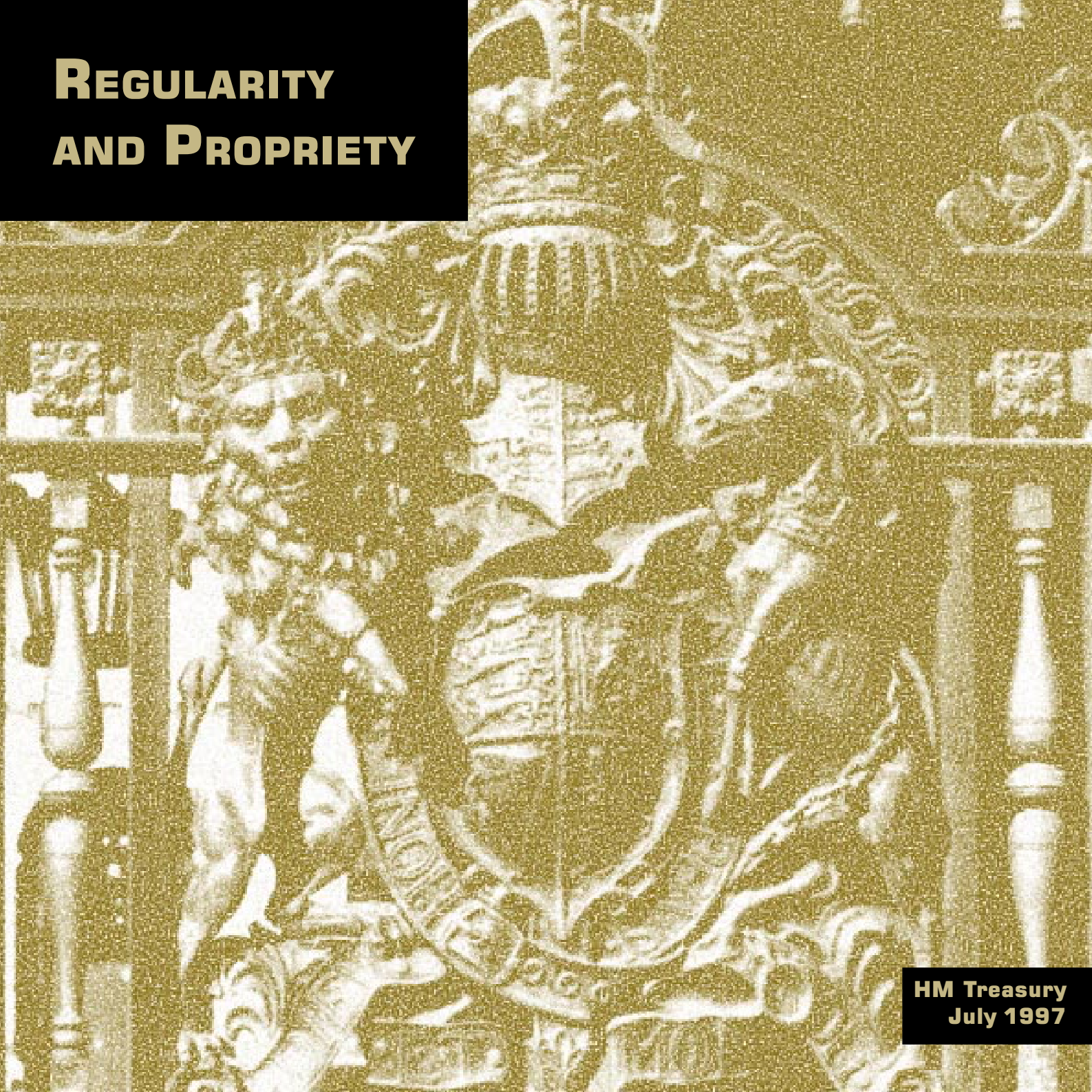


# REGULARITY AND PROPRIETY



**HM Treasury  
July 1997**

**REGULARITY AND PROPRIETY:  
A HANDBOOK**



**Treasury Officer of Accounts team  
HM Treasury  
July 1997**

## **This handbook ...**

... is designed primarily for Accounting Officers in government departments, in Next Steps executive agencies and in non-departmental public bodies, together with their equivalents in the National Health Service. But it will also be of interest to NDPB board members, and the boards of NHS Trusts, who also have an important role in ensuring that these bodies operate with propriety and regularity. Indeed, given the extensive delegation of financial authority in public sector organisations, and the fact that Accounting Officers and board members will often look to their staff for advice on these matters, the handbook should be of value to public servants at many levels.

Written guidance cannot be a substitute for experience or for training, particularly for people whose previous experience has not been in the public sector and who may not be familiar with the standards expected of public servants. Relevant induction training is available at the Civil Service College.

The handbook, which was first issued as an exposure draft in December 1996, has been prepared by the Treasury Officer of Accounts team in the Treasury, in consultation with government departments, the NHS Executive and the National Audit Office. The Treasury Officer of Accounts team produces "Government Accounting" together with "The Responsibilities of an Accounting Officer" and "The Responsibilities of a NDPB Accounting Officer".

If you have any questions about the handbook, call 0171-270-4304 or 5361. If you require additional copies, please call the Treasury's Public Enquiry Unit on 0171-270-4558.

