while national security was considered to carry significant weighting, this was not considered an excuse to avoid mitigation of the effect.

An international study on particular medical treatments considered criteria for patient selection.¹⁹³ It found that social value criteria were widely applied. The actual weightings were largely the product of the beliefs of individual doctors, although clinical criteria were provided by some professional bodies. Another medical study of 450 dialysis and transplant doctors was able to determine a set of weightings actually applied. They range from medical benefit, with a weighting of 4.2, through, for example, willingness - 3.7, age - 2.7, ability to pay - 1.8, to gender - 1.0.¹⁹⁴ Many of the aspects considered are clearly removed from broadly based impact criteria and social value criteria can be seen as arbitrary and unfair.¹⁹⁵ Not least of the controversy is whether the decisions should be left to specialists or take into consideration wider public views.

Sometimes there are absolute values that are so important (for example basic human rights) that they need to prevail in all but the most extreme situations. These can be dealt with by, in effect, applying a weighting of 100% or near to it.

8.2.6 TRADE-OFF OF INTERESTS

Given conflicts between the interests of different elements of the relevant public, the issue arises of whether it is right and proper to benefit one section of the community at the expense of another: in economic terms, what is maximising the end result considered to mean?

One measure, known as Pareto efficiency, takes it that output is maximised when it would be impossible to make someone better off, without making someone else worse off. Welfare economics, which considers distributive economic efficiency, often regards Pareto efficiency as the appropriate measure. In perfectly competitive markets there will be a set of prices at which aggregate demand equals aggregate supply for each commodity. This is competitive equilibrium. The key principles of welfare economics are that:

- every competitive equilibrium is Pareto efficient; and
- every Pareto efficient outcome can be achieved by an appropriate allocation of resources. Extending the logic, every Pareto efficient allocation can be changed by reallocation between the parties involved.¹⁹⁶

However, this takes no account of the distribution issues that arise if consideration is being given to interfering with the market equilibrium point in order to move to a different point on an output curve, or a point on a different curve.

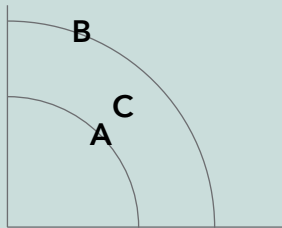
A proposed action is more likely to happen if people affected are motivated to support it.

When are carrot, stick or sermon approaches to implementation most likely to be effective?

How is implementation affected by human nature, authority to act and available support tools?

PANEL 8.4: PARETO ALLOCATION

Consider an example of possible utility outcomes for various parts of a society.¹⁹⁷



The axes show increasing amounts of utility achieved by two different sections of society, for different outcomes.

Position **A** represents the utility outcome achieved under market equilibrium. However, because of some sort of market failure, government interference to correct that failure could achieve positions **B** or **C**. Both **B** and **C** are on higher utility outcome curves than **A** so both would be an advance in terms of overall utility, but which, if either, is a success?

B is on a higher Pareto curve than **C** so in Pareto terms **B** would be a welfare success and **C** a welfare failure. However, in the absence of offsetting transfers (which is a political option), to get from **A** to **B**, the much higher utility of one section is offset by a small reduction in utility in another section. There is an argument that in economic terms, government intervention is legitimate only if the position achieved through interference is better, or at least no worse, in every way. This would be the case with outcome **C**, which marks an improvement in utility for all sections, but **B** would be regarded as a failure in these terms.

One way of dealing with a position in which there is a loss to one set of people in order to benefit another, would be to arrange offsetting payments, for example a lump sum to offset loss of future benefits. Another way would be to settle for an alternative outcome where everyone is at least no worse off even if it is, in some terms, theoretically suboptimal to another outcome. This is position **C** in Panel 8.4. A third way is to conclude that the interests of the section being benefited are more important, in this respect at least, than those of the disadvantaged section. An example of this is welfare payments to the poor, funded by taxation on incomes of those better off. This involves weighting of interests.

Whatever method is used, this is likely to be a key consideration in assessment by others as to whether the action really is intended to be in the public interest or is more of a smokescreen, having been subject to undue influence. Transparency is particularly important here. This is not to say that the process of the decision should take precedence over the outcome: while there may be pragmatic issues that result in a less than optimal outcome, that substandard outcome can hardly be justified as being in the public interest if it is caused by prioritising appearance over all else.

Given the tendency to concentrate on expressed interest (discussed above), use of public voting and or generally supported custom and law can be safer options.¹⁹⁸

8.3 PRACTICAL WAYS FORWARD

Measurement is theoretically simple, but in practice sensible numbers are difficult to come by. Weighting is possible and indeed has to be done. However, it is fraught with difficulty. How, therefore, do those advocating public interest positions actually determine whose interests are to be considered and how to deal with conflicts?

One option is to determine that there is a 'win-win' situation: everyone is better off or at least some are better off and no-one is harmed. As noted in the discussion in Panel 8.4 on Pareto efficiency, this can arrive at a quite different solution to one in which there are winners and losers.

Given the wide divergence of opinions and circumstances, there is seldom an agreed view that there has been a win-win anyway, or even if it is, that the allocation of 'win' is fair and reasonable. However, divergent views can be taken advantage of to achieve this: if there are different expectations as to what will happen, it may be possible to construct an arrangement where all parties think they will win,¹⁹⁹ for example fixing upper and lower limits on a price (a cap and collar arrangement), where the parties both regard the pricing as in their interests, due to different expectations as to volume.

Where there are positive and negative attributes to be considered, as is usually the case with social decision-making, impact analysis is a useful means of assessing the net effect. It also assists in demonstrating the decision taken.

One suggestion made, as a means of combining the best parts of all approaches, is the use of 'informed intuition'.²⁰⁰ This, in essence, takes aspects of the Bazerman approach - assess the problem, consider the goals and their importance, consider what actions would facilitate what goals - and then make an intuitive judgement, monitoring your emotional reaction to different options. It can also be applied the other way around - as noted above it is difficult to switch off intuition, so the rational calculation process can be used to act as a logic check on what intuition has suggested in the first place.

This approach is perhaps of more value to individuals than regulators or other accountable organisations although, even in the latter, it indicates that 'gut feel' can be valuable if it can be justified as not being subverted by inappropriate influences.

8.4 CHAPTER SUMMARY

The advocate of a public interest action needs to apply, and be seen to be applying, judgement to information gathered about individual wants, needs and other constraints to wants. There may be a series of measurement issues to overcome, including: quantification; interaction; weighting; and how to maximise the end result when there may be several acceptable solutions.

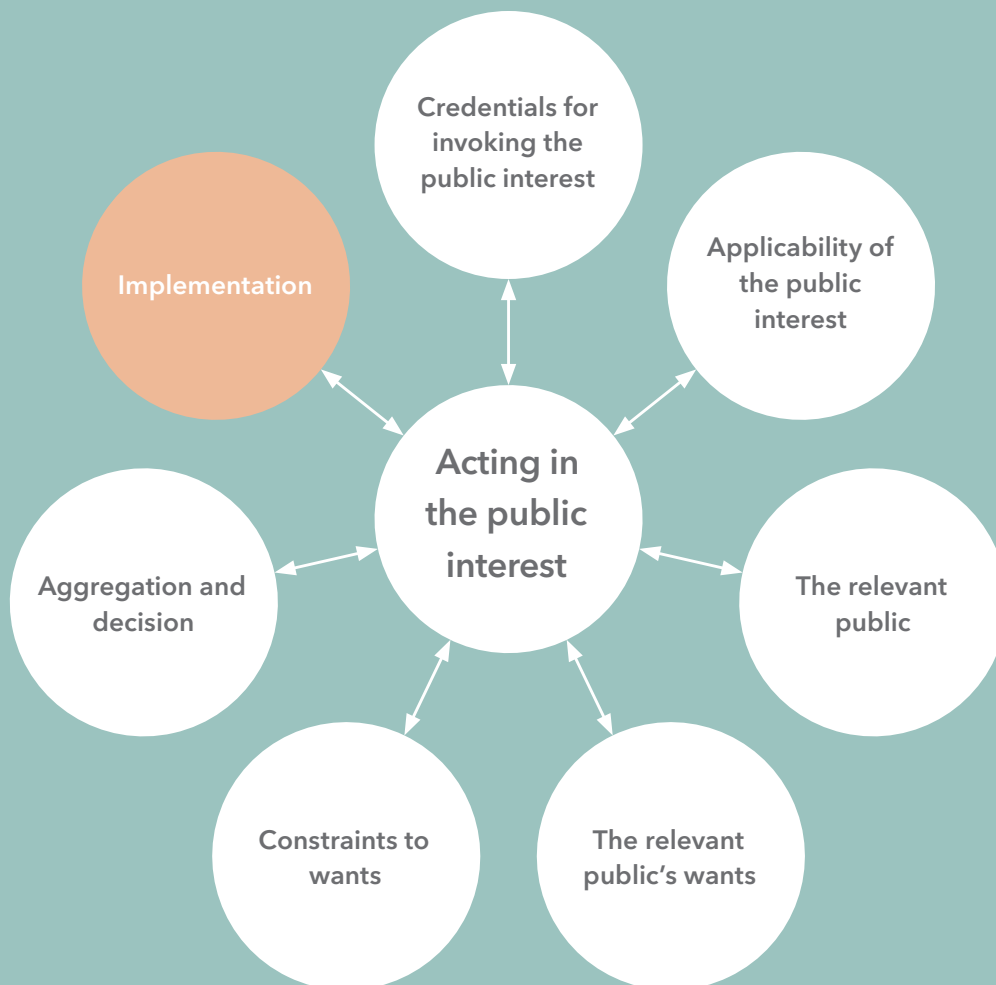
A logical approach is needed to determine what outcome would be in the public interest, or in the case of multiple positive outcomes, most in the public interest. A decision based on a rational basis of calculation will assist transparency but is easier said than done. Use of informed intuition and impact analysis may be relevant, although this will at least partially depend on the nature of the advocate.

