

The UK's trust-based approach to regulating conflicts of interest is no longer fit for purpose



Recently we found out that, six months after leaving office as Chancellor of the Exchequer, Sajid Javid will be taking a [job](#) with JP Morgan. Earlier in the summer, we saw major donors to the Conservative Party rewarded with [elevation](#) to the House of Lords and learned how Housing Minister Robert Jenrick had overruled his own department to grant planning permission to another party donor, and done so in a way that allowed the property developer to [avoid](#) a £40m tax bill. In all cases, the public has been asked to take it on trust that the individuals concerned are managing conflicts of interest appropriately and insulating their decisions from improper

influence. [Liz David-Barrett](#) explains why this trust-based approach to regulating conflicts of interest is no longer fit for purpose.

The concept of a 'conflict of interest' is core to our understanding of what it is to act with integrity in public office and of how corruption occurs. It refers to the risk that one or more of an individual public officeholder's interests might conflict leading to a *distortion* of the decisions that they make or the way in which they carry out their public duties. When a private interest induces a public officeholder to change the way they exercise their power or carry out their duties, this will, in most cases, meet the definition of political corruption.

Conflicts of interest are more common than they used to be

The risks of conflicts of interest occurring are much greater than they used to be, as I argue in a new [book chapter](#). Over the least three decades, the growth in outsourcing has meant that public services are increasingly delivered by private companies. This has blurred the boundaries between public and private, and made public procurement a key risk area. Sometimes, civil servants and local government officials who have been responsible for providing a public service in their public role quit and set up companies which then win the outsourced contracts they helped to design. The current government has recently awarded numerous [contracts](#) to companies that have close political connections to key government figures – often, citing the COVID-19 emergency, without opening them up to competitive tender.

Policy-making has also become very complex, meaning that public officials must rely heavily on external actors for advice and evidence and even bring private-sector actors into government on secondments. Management consultants can advise governments on how to shape policy and then return to the private companies that benefit from the reform. And public service itself is no longer a lifelong career choice. Individuals often move fluidly through the revolving door between public and private roles – just as Sajid Javid did when he came into politics from investment banking a decade ago, and as he is doing now, a mere six months after stepping down from the second-highest office in government.

Political parties' reliance on private funding creates another slew of tensions, because of the risk that they may provide favours in return for financial support. In the past few months, Boris Johnson's government has faced repeated allegations that it rewarded party donors with various benefits – from honours to planning permission. The individual officeholders all claim that their decisions have not been influenced by these apparent conflicts, but can we be sure? Indeed, can they be sure themselves?

Can we trust those in office to screen out their biases?

Our system for regulating conflicts of interest invests huge trust in the judgment of individual officeholders. The Advisory Committee on Business Appointments trusts Sajid Javid that at JP Morgan he will not draw on privileged information available to him from his time as a minister, use his contacts to influence policy for the bank or offer advice on certain banned areas. Our rules for MPs (in the [Guidelines on the Code of Conduct](#)), ask them to declare a financial interest if it 'might reasonably be thought by others to influence the speech, representation or communication in question', trusting them not only to identify potential conflicts themselves but also to make accurate judgements about the risk they represent and what action they need to take.

This all assumes that individuals are capable of making such thoughtful, considered assessments of their own conduct. Yet research from psychology tells us that, most of the time, humans engage in what Kahneman has called automatic or 'fast thinking' rather than 'slow' deliberation. As such, they may be influenced by 'implicit biases' – automatic associations that influence action without triggering reflective awareness. We know that such biases can negatively influence individual evaluations of others based on gender, race, religious identity or age. Why should we trust officeholders' judgments about their own impartiality, when research also tells us that humans are prone to 'blind spots' and 'motivated reasoning'? This suggests that officeholders are not impartial judges of their own behaviour, even if they want to be. They often do not recognise their own conduct as wrongful and may be able to provide extensive justification as to why it is not only acceptable but also beneficial to society.

In a polarised polity, it is harder for the public to judge the facts

Appearances are also important. Often, we ask individuals to consider how their conduct would appear to others, and to use this as a benchmark against which to judge whether a conflict exists. Indeed, Jenrick's decision to award planning permission to property developer and Tory party donor Richard Desmond was finally overturned when the courts found it to be 'unlawful by reason of apparent bias'.

It makes sense for regulators to care about appearances because they affect public trust in officials and hence the legitimacy of the political system. But this creates a further layer of complexity in self-regulation. We ask officeholders not only to identify and evaluate their own conflicts of interest, but also to estimate how the risks will appear to the public. In a world where media and social media are easily manipulated to fabricate scandals or exaggerate wrongdoing, and where the polarisation of politics can mean that anti-corruption tools are used mischievously as political weapons, living up to the 'appearance standard' can be a tall order.

Remember the Nolan Principles

In the UK, most public officeholders go into public service careers because they wish to do just that: serve the public. Nevertheless, many of those currently in high office seem far too confident about their own ability to handle complex conflicts of interest. It is about time the government answered [longstanding calls](#) to put the business appointments regulator – the Advisory Committee on Business Appointments – on a statutory footing and make its advice binding. It should also [make the adviser on ministers' interests truly independent](#). But I'm not holding my breath. In the meantime, we can all do our best to keep reminding public officeholders that they are obliged to follow the Seven Principles of Public Life – Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership. While humans are not good at avoiding their own biases, research suggests that they can, if they want to, learn to do it better.

About the Author



[Liz David-Barrett](#) is Professor of Governance and Integrity at the University of Sussex.

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