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## Introduction

All public servants are expected to observe the highest standards of conduct. Public servants must act with propriety, particularly in the care and management of public funds. This handbook explores what propriety means in a financial context. It is a concept with many facets and experience has shown how important it is to understand the concept fully and to keep it at the forefront of the mind when making decisions.

Parliament's concern for regularity and propriety in the stewardship of public funds is particularly reflected in the work of the Public Accounts Committee, and hence the Committee's work features heavily in this handbook. The Committee are invariably very critical of any breaches of propriety or regularity and their comments are reported widely in the media. At the close we suggest there is one final test to apply if there is any question mark over whether a proposed course of action meets the requirements of propriety:

*Could I satisfactorily defend this before the Public Accounts Committee?*

The Public Accounts Committee is only one element of accountability, which is ultimately to the public. On that basis, the test could simply be worded:

*Could I satisfactorily defend this course of action in public?*

The fact that what is involved is responsibility for public funds means that the standards of behaviour expected of public servants in financial matters are different, and in some respects more demanding, than those which may be accepted for equivalent activities in a private context. Achieving good results is important, but these results must not be achieved by cutting corners.

The aim of this handbook is to illustrate what is and is not "proper" behaviour in the stewardship of public funds.

There are some basic “dos and don’ts” (see box).

If in your stewardship of public funds you have any doubts as to whether a proposed course of action meets the requirements of propriety, you should think again and seek advice from the sponsoring department, the Treasury or NHS Executive (or the equivalent department in Wales or Scotland).

- ❑ Don't bend or break the rules
- ❑ Put in place and follow clear procedures
- ❑ If approval is needed, get it first
- ❑ Don't allow a conflict of interests to affect, or appear to affect, decisions
- ❑ Don't use public money for private benefit
- ❑ Be even-handed
- ❑ Record the reasons for decisions

## Accounting Officer responsibilities

There are repeated references to regularity and propriety in “The Responsibilities of an Accounting Officer”, the memorandum issued by the Treasury to Accounting Officers in government departments and agencies. To quote a couple of the most important references (emphasis added):

*“The essence of an Accounting Officer’s role is a **personal responsibility** for the propriety and regularity of the public finances for which he or she is answerable...”*

*“As Accounting Officer you must ... ensure that, in the consideration of policy proposals relating to the expenditure or income for which you have responsibilities as Accounting Officer, **all relevant financial considerations, including any issues of propriety, regularity or value for money, are taken into account ...**”*

Note the fact that this responsibility for propriety is personal. There is similar wording in the Treasury memorandum on the responsibilities of a NDPB Accounting Officer and in the guidance to accountable officers in the National Health Service. And to avoid misunderstanding here, a NDPB Accounting Officer’s responsibilities extend to all the resources in his or her care, irrespective of the source of funding.

The Treasury memorandum goes on to say that an Accounting Officer “has particular responsibility to see that appropriate advice is tendered to Minister on all matters of financial propriety and regularity ...” If a Minister is contemplating a course of action which the Accounting Officer considers would infringe the requirements of regularity or propriety, he or she should set out in writing the objection to the proposal, the reasons for this objection and the duty to inform the Comptroller and Auditor General should the advice be overruled. If the Minister decides to proceed, the Accounting Officer should seek a written instruction to take the action in question.

The NDPB Accounting Officer has the same responsibility:

*“The Board of a NDPB should act in accordance with the requirements of propriety or regularity .... However, if the Board or the Chairman is contemplating a course of action involving a transaction which you as Accounting Officer consider would infringe these requirements, you should set out in writing your objection to the proposal, the reasons for this objection, and your duty to notify the Comptroller and Auditor General should your advice be overruled. If the Board decides nonetheless to proceed, you should seek a written instruction to take the action in question. You should also inform your sponsoring department’s Accounting Officer ... so that the department, if it considers it appropriate, can intervene with the Board and inform the Treasury.”*

## **Accounting Officers**

**Accounting Officers are normally the most senior official in an organisation - the permanent head of a government department or chief executive of an executive agency or NDPB. The appointment as Accounting Officer reflects the fact that he or she has responsibility for the overall organisation, management and staffing of the body, and for its procedures in financial and other matters. The essence of the Accounting Officer’s role is a personal responsibility for the propriety and regularity of the public finances for which he or she is answerable; for the keeping of proper accounts; for prudent and economical administration; for the avoidance of waste and extravagance; and for the efficient and effective use of all the resources in their charge. Accounting Officers may be called to give evidence before the Public Accounts Committee on the basis of reports by the Comptroller and Auditor General. There is more background information on this in a later inset.**

Alongside these specific responsibilities, the Accounting Officer has a leadership role as regards propriety: his or her actions and behaviour must set a high standard for the organisation, and the Accounting Officer must communicate these standards to the organisation's staff.

## Regularity

Regularity is defined in chapter 6 of "Government Accounting":

*Regularity is the requirement for all items of expenditure and receipts to be dealt with in accordance with the legislation authorising them, any applicable delegated authority and the rules of Government Accounting.*

Key here are the references to authorising legislation and delegated authority: regularity is about compliance with appropriate authorities.