9. Implementation

A proposed action is more likely to happen if people affected are motivated to support it.

When are carrot, stick or sermon approaches to implementation most likely to be effective?

How is implementation affected by human nature, authority to act and available support tools?



9.1 CARROT, STICK OR SERMON

9.1.1 MOTIVATION

If a proposed action is considered to be in the public interest, it follows that it is for the public benefit that the action actually happens. Something will be more likely to happen if people are motivated to undertake or at least support it.

The first need in this respect is for the proposed action to be understood and agreed. It will help to reduce the risk of error if the proposition is clear and precise, able to withstand critical reflection, consistent, and having consensus.²⁰¹

The next requirement is for there to be a motivation to comply. Behavioural economics recognises that people do not necessarily behave rationally and are motivated by a variety of factors, considered below.

The issue is exacerbated when the impact will be felt internationally: even where people are motivated to do the 'right thing', different cultures tend to have different perspectives on what the 'right' thing to do is.

9.1.2 HUMAN NATURE

First, self-interest. Hobbes noted that, unlike ants and bees, people do not behave sociably as a natural state of affairs.²⁰² This has been attributed to a number of factors:

- a tendency to: compete for honour and dignity; desire pre-eminence; interfere to reform others (but not themselves); use words to misrepresent; and imagine injuries when at rest.²⁰³
- reinforcing this is our 'fallible reason, reinforced by passions, and our diverse abilities, which are the source of property rights and which result in conflict'.²⁰⁴
- motivation by selfishness and greed for esteem, by self and others.²⁰⁵

Given that they exist, self-interest and ego have long been used as motivational tools to make people do what the public in general (usually through government) wants them to do.²⁰⁶ Whether people act in the interests of others through genuine concern or esteem could be considered to be irrelevant here, although from an aggregate qualitative perspective, egoism is a zero-sum game but self-respect creates humanity and virtue.²⁰⁷

In addition, human nature makes us prone to:

- following herd instinct or 'group think';²⁰⁸
- a conservative tendency to stop while the going is good, or conversely keep ploughing on if doing badly;²⁰⁹
- being risk averse: we are more concerned to avoid small losses than make small gains, accepting a low probability of a high loss, but not vice versa. Similarly we will accept a high probability of a low gain but not vice versa. This can cause insurance or safety nets to result in moral hazard, as we adjust behaviour to our risk tolerance levels;²¹⁰

- being, conversely, over confident in our own judgement;²¹¹
- giving up where targets seem unattainable;²¹²
- unconscious bias towards what suits us;²¹³
- over commitment to prior decisions to avoid acknowledging error;²¹⁴
- satisficing rather than optimising, as heuristic 'mental shortcut' behaviour applies prior experience and first impressions through rules of thumb;^{215 216} and
- becoming suspicious where there is information asymmetry.²¹⁷

It follows from the last point above that the perceived trustworthiness of those responsible for a public interest action will directly affect reaction to it. For example, the widespread belief in the UK that roadside speed cameras are revenue-generating devices rather than to enhance safety discourages willing compliance.

Hindsight research into the causes of erroneous decisions suggests that we are influenced by past experiences, prejudgements and attachments that can lead us to misleading conclusions about current situations.²¹⁸

It is important for those responsible for implementing public interest measures to work on the assumption that people will react based on human nature as it is, rather than as it 'should be'. Earlier thought leadership work by ICAEW analyses the record of the UK government's child and working tax credit system, introduced in 2003.²¹⁹ It resulted in massive over- and under- payments and several investigations were carried out. The problems were at least partially attributed to lack of information, and over-complexity, which put people off claiming, or resulted in incorrect claims. This seems to be a clear example of something done on the basis of how it was thought people 'ought' to behave, rather than how they actually do.

9.1.3 PRESUMPTION

Then there is the issue of whether people should be treated as innocent until proven guilty or vice versa: should any system of government assume 'all people are knaves'?²²⁰

We started this report observing that, in most societies, there is a basic presumption that people should be able to go about their legitimate business. Sometimes 'legitimate' is unclear – for example where what is legal and the greyer area of what is 'just' do not overlap. Nevertheless, an assumption of guilt unless innocence is proven does not sit easily with this.

There is also a risk that a presumption of guilt will result in suboptimal regulation: such a presumption is likely to result in an economically worse outcome than that of a system based on a different presumption, unless there is reason to suppose that most of those regulated actually are likely to misbehave.²²¹

9.1.4 THE APPROACH TO IMPLEMENTATION

The approach for the implementer to use will take the above factors into account but will also depend on the degree of constraint intended and the extent to which it is expected that there is already a propensity for people to do what is wanted of them:

- **Deviation from the norm**

Compulsion through law, regulation and enforcement creates the maximum amount of constraint in terms of complying with what is required (at least in the short term). An information approach achieves the least constraint and incentives come somewhere in between.

- **Alignment of requirement with self-interest**

Incentives can be used to promote behaviour through self-interest, but law or regulation is likely to be more effective where the desire is to change behaviour in a manner that would otherwise be resisted. Where there is already a self-interest in doing what is wanted or it is likely that inbuilt values will cause the required behaviour, information is likely to be more effective.

In short: 'carrot, stick or sermon'?²²²

An influence will be the extent to which behaviour that is beyond accepted values is, in the circumstances under consideration, tolerable, and/or whether enforcement is needed?

PANEL 9.1: TRAFFIC LIGHTS

An example from the Netherlands reinforces the potential impact of considering alternatives to carrot or stick. There, and latterly in a number of other countries, there have been experiments with controlling traffic in urban areas by removing, rather than increasing, traffic lights, barriers and signs. In Section 7.1.1 an example was noted of chaos in Manhattan when power loss switched off traffic signals. This, presumably, was at least partly because people were used to being told exactly what to do at intersections and had ceased to have to think about interacting with others. The Dutch and other experiments work on the premise that, by removing the detailed controls and making cars and pedestrians interact in a less specified manner: in short replacing clarity and segregation with confusion and ambiguity, people will become more cautious and accommodating. The traffic world is replaced with a social world, appealing to people's intrinsic social norms. While the traffic planners concede this would not work everywhere, results have been encouraging: traffic has continued to flow but accidents have reduced.²²³

What is needed, therefore, is a combination of 'carrot, stick and sermon', which might otherwise be referred to as incentives for compliance, requirements for compliance, and information that persuades compliance.

PANEL 9.2: ICAEW APPROACH TO IMPLEMENTATION

The approach used in practice by ICAEW illustrates the application of a combination of approaches. The ICAEW code of ethics, in common with that of IESBA, generally applies a principles based approach whereby the fundamental principles of behaviour (ie, social norms) within the profession are set out and then, within a framework, the professionals themselves are left to determine potential threats to compliance with the principles and what safeguards can be applied to address these. The element of self-assessment inherent in such an approach does work on the basis of how people ought to behave, rather than how some do, although threats to compliance through conflicts such as self-interest, are recognised explicitly as an issue that needs to be addressed.

However, there are a number of absolute requirements and prohibitions and these are enforced through monitoring and disciplinary regimes, which recognise that some people do not always behave as they ought to.

Thus advantage is taken of the professional infrastructure to apply a combination of 'sermon' and targeted 'stick'.

We also discuss combinations of these approaches in our thought leadership work, for example, taxes, subsidies and tradable permits and/or requirements and prohibitions in the context of implementing sustainability targets.²²⁴

9.2 SUFFICIENCY OF AUTHORITY AND REMIT

If a case has been made for intervention in people's affairs 'in the public interest', that means that somebody must do the intervening (Hobbes' 'leviathan'²²⁵) and those who are the subject of the intervention must accept the authority to do so.

As well as the means of implementation considered above, the regulator or other implementer needs to consider whether what it believes the appropriate public interest action is, fits with its accepted remit and/or authority. This might be too narrow or misaligned with what the regulator, having taken all matters into account, believes would be the right thing to do. In those circumstances, a course of action might be along the lines of: 'let's do what we can within our remit', which will, assuming their initial analysis is right, be suboptimal by definition. An alternative course of action, in the interests of transparency and, ultimately, the 'best' solution, might be to publicise the issue in the interests of a debate on whether the remit and/or authority should be amended, or the objective allocated elsewhere. That is, there may be elements of justification and persuasion.