### **Authorised by Parliament**

A central requirement is that expenditure must be properly authorised by Parliament. According to the Accounting Officer memorandum (emphasis added):

*"An Accounting Officer has a particular responsibility for ensuring compliance with Parliamentary requirements in the control of expenditure. **A fundamental requirement is that funds should be applied only to the extent and for the purposes authorised by Parliament ...**"*

This wording harks back to the Exchequer and Audit Departments Act, 1921:

*"Every appropriation account shall be examined by the Comptroller and Auditor General on behalf of the House of Commons, and in the examination of such accounts the Comptroller and Auditor General shall satisfy himself that **the money expended has been applied to the purpose or purposes for which the grants***



***made by Parliament were intended to provide and that the expenditure conforms to the authority which governs it.”***

There are thus two facets to Parliamentary control. First, expenditure must be consistent with the specific legislation providing for the activity or service. The legislation expresses Parliament’s intentions as to when and how public money should be used. Transactions should also be in accordance with any regulations issued under the governing legislation. Second, expenditure must fall within the ambit of the relevant Vote (the grant made by Parliament). The ambit of each Vote records Parliament’s intentions as to the purposes of the expenditure. Expenditure which is outside the ambit of the relevant Vote or outside the specific legislation is automatically “irregular”.

***“The authority of the Treasury”***

Leading on from this, a second key aspect is the requirement to have the necessary authority for expenditure.

***“If in examining an appropriation account it appears to the Comptroller and Auditor General that the account includes any material expenditure requiring the authority of the Treasury which has been incurred without such authority he shall report that fact to the Treasury, and any such unauthorised expenditure shall, unless sanctioned by the Treasury, be regarded as not being properly chargeable to a Parliamentary grant, and shall be so reported to the House of Commons.”***

This is a quote from the Exchequer and Audit Departments Act, 1921. As you will see from some of the cases described later in the handbook, the fact that a department has acted outside the authority delegated from the Treasury or without the necessary Treasury approval will often result in PAC criticism. Again such expenditure is “irregular”. While the Public Accounts Committee regards irregular expenditure as a serious matter, often its deeper concern is with what was done. The failure to seek the required external approval for a course of action is seen as a signal that the course of action was dubious.

The Committee takes the same approach in other situations where the necessary approval for expenditure has not been gained - for example, where a NDPB acts outside the authority delegated to it in the financial memorandum, or a NHS Trust ignores the requirement for

approval by the NHS Executive. Parliament's expectation is that public bodies will observe such requirements when spending public money: this too is part of compliance with the appropriate authorities.

## Propriety

The "Government Accounting" definition of propriety is linked to that of regularity, with an emphasis again on Parliamentary control:

*Propriety is the further requirement that expenditure and receipts should be dealt with in accordance with Parliament's intentions and the principles of Parliamentary control, including the conventions agreed with Parliament (and in particular the Public Accounts Committee).*

This definition of propriety is obviously not a conventional one. "Fitness; rightness; correctness of behaviour or morals" is one dictionary definition. Behaviour is also included in the definition used in the Nolan Committee's First Report, "*Standards in Public Life*", published in May 1995 (emphasis added):

*"We take propriety to encompass not only financial rectitude, but a sense of the values and behaviour appropriate to the public sector."*

And in practice the Public Accounts Committee takes a very similar approach. Its report in early 1994, "*The Proper Conduct of Public Business*" (Eighth Report, Session 1993-94), uses phrases such as "the standards of public conduct", "care for the honest handling of public money" and "traditional public sector values".

What this implies is that the reference to "Parliament's intentions" in the "Government Accounting" definition of propriety needs to be interpreted in a wide sense. As the Auditing Practices Board puts it (emphasis added):

## The Public Accounts Committee and National Audit Office

The **Public Accounts Committee** was set up in 1861 as one of the measures to give Parliament a better control over the expenditure of public funds. Under House of Commons Standing Order No 122 the Committee examines and reports on “ ... the accounts showing the appropriation of the sums granted by Parliament to meet the public expenditure and ... such other accounts laid before Parliament as the Committee may think fit”. The Committee is nominated by the House for the duration of each Parliament. It consists of 15 members, drawn from all parties. Traditionally the Chairman is provided by the Opposition and is usually a former Treasury Minister. It works on the basis of reports by the Comptroller and Auditor General, either as a result of his certification (financial) audit or value for money examinations. It takes evidence in public on the basis of these reports, with the main witnesses being Accounting Officers: the Comptroller and Auditor General and the Treasury are also witnesses at each hearing. After deliberating on the evidence, the Committee reports to Parliament, with the Government responding in Treasury Minutes.

The **Comptroller and Auditor General** is appointed by the Crown and is responsible to Parliament rather than the Government. As auditor his statutory duties are to certify the accounts of all government departments and a wide range of other public bodies; to examine revenue and store accounts; and to report the results of his examinations to Parliament. These duties are set out in the Exchequer and Audit Departments Acts 1866 and 1921. Under the National Audit Act 1983 - which created the National Audit Office to replace the Exchequer and Audit Department - he has wide powers to carry out examinations of the economy, efficiency and effectiveness of the use of resources by those bodies he audits or to which he has access - value for money examinations. In these examinations the C&AG may not question policy objectives.

The staff of the **National Audit Office** are appointed by the Comptroller and Auditor General and are not civil servants. Each year the NAO audits some 500 accounts and publishes around 50 value for money reports. It describes its “primary concern” as “... accountability to Parliament, and ultimately to taxpayers - to assure them that public funds and resources are used properly and to good effect”.

Reports by the Audit Commission and the Accounts Commission - which are responsible for the audit of both NHS bodies and local authorities in England and Wales and Scotland respectively - are not presented to Parliament, though their NHS audit reports may be followed up by the National Audit Office.

***“Propriety is concerned with Parliament’s intentions as to the way in which public business should be conducted, including the conventions agreed with Parliament and in particular, the Committee of Public Accounts.***

*“Whereas regularity is concerned with compliance with appropriate authorities, propriety goes wider than this and is concerned more with standards of conduct, behaviour and corporate governance. **It is concerned with fairness and integrity and would include matters such as the avoidance of personal profit from public business, even-handedness in the appointment of staff, open competition in the letting of contracts and the avoidance of waste and extravagance.**”*

*(Practice Note 10, “Audit of Central Government Financial Statements in the United Kingdom”, February 1996)*

All of these “proper” behaviours are of course reflected in “Government Accounting” or other guidance documents.

For example, the Code of Conduct for NHS Boards in England refers to “... three crucial public service values ... “

**Accountability** - everything done by those who work in the NHS must be able to stand the test of parliamentary scrutiny, public judgements on propriety and professional codes of conduct.

**Probity** - there should be an absolute standard of honesty in dealing with the assets of the NHS: integrity should be the hallmark of all personal conduct in decisions affecting patients, staff and suppliers, and in the use of information acquired in the course of NHS duties.

**Openness** - there should be sufficient transparency about NHS activities to promote confidence between the NHS authority or trust and its staff, patients and the public.

Similar expectations about behaviour are expressed in the Civil Service Code:

*“Civil servants should conduct themselves with integrity, impartiality and honesty ... [they] should not misuse their official position to further their private interests ...”*

And the model code of conduct for staff of executive NDPBs says:

*“Key members of staff, such as the Chief Executive, Finance Director ... should ensure that any possible conflicts of interests are identified at an early stage and that appropriate action is taken to resolve them ...”*

When it authorises expenditure Parliament expects the public servants responsible for its care to behave in these ways: Parliament’s intention when authorising expenditure is that the funds should be managed with impartiality, honesty, avoiding personal gain and waste and extravagance. In short, propriety in a financial context embraces a wide range of proper behaviours.

**To summarise then. We are concerned with regularity and propriety in a financial context. A key element is conforming with the requirements of Parliamentary control and Parliament’s intentions as regards the use of public funds. In respect of propriety, “Parliament’s intentions” has a broader meaning - its expectations about the way in which public business should be conducted, or should not be conducted; its expectations about the way public servants should and should not behave when managing public funds.**

The next section attempts to illustrate how this works in practice by looking at situations which have led to criticism by the Public Accounts Committee. Some of these examples featured in the Committee’s Eighth Report, Session 1993-94, *“The Proper Conduct of Public Business”*. At the end of this handbook we have included the checklist which forms part of the report, but the whole of the report is recommended reading. It is true to say that the report, together with the work of the Nolan Committee, has given issues of regularity and propriety a much higher profile.

On the next page there is a section from the Nolan Committee’s First Report, *“Standards in Public Life”*. These “Seven Principles of Public Life” capture the key characteristics of propriety and are a reminder that issues of propriety and issues of governance are closely linked.

## The Seven Principles of Public Life

- Selflessness*** Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.
- Integrity*** Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.
- Objectivity*** In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
- Accountability*** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- Openness*** Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- Honesty*** Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- Leadership*** Holders of public office should promote and support these principles by leadership and example.

*The Seven Principles of Public Life were endorsed in "Spending Public Money: Governance and Audit Issues", Cm 3179, March 1996.*

### CASE 1

#### *MPs call £1.2 million junkets arranged by civil servants 'inexcusable'*

This was one headline for the PAC report on a relatively straightforward case. The case illustrates the links between regularity and propriety and how all-embracing is the Committee's view of propriety. The incident is described in the Public Accounts Committee's 28th Report, Session 1992-93 - "Ministry of Defence: Irregular Expenditure under an Efficiency Incentive Scheme".

As part of a strategy to achieve efficiency savings, in the late 1980s the Ministry of Defence introduced a trial efficiency incentive award scheme. It was designed to reward groups of staff for their part in contributing to efficiency. But some members of staff went beyond the department's guidelines for the scheme, spending money on go-carts, bicycles, cameras, golf-club furnishings, televisions and the like. There was also expenditure on what the PAC Chairman described as "jollifications". Here are some of the things the Committee said in its report (emphasis added):

*"We are concerned that **expenditure was incurred by the Department outside the ambit of the Votes concerned and that some was incurred on gifts and donations for which specific Supply Estimates provision had not been made.** This expenditure cannot be regarded as having been authorised by Parliament and should not have occurred.*

*"We are also concerned that the Department incurred expenditure on novel and contentious items which fell outside their delegated authority and required specific prior Treasury approval. **We are dismayed that they did not seek Treasury approval before making these payments.***

*"We remain critical of the lavish scale of unauthorised expenditure to mark the 25th Anniversary celebrations of the Royal Naval Supply and Transport Service and find the cost of up to £70 a head incurred in holding these events to be*

***completely unjustified. In future we expect the Department to act in line with the Accounting Officer's duty to avoid waste and extravagance ...***

*"We endorse the Accounting Officer's acknowledgement that he is ultimately responsible, and we regard such personal accountability as a cardinal principle of Parliamentary control over public expenditure."*

So the starting point for the Committee's concern was that the expenditure was irregular: it was outside the ambit of the relevant Vote and the department's delegated authority and the department failed to get the necessary Treasury approval.