9.2.1 GOVERNMENT AUTHORITY

At the state level the ultimate authority will take the form of, or derive from, government, although this need not always be so. There are examples of groups in Africa existing without what would nowadays be regarded as government well into the twentieth century.²²⁶ There is also no authoritative international government, which means that adopting the 'sermon' approach is often the only proportional approach, though often slow in terms of effect. The 'stick' approach in particular, can be extreme in an international context, and raises issues of justification of proportionality against norms which may differ from one country to another.

PANEL 9.3: EXISTENCE OF GOVERNMENT

Two general explanations for the existence of government are advanced: social contract theory, in which the cost of organisation, enforcement, and maintenance of public goods is outweighed by the economic benefits from increased trade; and predatory theory, in which force is used to secure advantage for those exercising it.²²⁷ From a public interest perspective, the predatory theory is, while perhaps a fact in some places, hardly a justification and social contract theory has more place as a reasonable means of considering intervention in the public interest.

It follows from social contract theory that governments, and other organisations set up to benefit the public, will not be worthwhile where:

- the cost would be excessive, as might be the case with an international government;
- the benefits would be few – for example in a primitive society where the small population and low level of diversity in skills and preferences would result in a limited increase in gains from trade.²²⁸

All governments nowadays claim authority over their subjects to a greater or lesser degree.²²⁹

A couple of examples include:

- the UK Crown Proceedings Act 1947, which states that where the executive government takes advantage of a statute it is deemed to be for the public benefit.
- A comment by Harold Wilson MP (later UK Prime Minister) in the UK parliament: ‘... In the last resort, this House is, and must be, the authority which decides whether or not any particular practice is in the public interest.’²³⁰

Therefore, at least in the UK, the government affords itself democratic legitimacy and deems the determinations it makes to be in the public interest. This accords with the definition quoted earlier from a UK judge (Section 5.3) which sees the government as arbitrator.

There are limits to the authority of the state. These vary from country to country, at least partly based on the cultural issues referred to previously, as do the means of enforcing those limits. In many market economies, the default position would appear to be what John Stuart Mill called the ‘liberty principle’: ‘the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others.’²³¹ However, this is not always spelt out.

Even in that situation, governments will sometimes consider that others are more suited to exercising that power: the continued survival of professional bodies being an illustration of this.

Even the liberty principle leaves wide room for interpretation and mechanisms have evolved to constrain, or impel, executive government action. Sometimes these involve individual or collective activism applying what has been called: ‘the time-tested tools of investigative research, media exposés, grassroots organising, advocacy and litigation.’²³² Public interest litigation has evolved in many countries. In India, for example, one of the drivers behind such litigation has been described as the redressing of grievances against bureaucratic unresponsiveness.²³³ In the UK this falls within the process of ‘judicial review’, which again exists to keep the executive action of the government within the bounds of what the legislature has determined to be in the public interest.²³⁴ This does not, in the UK, extend to create public policy from scratch: the UK Supreme Court notes that it: ‘does not have the power to strike down legislation passed by the UK parliament. It is not the court’s role to formulate public policy, but to interpret law.’²³⁵

In some more autocratic regimes, such a safety valve is not available but even there, there are ultimately limits to authority. The widespread protests and, in some instances, ensuing regime changes in North Africa and the Middle East since early 2011 are an illustration of this.

9.2.2 AGREED AUTHORITY

Sometimes authority derives from those affected themselves, with them agreeing to abide by rules set by a collective body: 'mutual coercion, mutually agreed upon'.²³⁶ For example, the Financial Reporting Council (FRC), which is the independent oversight body for the UK accountancy profession, is backed by the government but is not a government body. Certain of its powers are enshrined in legislation but some of its activities are based around mutual agreement by the UK accountancy bodies that they will accept the authority of the FRC in these areas.

PANEL 9.4: ICAEW'S REMIT AND AUTHORITY

ICAEW's remit is partly set out in law, partly in its objectives, as re-summarised in the Supplemental Charter and noted above. Many of its objectives and activities relate to the establishment, inculcation and maintenance of high standards of integrity and competence among its members - the rationale for it coming into existence in the first place. These include training, on-going education, setting ethics standards, and regulation and monitoring.

Other activities relate to the other objectives: 'to advance the theory and practice of accountancy, finance, business and commerce in all their aspects ...' and 'to do all such things as may advance the profession of accountancy ...' These objectives could be interpreted to mean various different things. A consideration of the key areas of work that ICAEW undertakes that would seem to fall under these objectives suggests that the objectives are taken to cover:

- providing guidance to members to assist with the work that many of them typically do: such guidance is often made available to the wider public;
- interacting with, and making representations to other regulators who now set most standards that affect accountants and also business in general;
- developing 'thought leadership' debates and materials on the markets in which business operates, areas traditionally covered by accountants, and evolving new areas;
- looking to raise standards within the profession generally through international outreach and additional qualifications;
- and through all these raise the reputation of ICAEW and its members specifically and the accountancy profession in general.

Some of this is within ICAEW's own authority but much requires seeking to persuade others, with wider authority. Achieving an action which ICAEW believes necessary in pursuit of its objectives and in the public interest, will therefore depend on being persuasive, rather than setting out requirements.

As noted previously, there is a widespread view that professions use their public interest responsibilities to justify the privileges that they attract. By comparison with some professions, accountancy bodies in the UK have relatively few monopolistic privileges: in most activities their members face competition from unqualified accountants and/or members of other types of professional body. However, there are some restricted activities (for example statutory audit) and there will be a natural suspicion that any actions asserted to be in the public interest are designed to protect or facilitate such protection. The global nature of marketplaces and the media has also resulted in accounting scandals such as Enron, being reflected on professional accountants and auditors around the world, regardless of actual connection, and that has generated a further suspicion about motives.

When advocating measures in the public interest, ICAEW will need to take care to justify its position, as much as anyone else. A former ICAEW president has noted 'that there is a looseness in the way we refer to ICAEW's public interest role ...' He went on to note that 'we [ICAEW] act on behalf of the public to ensure that our members work to proper standards.'²³⁷

9.3 INFRASTRUCTURE AND SUPPORT TOOLS

A further factor to consider is what tools are available to those responsible for implementation. What education and publicity tools are available? What infrastructure and support is there? The infrastructure available to those responsible for implementation and those affected, is a key consideration.

Education and publicity are vital, both to inform those affected about any changes, and to improve motivation to comply.

We have so far in this section primarily been considering actions in the public interest in terms of an organisation such as a government or regulator. If instead we look at possible actions of an individual in the public interest, the potential negative effect becomes a key consideration. The action may be unpopular with those that influence the individual's way of living (for example he or she may be considering making public a breach of standards by an employer).

Any organisation that encourages people to act in the public interest needs to consider support mechanisms for its members, or others as appropriate. This particularly applies to professional bodies which require their members to act in the public interest as part of professionalism. Some countries' legislation seeks to help individuals acting in the public interest, for example the UK's Public Interest Disclosure Act, which seeks to protect workers from reprisals because they have raised a concern about malpractice. Nevertheless acting in the public interest can result in peer, family and/or financial pressures, which support mechanisms should seek to alleviate.

PANEL 9.5: ICAEW AND SUPPORT

The broadly principles-based approach generally used in the accountancy profession is reasonably clear as to intent and the motivation is clear: to preserve common reputation and thus marketability.

However, it does require support, both because of the significant amounts of judgement required to ensure the solution fits the circumstances and, sometimes, because of the consequences of acting professionally. ICAEW has confidential advisory services available for members, along with a Support Members Scheme and, as a separate entity, the Chartered Accountants' Benevolent Association, which can offer financial and other support to members in need.

9.4 CHAPTER SUMMARY

If a proposed public policy action is in the public interest it follows that it is in the public interest for that action to be implemented and implemented effectively. This requires post-decision action by those charged with implementation, following consideration of how best to do it. That in turn depends on three key aspects:

- First, how will those affected actually be expected to react to the changes being implemented, given human nature? Is it even clear that there will be a consensus as to what the 'right' thing to do is? Many public policy initiatives have foundered because they are based on perceptions of how people should react, rather than how they actually do behave. In addition, people's perception of motives will be relevant.
- Second, are those affected able to be assured that the advocate of the action can be trusted to make a decision in the public interest? This was considered under the first element of the framework in Chapter 3, but is also relevant here.
- Third, practicalities: what remit and authority does the advocate have, and what education, publicity and support tools will be available?

The answers to these questions will all inform the decision on the relative degrees with which persuasion is balanced with outright requirements. Reaction needs to be anticipated in assessing the various combinations of 'carrot, stick or sermon' that may be needed.

This is the final element of the framework in our report, but as noted at the beginning of the report, the whole process is iterative and implementation outcomes will affect the reputation of the advocate of the public interest action, itself feeding through to influence future acceptance and implementation.

As the pace of change in society increases, so demand for, and controversy over, actions justified as being in the public interest will increase. In this report we have identified key challenges in advocating, justifying and assessing such actions and set out a framework that we hope will be useful in addressing them.

10. *Invitation to comment*

ICAEW welcomes comments on the analysis in this report and the proposed framework. Readers are particularly invited to give their opinions on the assertions noted below, including illustrative challenges and examples beyond those which we have noted.

Comments on some of the assertions are likely to identify areas needing further review of existing knowledge or further research on specific issues. These and comments on other matters will be taken into account in the further evolution of this framework.

- 1 There is a public interest in people being allowed to go about their business. However, collective individual actions can result in an outcome which is not for the greater good in aggregate, and so interference can sometimes be justified in the public interest, even if there is not an overall consensus.
- 2 A detailed general definition of the public interest would not be helpful as individual circumstances are too variable and detailed definitions would be likely to result in unintended consequences.
- 3 'The public interest' is often used without a clear understanding of why it is being used, or sometimes as a smokescreen for other interests.
- 4 We propose a framework that identifies a number of key questions to be addressed when justifying actions as being in the public interest. We believe it will assist in understanding both by those advocating a public interest measure and those assessing it.
- 5 There are a number of threats to a public interest decision not actually being, or seen to be, in the public interest. Examples include past behaviour, self-interest and lobby pressure. We suggest that safeguards should match the threat, for example acting on feedback, transparency of process, oversight, and a sense check on understanding.
- 6 We distinguish between matters which are in the public interest and matters in which the public is interested, arguing that the latter does not determine the former.
- 7 Consideration of the public interest must mean being open to taking into account the interests of the global public. However, as a practical matter, not everyone will actually be affected by the matter at hand. The relevant public will be all those who will be affected, or who have a legitimate remit to speak for those who are.
- 8 There can be constraints to the public's wants through, for example, self-interest, misinformation, and externalities. In addition, there may be overriding values, though these should be transparent.
- 9 In principle even small scale matters can be considered to be in the public interest, although in practice other decision-making objectives might be more suitable.
- 10 A number of ways to deal with aggregation problems and conflicts are proposed. Many of these are variations or add-ons to utility theory and they include, for example: weighting and rating; game theory; offsetting payments; Pareto optima; win-win solutions; and impact analysis, including contingent valuation.
- 11 We note a number of potential approaches to implementation, summarised as 'carrot, stick and sermon'. We suggest that the appropriate approach depends on the likely reaction by those affected, which is itself influenced by factors such as reputation of the proposer and closeness of the required behaviour to what self-interest would dictate; the nature of the enforcing structure; and acceptability of alternative behaviour.

- 12 The framework proposes a significant degree of transparency throughout the process of assessing and applying what action is in the the public interest. However we caveat this with the view that a substandard outcome can never be justified as being in the public interest by prioritising appearance over outcome.
- 13 As well as undertaking a relatively high level review of the issues involved in public interest determination, this report also includes some illustrative examples. These include: balancing confidentiality with reporting illegal acts; how to manage traffic at road crossings; how to allocate scarce health resources among patients; balancing different interests in transport infrastructure projects; and the current debate on managing government debt.

Bibliography

- Adler, Jonathan H, Perverse Incentives and the Endangered Species Act, *Resources for the Future*, Weekly policy commentary 4/8/2008.
- Alderfer, Clayton P, 'An Empirical Test of a New Theory of Human Needs', *Organisational Behaviour and Human Performance*, vol 4, 1969.
- American Bar Association Constitution 2011, Article 1.2.
- Anscombe, G. E M., 'Modern Moral Philosophy', *Philosophy*, 33, No 124, January 1958.
- Askary, Saeed and Olynyk, Mark, 'Public Interest, Ethics, and the Balanced Scorecard: Implications for the Accounting Profession, Articles of Merit', *Australian Accounting Review*, Vol 16, Issue 38, March 2006.
- Aslan, Reza, *No God but God*, London: Random House, 2006.
- Auditing Practices Board, ISA (UK and Ireland) 250, Section A - Consideration of laws and regulations in an audit of financial statements, The Auditing Practices Board, 2009.
- Barnes, Jonathan, *The Complete Works of Aristotle*, Princeton, NJ: Princeton University Press, 1983.
- Baumeister, Roy F, Campbell, Jennifer D, Krueger, Joachim I, and Vohs, Kathleen D, 'Does High Self-Esteem Cause Better Performance, Interpersonal Success, Happiness, or Healthier Lifestyles?' *Psychological Science in the Public Interest*, vol 4, May 2003.
- Bazerman, Max, Loewenstein, George, and Moore, Don A, 'Why Good Accountants Do Bad Audits', *Harvard Business Review*, November 2002.
- BBC News, Hormones May Fuel Market Crises, 14 April 2008.
- Beattie, Alan, *False Economy*, London: Penguin, 2010.
- Benditt, Theodore M, 'The Public Interest', *Philosophy and Public Affairs*, vol 2, Spring 1973.
- Bentham, Jeremy, *An Introduction to the Principles of Morals and Legislation*, 1781, Mineola, NY: Dover Publications, 2009.
- Besley, Timothy, *Welfare Economics and Public Choice*, London School of Economics and Political Science, April 2002.
- Boden, Leslie I, 'Cost-Benefit Analysis: "Caveat Emptor"', *American Journal of Public Health*, vol 69, No 12, 1979.
- Brandenburger, Adam M, and Nalebuff, Barry J, 'The Right Game: Use Game Theory to Shape Strategy', *Harvard Business Review*, July-August 1995.
- Brooks, Clem and Manza, Jeff, *Why Welfare States Persist: The Importance of Public Opinion in Democracies (Studies in Communication, Media, and the Public Opinion)*, Chicago IL: University of Chicago Press, 2007.
- Buchanan, James M, 'Public Choice: Politics Without Romance', *Policy magazine*, vol 19, 2003.
- Burke, Edmund, 'Speech to the Electors of Bristol 1774', in *The Works of the Right Honourable Edmund Burke*, Henry G Bohn, 1854-56.
- Business Day*, 'Hope Rerun "Not in Public Interest", says JSC', 12 May 2010.
- Calvert-Henderson, 'Quality of Life Indicators', www.calvert-henderson.com (collected 12/11/2009).
- Capra, Fritjof and Henderson, Hazel, *Qualitative Growth*, London: ICAEW and Tomorrow's Company, 2009.
- Carter, Jenny, 'For the Public Good', *Accountancy magazine*, Nov 2005.
- Centre for Economics and Business Research, *Regulation in the Market Place: An Economic Literature Review*, London: ICAEW, 2008.

- Champlin, Dell P and Knoedler, Janet T, 'Corporations, Workers and the Public Interest', *Journal of Economic Issues* vol XXXVII No.2, June 2003.
- Chapman, Richard and O'Toole, Barry, 'The Role of the Civil Service: a traditional view in a period of change', *Public Policy and Administration* 1995, vol 10, no2.
- Citron, David B, 'The UK's Framework Approach to Auditor Independence and the Commercialization of the Accounting Profession', *Accounting, Auditing & Accountability Journal*, vol 16, Issue 2, 2003.
- Ciulla, Joanne B, 'Ethics and Leadership Effectiveness', in Antonakis, John, Cianciolla Anna T, and Sternberg, Robert J, *The Nature of Leadership*, Sage Publications, 2004.
- Cochran, Clarke, 'Political Science and the Public Interest', *Journal of Politics*, 1974, vol. 36:2.
- Committee on Standards in Public Life, *The Seven Principles of Public Life*, Committee on Standards in Public Life, September 2001.
- Cowton, Christopher J, 'Accounting and the Ethics Challenge: Remembering the professional body', *Accounting and Business Research*, 39, (3) 2009, pp177-190.
- Dent, Chris, 'Generally Inconvenient: The 1624 Statute of Monopolies as Political Compromise', *Melbourne University Law Review*, vol 33, 2009.
- Department for Business, Innovation and Skills, *Enterprise Act 2002: Public Interest Intervention in Media Mergers*, BIS, 2004.
- Deskins, James Wesley, 'On the Nature of the Public Interest', *Accounting Review*, 1/65 vol 40, Issue 1.
- Dhaka Mirror*, HC Forbids Vehicle Requisition Except in Public Interest, 24 February 2010.
- Diez Medrano, Jaime, Interpersonal Trust, www.jdsurvey.net (collected 28/5/2010).
- Donaldson, Thomas and Dunfee, 'Thomas W, Précis for Ties that Bind', *Business and Society Review*, vol 105, Issue 4, Blackwell Publishing, 2000.
- Drakeford, Mark, 'Ownership, Regulation and the Public Interest: The case of residential care for older people', *Critical Social Policy*, November 2006, vol 26, Issue 4.
- Drucker, Peter F, 'The New Pluralism', *Leader to Leader Journal*, No. 14 1999, www.leadertoleader.org (collected 15/9/2008).
- Duffy, Jonathan, How Did We Get so Cynical? www.bbc news.co.uk, 16 February 2004 (collected 28/5/2010).
- Eastern Daily Press*, "'Not in the Public Interest" to release picture of pub killer', 7 January 2010.
- Economist*, The, 'The Rule of More', 18 February 2012.
- Engelen, Bart, 'Thinking Things Through: The Value and Limitations of James Buchanan's Public Choice Theory', *Review of Political Economy*, vol 19, 2007.
- European Financial Reporting Advisory Group (EFRAG), *Considering the Effects of Accounting Standards: Discussion Paper*, Financial Reporting Council and European Financial Reporting Advisory Group, 2011.
- Fair Trading Act, The Stationery Office, 1973.
- Faulhaber, Robert W, 'The Rise and Fall of "Self Interest"', *Review of Social Economy*, vol LXII No3, September 2005.
- Fédération des Experts Comptables Européens (FEE), *Integrity in Professional Ethics: A Discussion Paper and Analysis of Responses*, FEE, September 2009 and April 2011.
- Finkelstein, Sydney, Whitehead, Jo, and Campbell, Andrew, 'Think Again: Why Good Leaders Make Bad Decisions and How to Keep it from Happening to You', *Harvard Business Press*, 2009.