But clearly the Committee's concerns went wider than this. The people involved went beyond the rules for the scheme - as we will see in other examples, acting outside the rules is an immediate trigger for the Committee's concern. Some of the expenditure was, in the Committee's view, excessive: it went beyond Parliament's expectations of how much public money it is reasonable to spend on entertainment for public servants. And there was an underlying concern that public money had been spent for what might be regarded as private benefit.

Each year there is a Parliamentary debate on the past year's reports by the Public Accounts Committee. Speaking in the 1993 debate, the Committee's Chairman commented:

*"Public money should not be spent in such a way. We were uneasy about the way in which the spending of it had been authorised, which we thought was a most serious matter ..."*

## **CASE 2**

***"We are disquieted to learn of the real conflicts of interest that arose ..."***

The next example concerns the 2nd Report in 1994-95 Session, *"The Sports Council: Initiatives to Improve Financial Management and Control and Value for Money"*.



The Sports Council is an executive NDPB whose principal source of income is grant aid. From 1989 the Council took a number of steps designed to strengthen its commercial activities. These included the creation of a charitable company to replace the Council's charitable trust; the acquisition of a company wholly owned by the charitable company; and the formation, jointly by the acquired company and a private sector company, of a joint-venture. The Council and these three companies formed the Sports Council Group. The Council's Accounting Officer and its Director of Finance held positions on, or worked on behalf of, the Sports Council while simultaneously holding positions on one or another of the three companies in the Sports Council Group: for example, the Finance Director became the chief executive of one of the companies. The result was what the Committee's report described as "conflicts of duty and interest", which had financially disadvantaged the Council in various transactions with the companies: for example, the contracts between the Council and one of the companies required the Council to pay in advance, whereas payments by the company to the Council under the contract terms were considerably in arrears. Here is a selection of the Committee's comments in its report:

***"Responsibility for public funds ... entails maintaining the expected standards of propriety. This includes not only avoiding actual or potential conflicts of interest but also any doubt that such conflicts might exist. We are therefore disquieted to learn of the real conflicts of interest that arose, which disadvantaged the Council financially in contractual arrangements with [the company] and which did not conform with Treasury guidance or with government best practice ...***

***"We are particularly concerned that the former Director General and Accounting Officer and the former Finance Director had conflicts of interest, despite numerous reports by this Committee drawing attention to such dangers ...***

***"We are very concerned that the Council and the Trust Company took actions on several occasions which they knew were opposed by the sponsoring department ...***

***"We note that on his retirement the Trust Company appointed the former Director General of the Council as their part-time Chief Executive without the post being advertised ...***

*"We are very concerned that the Council awarded a contract ... for twenty years to manage the Council's annual exhibition and seminar as this does not allow the Council regularly to test the market ...*

*"We consider that it was clearly unsatisfactory for the Council to award the contract ... to a management buy-out company which had not submitted a tender. **We note that the Council and the Department have accepted that this was an improper procedure ...**"*

Avoidance of conflicts of interest is a fundamental principle. A comment by the PAC Chairman during the Committee's hearing is of particular interest here:

*"Potential conflicts of interest are very serious matters indeed. We do not have to prove that something wrong has happened as long as the potentiality for that wrongdoing exists ..."*

The underlying concern here was that public officials had taken actions which appeared to benefit private interests at a cost to public funds. The quotes also illustrate the point that the various rules about how public business should be conducted - for example, that posts should be filled by open competition, that contracts should be periodically re-tendered and should be let using even-handed tendering procedures - are safeguards against impropriety.

### CASE 3

*" .... The standards required for the expenditure of the taxpayer's money are rather different ... "*

In its 47th Report, Session 1992-93 - "Welsh Development Agency: Accounts 1991-92" - the Committee found a number of causes for concern. Here are some quotes from the report's conclusions:

*"... It seems self-evident to us, however, that the redundancy arrangements adopted by a public sector body should relate to its own pension scheme. **It is clearly not***

*acceptable that a public sector body should pick and choose the best terms on offer from superannuation schemes they do not belong to ...*

*“We consider it unacceptable that the Agency should have provided cars to their Board members and senior executives without requiring them to pay for private motoring ... We criticise the Agency for the breakdown in financial controls which led to their incurring ... irregular expenditure on their car scheme ...*

*“We are deeply concerned at the artificiality of the arrangements made for his retirement settlement, and at the total cost of the package which the Agency put at over £228,000 ...*

*“We recognise the need for the Agency to seek confidentiality undertakings on certain operational matters from staff who leave their employment. However, we consider the agreement which they had required [the International Director] to sign is **excessively restrictive and potentially damaging to public accountability in its application of confidentiality undertakings to the circumstances and terms of his retirement.** We are therefore concerned at the steps the Agency took to ensure [his] silence and regard this as an unacceptable development in personnel management in the public sector.*

*“We note the explanations by ... the Agency’s Chairman ... **It is clearly important that persons in high public office should ensure that circumstances do not arise which can give cause to any allegations of abuse of position ...***

*“We note that neither approval nor progress of Operation WIZARD [a study of policy options for the future of the Agency] **was formally minuted by the Agency’s Board** and that its existence was not publicly revealed, even after it was shelved ...*

*“We ... note the degree of freedom which non-departmental public bodies enjoy to manage their own affairs, but **we stress that it is the responsibility of the Agency’s Chairman and other Board members to act in a way which conforms with the high standards expected of those who handle public finance ...**”*

Some of these concerns are familiar from the earlier cases: some are new or differently expressed. In both the redundancy payments and the car scheme the agency had acted outside the relevant rules, without seeking the necessary authority to do so. As regards the car scheme there had been expenditure of public funds for private benefit. Additionally there is the concern about “confidentiality undertakings” - what the Committee sometimes refers to as “gagging clauses” - where these are designed to limit public scrutiny and accountability. Likewise, there is the concern that the proper procedures to record decisions had not been followed. And returning again to the issue of conflict of interest, there is the concern about possible “abuse of position”.

One quotation from the PAC Chairman during the hearing is also worth noting:

*“The standards required for the expenditure of the taxpayer’s money are rather different from the standards required when one is dealing with one’s own money”.*

*“Detailed reasons should always be recorded ...”*

The importance of keeping records also featured in the 6th Report of the 1994-95 Session, “Wolds Remand Prison”. Wolds Remand Prison was the first to be contracted out, and the NAO report examined that process. The Committee’s report commented:

*“To avoid any question of impropriety, detailed reasons should always be recorded whenever a contract is not awarded to a tenderer who submits the lowest bid and is judged capable of meeting the key performance criteria ...”*

Failure to record the reasons for decisions, establishing a clear audit trail, may lead to the suspicion that there is something to hide. The Treasury Minute in response to the report agreed with the Committee’s conclusion and said that the Prison Service did record such information.

## CASE 5

*“I do not think that enthusiasm to be entrepreneurial should lead to a failure to carry out essential controls”.*

Another short entry, from the 48th Report, Session 1992-93, *“Irregularities in the 1991-92 Accounts of Forward Civil Service Catering”*. The irregularities were primarily in purchasing. Forward has since been privatised, but at the time was part of the Treasury. The Committee commented as follows:

*“We consider that this case, involving poor control, mismanagement, irregularity, malpractice and fraud, represents a serious failure in the proper conduct of public business in what is - or should have been - a straightforward trading operation. We regard it as particularly unsatisfactory that this situation was allowed to develop in a body which is the direct responsibility of the Treasury and should have been the subject of more effective oversight ...*

*“The main weaknesses and irregularities disclosed [included] ... failures to comply with laid-down purchasing procedures. There was a general lack of competitive tendering, substantial contracts were rolled forward without re-tender or any search for alternative suppliers ... European Community directives were breached; requirements were poorly specified; and there were weaknesses in local purchasing arrangements, in the receipt, storage and issue of goods, and in invoice certification; certain records had been destroyed at four locations ....*

*“One element of the deterioration of control in Forward caused us particular concern ... In the course of re-letting contracts without competition - including a contract with an individual value of £4.25 million - a senior member in Forward apparently entered into discussions with some of the contractors to seek their financial support for a management buy-out for Forward. He had also established, without informing the Accounting Officer, a company ... which was apparently intended to be the vehicle for such a buy out ...”*

The opening quotation is from the Accounting Officer during the PAC hearing.

## CASE 6

*“There were serious failings here of an astonishing kind ...”*

To return to rather longer extracts, this example is from the 63rd Report in the 1992-93 Session, *“Wessex Regional Health Authority: Regional Information Systems Plan”*.

In May 1984 the Wessex Regional Health Authority launched its regional information systems plan to provide systems which would optimise the use of information in clinical and other health services. By April 1990, when the plan was abandoned, the RHA had spent some £43 million. But it was not simply the poor value for money on which the Committee commented:

*“We note with dismay that not only did the Regional Health Authority’s management strenuously contest the auditors’ criticisms, they were also able to conceal vital information from the Members of the Authority and from the Management Executive ...*

*“... The evidence presented to us depicted [the Regional General Manager] as a man with strong vision, and such a determination not to be deflected off course, that he presided over a series of actions incompatible with the proper handling of public money and without regard to clear evidence that the project was going badly wrong.*

*“We note that Anderson Consulting do not believe there to have been a conflict of interest. However, it is essential for the proper conduct of business that public bodies should be free, and be seen to be free, from any relationships which could materially interfere with their ability to take open and fair decisions aimed at securing value for money in the public interest, and we endorse the Regional Health Authority’s view that it is clearly wrong for somebody who is tendering for National Health Service business also to be advising the National Health Service as their consultant.*

*“We are concerned that the Regional Health Authority allowed [an individual], while on secondment from IBM, at the request of the Chairman of the Regional Health*

*Authority to advise them on the purchase of an IBM computer for £3.3 million, at which time it could have been purchased for £0.5 million to £1 million less than the price paid.*

***“We are also disturbed that the contract for the computer was signed by ... , [the] Regional Treasurer, on the instructions of ... [the] Regional General Manger, without reference to the Chairman or to the Authority and without competitive tendering, contrary to the Authority’s standing orders ... As we have pointed out in previous reports, competition ... is a key element in demonstrating that public business has been conducted properly.***

***“ It is also important in our view to ensure that all health service staff respect the fundamental principles of public business in this country, and are judged, in their own performance, by the standards of honesty, openness and fair dealing that are expected in public life.”***

The PAC report referred to “... a series of actions incompatible with the proper handling of public money ...” and, indeed, the list of concerns is a long one. Again there is the concern as regards conflict of interest, with officials in a public body acting in ways which led to private benefit, at a cost to the public purse. Again there is the emphasis on procedures such as competitive tendering as a safeguard against impropriety. There are also concerns that the proper procedures for taking decisions in the body were not followed and that information was concealed. The quotation opening this section is from the PAC Chairman during the hearing. The case is also a good illustration of the close relationship between propriety and good governance. Indeed, the Treasury Minute in response to the PAC report featured a number of steps to improve governance in the NHS, including the work on the NHS Codes of Conduct and Accountability.