- Flanagan, Jack, *Values, Codes of Ethics and the Law*, Sydney: The Institute of Chartered Accountants in Australia, 2006.
- Gaa, James C, 'User Primacy in Corporate Financial Reporting: A Social Contract Approach', *The Accounting Review*, July 1986.
- Gellner, Ernest, *Plough, Sword and Book*, Chicago IL: University of Chicago Press, 1992.
- Goldstein, Eric A, 'Defining the Public Interest', *Environment*, vol 22, Issue 7, September 1980.
- Gosling, Paul, *The Rise of the "Public Services Industry"*, Unison, September 2008.
- Gray, Rob, 'A Question of Public Interest', *Technical CA*, January 2002.
- Gwilliam, David and Marnet, Oliver, *Audit Within the Corporate Governance Paradigm: a Cornerstone Built on Shifting Sand*, Exeter: University of Exeter Business School, 2006.
- Guardian, The*, 'Bank of England official calls for bespoke accounting standards for banks', 19 January 2012.
- Hale, Matthew, Lord Chief Justice, 'De Jure Maris', written c1670, first published 1787 in *A History of the Foreshore and the law relating thereto*, The Lawbook Exchange, 2006.
- Hansard*, Deb 22 April 1948, vol 449 cc 2018-2133.
- Hansard (Lords)*, 8 July 1992, cc 1206-1207.
- Hansen, Chad, 'Chinese Philosophy and Human Rights: An Application of Comparative Ethics' in Becker, Gerhold K, *Ethics in Business and Society*, 2006.
- Hardin, Garrett, 'The Tragedy of the Commons', *Science*, 162 1243-1248, 1968.
- Hayek, Friedrich A, *The Road to Serfdom*, 1944, London: Routledge, 2001.
- Heathfield, Susan M, 'Build an Organisation Based on Values', About.com.
- Held, Virginia, *The Public Interest and Individual Interest*, Basic Books, 1970.
- Hing-Keung, Ma, 'Moral Orientation and Moral Judgement of Chinese Adolescents', in Becker, Gerhold, K, *Ethics in Business and Society*, 2006.
- Hooker, Richard, Capitalism, 'The European Enlightenment Glossary', 1996, www.wsu.edu (collected 4/1/2010).
- Hundert, EJ, introduction to Mandeville, Bernard, *The Fable of the Bees and Other Writings*, Indianapolis, IA: Hackett Publishing Limited, 1997.
- Hunt of Wirral, Lord, *The Hunt Review of the Regulation of Legal Services*, London: Law Society, 2009.
- Information Commissioners Office, *Freedom of Information Act Awareness Guidance 3 v 2.0*, The Public Interest Test, ICO, March 2007.
- ICAEW, Code of Ethics, London: ICAEW, January 2011.
- ICAEW, *Crisis Without a Legacy London Policy Summit 21 May 2012*, London: ICAEW 2012.
- ICAEW, Royal and Supplemental Charter, London: ICAEW, May 1880 and December 1948.
- ICAEW, *Information for Markets and Society*, London: ICAEW, 2005.
- ICAEW, *Professional Conduct in Relation to Defaults or Unlawful Acts*, London: ICAEW, May 2005
- ICAEW, *Reporting with Integrity*, London: ICAEW, 2007.
- ICAEW, *Sustainable Business*, London: ICAEW, 2008.
- ICAEW, *Sustainability: The Role of Accountants*, London: ICAEW, 2004.
- International Ethics Standards Board for Accountants, Code of Ethics, IFAC, July 2009.

International Federation of Accountants, *Policy Position Paper 5: A Definition of the Public Interest*, IFAC, 2012.

Jones, Roger, 'The Enlightenment', www.Philosopher.org (collected 5/1/2010).

Joyce, Andrew, *The Reynolds Public Interest Defence*, The IT Law Community, 2006.

Kahneman, Daniel, *Thinking, Fast and Slow*, New York: Farrar, Strauss and Giroux, 2011.

Kay, John, *The Truth About Markets*, London: Penguin, 2004.

Keys, Mary M, *Aquinas, Aristotle, and the Promise of the Common Good*, New York: Cambridge Press, 2007.

Koestenbaum, Peter, Keys, Patrick J, and Weirich, Thomas R, 'Integrating Sarbanes-Oxley, Leadership and Ethics', *CPA Journal*, April 2006.

Koetsier, L S, *Natural Law and Calvinist Political Theory*, Bloomington, IN: Trafford Publishing, 2004.

Kratochwil, Friedrich, 'On the Notion of Interest in International Relations', *International Organisations*, 1982 v36:1.

Kroll Associates, *Protecting the Public Interest* for Canadian Institute of Chartered Accountants, CICA, Toronto 2001.

Langevoort, Donald C, 'The Human Nature of Corporate Boards: Law, Norms and the Unintended Consequences of Independence and Accountability', *Georgetown Law Journal*, 2001, 2000 Working Paper Series.

Larsen, Peter Thal, 'King's Call for More Fivers Catches Bankers Off Guard', *Financial Times*, 22 June 2007.

Layard, Richard, *Happiness - Lessons From a New Science*, London: Penguin Books, 2006.

Lee, T A and Parker, R H, *The Evolution of Corporate Financial Reports*, London: Thomas Nelson & Sons, 1979.

Leeson, Pete T, 'Efficient anarchy', *Public Choice* 2006.

Levine, Michael E, and Forrence, Jennifer L, 'Regulatory Capture, Public Interest, and the Public Agenda: Towards a Synthesis', *Journal of Law, Economics and Organization*, vol 6, 1990.

Lewis, Carol W, 'In Pursuit of the Public Interest', *Public Administration Review*, 2006, September/October, vol 66, Issue 5.

Lewis, V Bradley, 'The Common Good in Classical Political Philosophy', *Current Issues in Catholic Higher Education*, vol 25, no 1, Winter 2006.

Manfredo, Robert F, 'Public Use & Public Benefit: The Battle for Upstate New York', *Albany Law Review*, vol 71.

Margerison, T, *The Making of a Profession*, London: ICAEW, 1980.

Marnet, Oliver, 'History Repeats Itself: The Failure of Rational Choice Models in Corporate Governance', *Critical Perspectives on Accounting* 18 (2007) 191-210.

Maslow, Abraham, 'A Theory of Human Motivation', *Psychological Review* 50 (4) 1943.

Mayson, S W, *Legal Services Regulation and 'The Public Interest'*, London: Legal Services Institute, July 2011.

McAllister, Breck P, 'Lord Hale and Business Affected with a Public Interest', *Harvard Law Review*, vol 43, 1930.

McDonald, Gael M, Zepp, Raymond A, Cho-Kan, Pak, 'Comparative Ethical Perceptions of Australian and Hong Kong Managers' in Becker, Gerhold K, *Ethics in Business and Society*, 1996.

- Merton, Robert K, 'The Unanticipated Consequences of Purposive Social Action', *American Sociological Review*, vol 1 1936, Harvard University.
- Mill, John Stuart, *Utilitarianism*, 1863, Hackett, 2002.
- Miller, David, *Political Philosophy*, Routledge Encyclopedia of Philosophy Online, www.rep.routledge.com (collected 11/7/2007).
- Ministry of Justice, Draft Defamation Bill, The Stationery Office, March 2011.
- Mosse, George L, Frederick II, 'Political Testament', *Europe in Review*, 1957.
- Mullholland, Marcus, '21st Century Socialism: What the Victorians did for us', 2006, www.21centurysocialism.com (collected 5/1/2010).
- National Union of Journalists: 'The Public Interest', www.nuj.org.uk (collected 23/5/2007).
- Neu, Dean and Green, Duncan, *Truth or Profit? The Ethics and Business of Public Accounting*, Black Point, NS: Fernwood Publishing and Centre for Public Interest Accounting, 2006.
- Nickson, Sue, 'Trappist orders', *Financial Management*, Nov 2004.
- Office for National Statistics, *Measuring National Well-Being, Measuring what matters*, ONS, 2011.
- Olson, Mancur, *The Rise and Decline of Nations: Economic Growth, Stagflation, and Social Rigidities*, Yale University Press, 1982.
- Oxera, *When Market's Fail: Lessons for Policy-makers*, Oxera, November 2008.
- Partridge, Ernest, 'Conscience of a Progressive, Chapter Five: Good for Each, Bad for All', www.gadfly.igc.org (collected 11/7/2008).
- Persky, Joseph, 'Retrospectives: Cost-Benefit Analysis and the Classical Creed', *Journal of Economic Perspectives*, vol 15, No 4, Fall 2001.
- Peter-Burth, Hans and Gotitz, Axel, 'Review of "Carrots Sticks & Sermons" by Bemelmans-Videc, Marie-Louise, Rist, Ray C, and Vendung, Evert', *Public Administration*, 1999, vol 77, no.4.
- Public Interest Oversight Board, *Looking Forward in a Changing World: Sixth Public Report of the PIOB*, PIOB, Madrid, May 2011.
- Plender, John, 'Friedman and CSR', *Financial Times*, 20 November 2006.
- Pleasence, Pascoe and Maclean, Sarah, *The Public Interest*, Legal Aid Board Research Unit, 1998.
- Po-Keung, Ip, 'Profit and Morality: Problems in Business Ethics' in Becker, Gerhold K, *Ethics in Business and Society*, 1996.
- Pratchett, Terry, *The Truth*, London: Transworld, 2001.
- Press Complaints Commission, Editors Code, PCC, January 2011.
- Professional Engineers Ontario, Code of Ethics s77.
- Prout, Charles H, 'Public Opinion and the Public Interest', *Public Relations Quarterly*, vol 13, Issue 5, Fall 1968.
- Radford, Robert T, *Cicero: A Study in the Origins of Republican Philosophy*, New York/Amsterdam: Rodopi, 2002.
- Rappeport, Alan, 'Game Theory Versus Practice', *CFO Magazine*, New York: July/August 2008.
- Rawls, John, *A Theory of Justice*, Cambridge: MA, The Belknap Press of Harvard University Press: 1971.
- Roberts, David, *Paternalism in Early Victorian England*, London: Taylor & Francis, 1979.
- Rodrik, Dani, *Institutions for High-Quality Growth: What they are and how to acquire them*, National Bureau of Economic Research, February, 2000.