*“There were failures of governance of the most serious kind ...”*

In its 19th Report, Session 1996-97 - *“Inquiry commissioned by the NHS Chief Executive into matters concerning the former Yorkshire Regional Health Authority”* - the Committee commented on what it described as *“the catalogue of breaches of process, internal controls and national regulations”* discovered in the inquiry commissioned by the NHS Chief Executive. There are in all 21 conclusions in the report. These are a selection:

*“The Committee consider it unacceptable that the former Yorkshire Regional Health Authority made irregular payments of relocation expenses totalling £447,847 to its employees ... We criticise the former Authority, in particular, for three payments to its senior officials under a scheme agreed in 1994 ...*

*“We also think it unacceptable, that the former Authority made severance payments to two of its senior staff without the necessary approval, and improperly employed three senior staff on general manager contracts. We are appalled that, in one of these cases, the Director of Personnel ... had in 1994 been switched from a General Manager’s to a Senior Manager’s contract, simply to enhance her redundancy terms; and that, in another case, a District General Manager had, in 1993, been paid, although he had no job to do and no requirement to attend the Office ...*

*“We are concerned that, in 1994, the former authority agreed to provide the Chairman of the successor Authority with a Range Rover at their expense with a loss of £10,000 to public funds when the car was subsequently withdrawn and sold, and that they also provided a second car to the Assistant Regional General Manager ...*

*“We consider it unacceptable that in the two years up to April 1994 a division led by the Personnel Director of the former Authority ... awarded contracts valued at £43,000 to a company owned by her husband; and that [the Personnel Director] failed to declare an interest ...*



***“We are appalled that the former Authority spent some £695,000 on functions and dinners at hotels between April 1992 and March 1994. These included events which clearly should not have been paid from public funds, such as two “Super Sleuth” weekends at a cost of £10,000, and excessive hospitality in top quality hotels including expensive wine. We are extremely concerned that a lack of proper certification and coding procedures concealed much of what had been going on ...***

***“While we recognise that this was a period of unprecedented change in the NHS and managers were being encouraged to adopt a more business-like approach, we cannot accept that this entitled senior managers to anticipate changes in the rules or to put the former Authority’s and public funds at risk ...***

***“There were failures of governance of the most serious kind which have resulted in the loss of public funds of millions of pounds which should have been spent on treating patients.”***

There is no need to add a commentary here. But one point worth noting, from the Committee’s reference to “proper certification and coding procedures”, is the contribution of basic financial procedures in meeting the requirements of propriety.

## **CASE 8**

***“We expect each Accounting Officer fully to uphold the principles and practices of proper conduct and to demonstrate good stewardship of public funds.”***

This next case concerns the authorisation of travel expenses. It is described in the 25th Report, Session 1996-97, “*Plymouth Development Corporation: Regularity, Propriety and Control of Expenditure*”

The Corporation is an executive NDPB sponsored by the then Department of the Environment. In 1995 the Department's Government Office for the South West raised a number of concerns about the way the Corporation was being run. These were investigated by the Department's internal audit service, Management Audit Services. In May 1995, the Corporation's external auditors discovered, during their audit of the 1994-95 financial statements, two invoices for travel costs which appeared irregular. Further investigation by the DoE's Management Audit Services found other examples of personal expenses incurred by the Chief Executive on international visits and paid for by the Corporation. The Chief Executive was suspended and his designation as Accounting Officer withdrawn in June 1995; he resigned in September 1995. The auditors estimated that he had authorised the charging to the Corporation of £9,210 of his own private expenditure, which was subsequently repaid.

These are among the conclusions in the Committee's report:

*"The Committee considers that [the Chief Executive's] conduct ... **did not meet the standards expected of those entrusted with the use of public funds, notably in his handling of travel and personal expenditure ...***

*"We consider it unacceptable that there were deficiencies in key financial controls at the Corporation, though these have since been remedied. **There was a lack of proper budgetary control; a lack of basic checks on invoices and supporting documentation; acceptance of inadequately specific invoices; a high level of duplicate payments; and inadequate management information for the Board ...***

*"It is now three years since the Committee reported on the need to maintain the principles and standards required to ensure the proper conduct of public business. **We continue to attach the highest importance to these standards at all levels in the public services. We expect each Accounting Officer fully to uphold the principles and practices of proper conduct, and to demonstrate good stewardship of public funds.**"*

Again there is a reminder here of the importance of basic financial controls. As the Accounting Officer memorandum records, the Accounting Officer must "ensure that proper financial procedures are followed and that accounting records are maintained in a form suited to the requirements of management as well as in the form prescribed for published accounts."