Ross, Stephen F, 'Antitrust, Professional Sports, and the Public Interest', *Journal of Sports Economics*, vol 4, Issue 4, November 2003.

Rothschild, Michael L, 'Carrots, Sticks and Promises: A Conceptual Framework for the Management of Public Health and Social Issue Behaviours', *Journal of Marketing*, vol 63, 1999.

Russell, Gerald, 'What is the Public Interest?' *Accountancy magazine*, September 2010.

Saul, John Ralston, *Voltaire's Bastards: The Dictatorship of Reason in the West*, Vintage, 1993.

Schall, James V, *At the Limits of Political Philosophy*, The Catholic University of America Press, 1996.

Scherer, Douglas, *Balanced Scorecard Overview*, New York: Core Paradigm, 2002.

Schmidt, Jon A, 'What is a Profession?', *Structure magazine*, November 2008.

Shaw, George Bernard, *The Doctor's Dilemma*, 1906, 1st World Library - Literary Society, 2004.

Shleifer, Andrei, *Understanding Regulation*, *European Financial Management*, vol 11, Oxford: Blackwell Publishing, 2005.

Sinha, Sourabh, 'Public Interest Litigation', British Council e-Newsletter (collected 23/05/2007).

Skinner, Quentin, *The Foundations of Modern Political Thought: Volume 2: The Age of the Reformation*, Cambridge: Cambridge University Press, 1978.

Smith, Adam, *The Theory of Moral Sentiments*, 1759, London: Penguin Classics, 2010.

Smith, Adam, *An Inquiry into the Nature and Causes of the Wealth of Nations*, 1776, Indianapolis, Indiana: Hackett Publishing Co, 1993.

Speier, Hans, 'Historical Development of Public Opinion', *The American Journal of Sociology*, vol 55, Issue 4, 1950.

Sri Lanka Library Association, Code of Professional Conduct, 1997.

Schultz, Barton, 'Henry Sidgwick', *Stanford Encyclopedia of Philosophy*, first published 5 October 2004, revised 13 November 2006, Stanford, CA: Stanford University.

Tanguay, Georges A., Lanoie, Paul and Moreau, Jérôme, 'Environmental policy, public interest and political market', *Public Choice*, vol 120, July 2004.

Tao, Julia, 'The Moral Foundation of Welfare in Chinese Society: Between Virtues and Rights', in Becker, Gerhold K, *Ethics in Business and Society*, 2006.

Tasmania Department of Treasury and Finance, Subordinate Legislation Act 1992, www.tenders.tas.gov.au, 14 February 2010.

Thagard, Paul, *How to Make Decisions: Coherence, Emotion and Practical Inference*, Cambridge MA: MIT Press, December 2008.

The Accountancy Foundation Review Board, *Protecting the Public Interest*, The Accountancy Foundation, February 2002.

The Charity Commission for England and Wales, *Charities and Public Benefit*, The Charity Commission, 2008.

The Times of India, 'Preventive Detention in Public Interest is Justified: SC', 10 March 2008.

Time, 'Crime: Glum Gorilla', 19 December 1927, www.time.com (collected 30/3/2010).

Tweeddale, Andrew, 'Confidentiality in Arbitration and the Public Interest Exception', *Arbitration International*, vol 21, No1: LCIA 2005.

UK Supreme Court, 'Frequently Asked Questions', www.supremecourt.gov.uk.

- US National Academy of Public Administration, *Deciding for the Future: Balancing Risks, Costs and Benefits Fairly Across Generations*, National Academy of Public Administration, 1997.
- US Public Interest Research Group, Mission Statement, www.uspirg.org (collected 11/11/2011).
- Van de Walle, Steven, 'The Impact of Public Service Values on Services of General Interest Reform Debates', *Public Management Review*, vol 8, Issue 2, Jun 2006.
- Vanderbilt, Tom, 'The Traffic Guru', *The Wilson Quarterly*, www.wilsoncenter.org (collected 6/7/2009).
- Waldmann, Erwin, 'Teaching ethics in accounting: a discussion of cross-cultural factors with a focus on Confucian and Western philosophy', *Accounting Education* 9, 2000.
- Walker, Stephen P, *Towards the 'Great Desideratum': The Unification of the Accounting Bodies in England, 1870-1880*, Edinburgh: ICAS, 2004.
- Watts, Ross L, and Zimmerman, Jerold L, 'The Demand for and Supply of Accounting Theories: The Market for Excuses', *The Accounting Review*, vol LIV No. 2, April 1979.
- Watts, Ross L, 'What has the Invisible Hand Achieved?' *Accounting and Business Research*, International Accounting and Policy Forum, 2006.
- Wells, Carolyn, *A Public Interest Framework for Public Policy Development: A Property and Urban Planning Perspective*, Monash University, 2007.
- West's Encyclopaedia of American Law*, edition 2, 'Public policy definition', The Gale Group 2008.
- Whitehead, John C and Blomquist, Glenn C, 'The Use of Contingent Valuation in Benefit - Cost Analysis', in Alberini, Anna and Kahn, James R, *Handbook of Contingent Valuation*, Edward Elgan 2006.
- Wise, Michael, 'Review of Competition Law and Policy in the United Kingdom', *OECD Journal of Competition Law and Policy*, vol 5, No.3, 2003.
- Wolfson, Adam, 'About the Public Interest', *Public Interest*, Spring 2005, Issue 159.
- Wolf, Martin, 'Why Progressive Taxation is not the Route to Happiness', *Financial Times*, 6 June 2007.
- Xenophon, *Cyropaedia*, c400 BCE, tr Dakyns, Project Gutenberg ebook 2009.

Endnotes

- 1 Eastern Daily Press, 'Not in the Public Interest'.
- 2 Tasmania Department of Treasury and Finance, 'Subordinate Legislation Act 1992'.
- 3 The Times of India, 'Preventive Detention in Public Interest is Justified: SC'.
- 4 Business Day, 'Hlophe Rerun 'Not in the Public Interest', says JSC'.
- 5 Gosling, *The Rise of the Public Services Industry*.
- 6 Dhaka Mirror, 'HC Forbids Vehicle Requisition Except in Public Interest'.
- 7 www.icaew.com/marketfoundations
- 8 Lewis, 'The Common Good in Classical Political Philosophy'.
- 9 International Federation of Accountants, Policy Position Paper 5: A Definition of the Public Interest.
- 10 Ibid.
- 11 Ministry of Justice, 'Draft Defamation Bill'.
- 12 Diez Medrano, 'Interpersonal Trust'.
- 13 BBC News, 'Hormones May Fuel Market Crisis'.
- 14 Lewis, 'In Pursuit of the Public Interest'.
- 15 Hansard (Lords)
- 16 From Schmidt, 'What is a Profession', discussing Lubell on Greenwood.
- 17 IESBA, Code of Ethics.
- 18 Professional Engineers Ontario, Code of Ethics.
- 19 American Bar Association, Constitution.
- 20 Sri Lanka Library Association, Code of Professional Conduct.
- 21 Shaw, *The Doctor's Dilemma*.
- 22 Neu and Green, *Truth or Profit? The Ethics and Business of Public Accounting*.
- 23 Cowton, 'Accounting and the Ethics Challenge: Re-membering the professional body'.
- 24 'Liverpool Mercury', 1870, quoted in Walker, *Towards the 'Great Desideratum': The Unification of the Accounting Bodies in England, 1870-1880*.

- 25 'The Accountant', 1877, quoted in Margerison, *The Making of a Profession*.
- 26 'Manchester Guardian', 1870, quoted in Walker, *Towards the 'Great Desideratum': The Unification of the Accounting Bodies in England, 1870-1880*.
- 27 *Solicitors' Journal*, 1872, quoted in Walker, *ibid*.
- 28 ICAEW, Royal Charter.
- 29 ICAEW, Supplemental Charter.
- 30 Cochran, 'Political Science and the Public Interest'.
- 31 Schubert, quoted in The Accountancy Foundation Review Board, *Protecting the Public Interest*.
- 32 Margaret Thatcher, quoted in Partridge, 'Conscience of a Progressive'.
- 33 Rand, quoted in Partridge, *ibid*.
- 34 Friedman, quoted in Champlin and Knoedler, 'Corporations, Workers and the Public Interest', Plender, 'Friedman and CSR'.
- 35 Hayek, *The Road to Serfdom*.
- 36 Saul, *Voltaire's Bastards: The Dictatorship of Reason in the West*.
- 37 Dent, 'Generally Inconvenient: The 1624 Statute of Monopolies as Political Compromise'.
- 38 Lord Hunt, quoted in Dent, *ibid*.
- 39 McAllister, 'Lord Hale and Business Affected with a Public Interest' referring to Hargraves 'Collection of Tracts' of 1787.
- 40 Xenophon, *Cyropedia* although note this is said to be a fictionalised account of Cyrus' life
- 41 *ibid*.
- 42 Chapman and O'Toole, 'The Role of the Civil Service: a traditional view in a period of change'.
- 43 Barnes, *The Complete Works of Aristotle*.
- 44 Radford, *A Study in the Origins of Republican Philosophy*, discussing Cicero.
- 45 Skinner, *The Foundations of Modern Political Thought: Volume 2: The Age of the Reformation*.
- 46 Aslan, *No God but God*.
- 47 Schall, *At the Limits of Political Philosophy, Koetsier, Natural Law and Calvinist Political Theory*, Keys, Aguinas, Aristotle, and the Promise of the Common Good.

- 48 Roberts, Paternalism in Early Victorian England, Mulholland, '21st Century Socialism: What the Victorians did for us'.
- 49 Quoted in Mosse, 'Frederick II, Political Testament'.
- 50 Roberts, Paternalism in Early Victorian England.
- 51 Drucker, 'The New Pluralism'.
- 52 Toynbee, quoted in Mulholland, '21st Century Socialism: What the Victorians did for us'.
- 53 Based on Mulholland, *ibid.*
- 54 ICAEW, Code of Ethics.
- 55 Gellner, Plough, Sword and Book quoting Ibn Khaldun.
- 56 Time, 'Crime: Glum Gorilla'.
- 57 From Buchanan, 'Public Choice: Politics Without Romance' referring to Tulloch.
- 58 Engelen, 'Thinking Things Through: The Value and Limitations of James Buchanan's Public Choice Theory', Buchanan, *ibid.*
- 59 Deskins, 'On the Nature of the Public Interest'.
- 60 From Tanguay, Lanoie and Moreau, 'Environmental policy, public interest and political market'.
- 61 Watts and Zimmerman, 'The Demand for and Supply of Accounting Theories: The Market for Excuses'.
- 62 Bazerman, Lowenstein and Moore, 'Why Good Accountants Do Bad Audits'.
- 63 Pelzman, quoted in Tanguay, Lanoie and Moreau, 'Environmental policy, public interest and political market'.
- 64 Tanguay, Lanoie and Moreau, *ibid.*
- 65 Watts, 'What has the Invisible Hand Achieved?'
- 66 For example, The Guardian, 'Bank of England official calls for bespoke accounting standards for banks'.
- 67 Centre for Economics and Business Research, Regulation in the Market Place: An Economic Literature Review, for ICAEW.
- 68 EFRAG, Considering the Effects of Accounting Standards.
- 69 Persky, 'Retrospectives: Cost-Benefit Analysis and the Classical Creed'.

- 70 Boden, 'Cost-Benefit Analysis: Caveat Emptor'.
- 71 The Economist, 'The Rule of More'.
- 72 Whitehead and Blomquist, 'The Use of Contingent Valuation in Benefit - Cost Analysis'.
- 73 Considered further in Section 7.2.2.
- 74 Boden, 'Cost-Benefit Analysis: Caveat Emptor'.
- 75 Kaldor and Hicks, then Hicks, quoted in Persky, 'Retrospectives: Cost-Benefit Analysis and the Classical Creed'.
- 76 Kaplan and Norton referred to in Scherer, Balanced Scorecard Overview.
- 77 Calvert-Henderson, 'Quality of Life Indicators'.
- 78 Information Commissioner's Office, Freedom of Information Act, Awareness Guidance 3.
- 79 Vengroff quoted in Lewis C, 'In Pursuit of the Public Interest'.
- 80 Committee on Standards in Public Life, The Seven Principles of Public Life.
- 81 Kay, The Truth About Markets.
- 82 Langevoort, 'The Human Nature of Corporate Boards: Law, Norms and the Unintended Consequences of Independence and Accountability'.
- 83 www.ipiob.org
- 84 Lee and Parker, The Evolution of Corporate Financial Reports.
- 85 National Union of Journalists, 'The Public Interest', Press Complaints Commission, 'Editors Code'.
- 86 Joyce, The Reynolds Public Interest Defence, referring to Reynolds v Times Newspapers [2001] 2 AC 127 and Jameel and Others v Wall Street Journal Europe Sprl [2006] UKHL 144.
- 87 Awaiting Parliamentary debate at the time of writing.
- 88 Ministry of Justice, 'Draft Defamation Bill'.
- 89 Information Commissioners Office, Freedom of Information Act, Awareness Guidance 3.
- 90 Auditing Practices Board, 'ISA (UK and Ireland) 250 Section A'.
- 91 ICAEW, Code of Ethics.

- 92 ICAEW, Professional Conduct in Relation to Defaults or Unlawful Acts.
- 93 For example, ICAEW, Crisis Without a Legacy London Policy Summit 21 May 2012.
- 94 The Charity Commission for England and Wales, Charities and Public Benefit.
- 95 ICAEW, The Code of Ethics.
- 96 Russell, 'What is the Public Interest?'
- 97 Lord Hunt of Wirral, The Hunt Review of the Regulation of Legal Services.
- 98 International Ethics Standards Board for Accountants, Code of Ethics.
- 99 Prout, 'Public Opinion and the Public Interest'.
- 100 Speier, 'Historical Development of Public Opinion'.
- 101 Acton, referred to in Speier, *ibid.*
- 102 All quoted in Speier, *ibid.*
- 103 Wilmott, quoted in The Accountancy Foundation Review Board, Protecting the Public Interest.
- 104 Kay, The Truth About Markets.
- 105 Partridge, 'Conscience of a Progressive'.
- 106 Kay, The Truth About Markets.
- 107 Locke, quoted in Faulhaber, 'The Rise and Fall of "Self Interest"'.
- 108 Faulhaber, *ibid.*
- 109 Wise, 'Review of Competition Law and Policy in the United Kingdom'.
- 110 The Accountancy Foundation Review Board, Protecting the Public Interest.
- 111 The Accountancy Foundation Review Board, *ibid.*, Watts and Zimmerman, 'The Demand for and Supply of Accounting Theories: The Market for Excuses'.
- 112 Kay, The Truth About Markets.
- 113 Aristotle quoted in The Accountancy Foundation Review Board, Protecting the Public Interest.
- 114 Bentham, An Introduction to the Principles of Morals and Legislation.
- 115 Layard, Happiness - Lessons From a New Science.

- 116 Faulhaber, 'The Rise and Fall of 'Self Interest', quoting Smith and Mandeville.
- 117 The Accountancy Foundation Review Board, Protecting the Public Interest.
- 118 Considered further in Section 7.2.2.
- 119 Layard, Happiness - Lessons From a New Science.
- 120 Deskins, 'On the Nature of the Public Interest'.
- 121 Office for National Statistics, Measuring National Well-Being, Measuring what matters.
- 122 Mayson, Legal Services Regulation and The Public Interest.
- 123 Larsen, 'King's Call for More Fivers Catches Bankers Off Guard'.
- 124 Pleasence and Maclean, The Public Interest.
- 125 Olson, The Rise and Decline of Nations: Economic Growth, Stagflation, and Social Rigidities, Beattie, False Economy.
- 126 Quoted in Pleasence and Maclean, The Public Interest.
- 127 ICAEW, Code of Ethics.
- 128 Benditt, 'The Public Interest'.
- 129 Hansen, 'Chinese Philosophy and Human Rights: An Application of Comparative Ethics'.
- 130 Waldmann, 'Teaching ethics in accounting: a discussion of cross-cultural factors with a focus on Confucian and Western philosophy'.
- 131 Based on Hansen, 'Chinese Philosophy and Human Rights: An Application of Comparative Ethics'.
- 132 Burke, 'Speech to the Electors of Bristol', Levine and Forrence, 'Regulatory capture, Public Interest, and the Public Agenda: Towards a Synthesis'.
- 133 Faulhaber, 'The Rise and Fall of 'Self Interest''.
- 134 Ibid.
- 135 Quoted and analysed in Faulhaber, ibid.
- 136 Discussed further in Section 7.4.
- 137 Smith, An Inquiry into the Nature and Causes of the Wealth of Nations.

- 138 From Prout, 'Public Opinion and the Public Interest'.
- 139 Deskins, 'On the Nature of the Public Interest'.
- 140 Hollis and Neil quoted in Po-Keung, 'Profit and Morality: Problems in Business Ethics'.
- 141 Rodrik, Institutions for High-Quality Growth: What they are and how to acquire them.
- 142 Quoted in Prout, 'Public Opinion and the Public Interest'.
- 143 All three from Partridge, 'Conscience of a Progressive'.
- 144 Po-Keung, 'Profit and Morality: Problems in Business Ethics'.
- 145 Hardin, 'The Tragedy of the Commons'.
- 146 Smith R, quoted in Partridge, 'Conscience of a Progressive'.
- 147 Tanguay, Lanoie and Moreau, 'Environmental policy, public interest and political market'.
- 148 ICAEW, Sustainability: The Role of Accountants.
- 149 Brooks and Manza, Why Welfare States Persist: The Importance of Public Opinion in Democracies.
- 150 Van de Walle, 'The Impact of Public Service Values on Services of General Interest'.
- 151 Capra and Henderson, Qualitative Growth.
- 152 Marnet, 'History Repeats Itself: The Failure of Rational Choice Models in Corporate Governance', Gwilliam and Marnet, Audit Within the Corporate Governance Paradigm: a Cornerstone Built on Shifting Sand.
- 153 Pleasence and Maclean, 'The Public Interest'.
- 154 The Bruntland Report quoted in ICAEW, Sustainable Business.
- 155 Quoted in US National Academy of Public Administration, Deciding for the Future: Balancing Risks, Costs and Benefits Fairly Across Generations.
- 156 Hundert, The Fable of the Bees and Other Writings, discussing Mandeville.
- 157 Smith, The Theory of Moral Sentiments.
- 158 Baumeister, Cambell, Krueger and Vohs, 'Does High Self-Esteem Cause Better Performance, Interpersonal Success, Happiness, or Healthier Lifestyles?'
- 159 Maslow, 'A Theory of Human Motivation'.

- 160 Alderfer, 'An Empirical Test of a New Theory of Human Needs'.
- 161 Griffin quoted in Pleasence and Maclean, 'The Public Interest'.
- 162 Flanagan, Values, Codes of Ethics and the Law.
- 163 Rawls, A Theory of Justice.
- 164 Flanagan, Values, Codes of Ethics and the Law.
- 165 Section 5.2 and Panel 8.2 include examples.
- 166 Both from Deskins, 'On the Nature of the Public Interest'.
- 167 Lee and Parker, The Evolution of Corporate Financial Reports.
- 168 ICAEW, Reporting with Integrity.
- 169 ICAEW, Code of Ethics.
- 170 Fédération des Experts Comptables Européens, Integrity in Professional Ethics: A Discussion Paper and Analysis of Responses.
- 171 www.teebweb.org
- 172 Quoted in Thagard, How to Make Decisions: Coherence, Emotion and Practical Inference.
- 173 Bentham, An Introduction to the Principles of Morals and Legislation.
- 174 Mill, Utilitarianism.
- 175 Kahneman, Thinking, Fast and Slow.
- 176 Thagard, How to Make Decisions: Coherence, Emotion and Practical Inference.
- 177 Quoted in Thagard, *ibid.*
- 178 Kahneman, Thinking, Fast and Slow.
- 179 Deskins, 'On the Nature of the Public Interest'.
- 180 Schultz, 'Henry Sidgwick'.
- 181 Flanagan, Values, Codes of Ethics and the Law.
- 182 Another is at Section 5.2.
- 183 Wise, 'Review of Competition Law and Policy in the United Kingdom', Fair Trading Act.

- 184 Department for Business Innovation and Skills, Enterprise Act 2002: Public Interest Intervention in Media Mergers.
- 185 Ibid.
- 186 Brandenburger and Nalebuff, 'The Right Game: Use Game Theory to Shape Strategy'.
- 187 Rapoport, 'Game Theory Versus Practice'.
- 188 Sidgwick quoted in Schultz, 'Henry Sidgwick'.
- 189 James Madison, quoted in Faulhaber, 'The Rise and Fall of 'Self Interest''.
- 190 Faulhaber, *ibid.*, on Madison.
- 191 The Accountancy Foundation Review Board, Protecting the Public Interest.
- 192 'The Kings Prerogative in Saltpetre' discussed in Manfredo, 'Public Use & Public Benefit: The Battle for Upstate New York'.
- 193 Quoted in Pleasence and Maclean, 'The Public Interest'.
- 194 Quoted in Pleasence and Maclean, *ibid.*
- 195 Pleasence and Maclean, *ibid.*
- 196 Kay, *The Truth About Markets*, Besley, *Welfare Economics and Public Choice*.
- 197 Based on Besley, *ibid.*
- 198 Deskins, 'On the Nature of the Public Interest'.
- 199 Brandenburger and Nalebuff, 'The Right Game: Use Game Theory to Shape Strategy'.
- 200 Thagard, *How to Make Decisions: Coherence, Emotion and Practical Inference*.
- 201 Sidgwick, quoted in Schultz, 'Henry Sidgwick'.
- 202 Quoted in Faulhaber, 'The Rise and Fall of "Self Interest"'.
- 203 Hobbes, quoted in Faulhaber, *ibid.*
- 204 Madison, quoted in Faulhaber, *ibid.*
- 205 Mandeville referred to by Hundert, *The Fable of the Bees and Other Writings*.
- 206 Machiavelli, quoted in Faulhaber, 'The Rise and Fall of 'Self Interest''.
- 207 Rousseau, quoted in Faulhaber, *ibid.*

- 208 Marnet, 'History Repeats Itself: The Failure of Rational Choice Models in Corporate Governance'.
- 209 BBC News, 'Hormones May Fuel Market Crises'.
- 210 Kay, *The Truth About Markets*.
- 211 Kay, *ibid.*
- 212 Ciulla, 'Ethics and Leadership Effectiveness'.
- 213 Bazerman quoted in Marnet, 'History Repeats Itself: The Failure of Rational Choice Models in Corporate Governance'.
- 214 Marnet, *ibid.*
- 215 Marnet, *ibid.*
- 216 Kay, *The Truth About Markets*.
- 217 Kay, *ibid.*
- 218 Finkelstein, Whitehead and Campbell, 'Think Again: Why Good Leaders Make Bad Decisions and How to Keep it from Happening to You'.
- 219 ICAEW, *Information for Markets and Society*.
- 220 Hume, referred to in Engelen, 'Thinking Things Through: The Value and Limitations of James Buchanan's Public Choice Theory'.
- 221 Engelen, *ibid.*
- 222 Peter-Burth and Gotitz, 'Review of "Carrots Sticks & Sermons"', Rothschild, 'Carrots, Sticks and Promises: A Conceptual Framework for the Management of Public Health and Social Issue Behaviours'.
- 223 Vanderbilt, 'The Traffic Guru'.
- 224 ICAEW, *Sustainability: The Role of Accountants*.
- 225 Quoted in Faulhaber, 'The Rise and Fall of 'Self Interest''.
- 226 Leeson, 'Efficient anarchy'.
- 227 From Leeson, *ibid.*
- 228 Leeson, *ibid.*
- 229 Miller, *Political Philosophy*.

230 Hansard.

231 Mill, Utilitarianism. Mill used the word 'harm' in a narrow fashion, implying direct harm only.

232 US Public Interest Research Group, 'Mission Statement'.

233 Sinha, 'Public Interest Litigation'.

234 Ibid.

235 UK Supreme Court, 'Frequently Asked Questions'.

236 Hardin, quoted in Partridge, Conscience of a Progressive.

237 Russell, 'What is the Public Interest?'

Acknowledgements

ICAEW is grateful to the following commentators for sharing their knowledge and experience of the topics with us, providing helpful reactions in a personal capacity to the development of the ideas in this report or commenting on drafts of it, or participating in ICAEW organised discussion panels on the public interest at the American Accounting Association Ethics Symposiums in 2010 and 2012.

Kenneth Chatelain

Jim Gaa

Jay Hanson

Jeff Hoops

Martyn Jones

Lisa Lindsley

Gareth Morgan

Paul Palmer

Manuel Ramirez

Stavros Thomadakis

John Thornton

Graham Ward

Ross Watts

None of the commentators should be assumed to agree with the views expressed in this report, and they are not responsible for any errors or omissions.

The report's principal authors are Tony Bromell and Robert Hodgkinson.

There are over 1.7m chartered accountants and students around the world – talented, ethical and committed professionals who use their expertise to ensure we have a successful and sustainable future.

Over 149,000 of these are ICAEW Chartered Accountants. We train, develop and support each one of them so that they have the knowledge and values to help build local and global economies that are sustainable, accountable and fair.

We've been at the heart of the accountancy profession since we were founded in 1880 to ensure trust in business. We share our knowledge and insight with governments, regulators and business leaders worldwide as we believe accountancy is a force for positive economic change across the world.

www.charteredaccountantsworldwide.com
www.globalaccountingalliance.com

ICAEW

Chartered Accountants' Hall
Moorgate Place
London
EC2R 6EA
UK

T +44 (0)20 7920 8100
E marketfoundations@icaew.com
icaew.com