## CASE 9

*“The central reason for the removal of Accounting Officer status was that the conflict of interests which had occurred ... was then persisted in ...”*

Conflict of interests was at the heart of the final example, which is from the Committee’s 23rd Report, Session 1995-96, *“National Heritage Memorial Fund Account 1994-95: Replacement of the Accounting Officer”*. The National Heritage Memorial Fund is an executive NDPB which gives assistance towards the cost of acquiring, maintaining and preserving items of national heritage. It is grant-aided, the sponsoring department being the then Department of National Heritage (DNH). In June 1995 the Department’s Accounting Officer concluded, after investigation, that the Accounting Officer of the Fund had allowed a conflict of interests to arise in breach of her basic responsibilities as an Accounting Officer. After informing the Chairman of Trustees, he therefore revoked her designation as Accounting Officer. The Trustees of the Fund then terminated her appointment as Director. One quotation from the Committee’s report is central:

*“We view the responsibility of Accounting Officers for ensuring that the highest standards of propriety are maintained in the conduct of public business as being of fundamental importance. We therefore regard it as unacceptable that ... the Accounting Officer of the National Heritage Memorial Fund ... allowed a clear conflict of interest to arise by permitting her partner’s firm ... to tender for a contract to be let by the Fund ... **This compromised her role as the Fund’s Accounting Officer ...**”*

The Treasury Minute in response to the report said, amongst other things, “It is a key responsibility of Accounting Officers to safeguard the financial propriety and regularity of an organisation ...” The opening quotation is from the DNH Accounting Officer at the PAC hearing.

## What is proper conduct?

These case studies should have given you a clear impression of the type of actions or behaviour the Committee regards as unacceptable, as outside its definition of propriety.

It is not easy to define neatly what is “proper” behaviour. But it is possible to identify its characteristics:

- **It follows the rules and seeks approval where this is required**

If the proposed course of action is outside the current rules, discuss it with the relevant authority. And if approval is required for the proposed course of action - from the Treasury, or the sponsoring department or the NHS Executive - get it before you take action.

- **It puts in place and follows clear procedures**

Clear procedures for decision-making - for example, when letting contracts - are a safeguard for propriety. Effective financial procedures generally are similarly a safeguard.

- **It resolves any conflict of interests**

Conflicts of interests may well arise. They must be dealt with so that decisions are not taken, or appear to be taken, for the wrong reasons.

- **It does not use public money for private benefit**

A basic test for whether an action does or does not meet the requirements of propriety.

- **It is even-handed**

There must be no bias or partiality in decisions about the use of public funds. That is why there are the rules about competition, for example, to ensure that the choice of contractor is made on merit.

- **There are records**

Recording the reasons for decisions is another important safeguard of propriety. It establishes the audit trail which supports accountability.

- **It is transparent - it can accept scrutiny**

If a proposed course of action meets the requirements of propriety, then there will be no concern about external scrutiny.

These characteristics again show the relationship between financial propriety and good governance. They provide tests which can be applied when a course of action is being considered to check that it meets the requirements of propriety. If any of them leave a question mark about the proposed course of action, there is then one key test to apply:

*Could I satisfactorily defend this before the public accounts committee?*

Since accountability to Parliament is part of a wider accountability, the question might be put even more simply:

*Could I satisfactorily defend this course of action in public?*

To end on a practical note, if you have any doubts as to whether a proposed course of action meets the requirements of propriety, rather than “taking a chance” you should think again and seek advice from the sponsoring department, the Treasury or the NHS Executive.

A postscript, in the form of a final quote from the Public Accounts Committee. It is again from the Eighth Report, “*The Proper Conduct of Public Business*”:

*“We make one further point. Some allege that the drive for economy and efficiency must be held back to some extent because of the need to take specific care with public money. Others argue that if economy and efficiency are to be forcibly pursued then traditional standards must be relaxed. We firmly reject both these claims. The first is often urged by those who do not want to accept the challenge of securing beneficial change. And the second is often put forward by those who do not want to be bothered to observe the right standards of public stewardship. Quite apart from the important moral and other aspects involved we consider that any failure to respect and care for public money would be a most important cause of a decline in the efficiency of public business. **But there is no reason why a proper concern for the sensible conduct of public business and care for the honest handling of public money should not be combined with effective programmes for promoting economy and efficiency.**”*

The Treasury Minute response agreed that:

*“... effective programmes for economy and efficiency must be combined with a proper concern for the sensible conduct of public business and care for the honest handling of public money.”*

## THE PROPER CONDUCT OF PUBLIC BUSINESS: CHECKLIST

This is the checklist from the Public Accounts Committee's Eighth Report, Session 1993-94, "*The Proper Conduct of Public Business*" published in January 1994. The report drew on a number of PAC reports over the previous three years to draw attention to what the Committee regarded as departures from the established standards of public administration. Hence it covered a wide range of stewardship issues, including issues of regularity and propriety.

### Failures

### Checklist

#### *Inadequate Financial Controls*

- Inadequate internal accounting systems and controls, leading to waste and a risk of fraud and theft.

- *Failure to ensure that financial procedures and controls are adapted in line with major changes in the organisation of the business.*

- Inexperienced staff lacking in financial training and expertise, leading to failure to secure adequate controls especially at a time of change.

- Departments and public bodies should ensure that from the outset proper financial systems are in place and applied.

- *Procedures and controls need to be revised from time to time to ensure their continuing relevance and reliability, especially at times of major changes.*

- Care should be taken to provide staff with the financial skills required and to ensure that staff responsible for securing major changes in accounting systems are suitably experienced.

•*Poor monitoring of expenditure on capital projects, leading to overspends and waste.*

•Paying bills and other outgoings without checking.

•*Failure to pursue money owed.*

•*Major capital projects require specific financial and project management skills and experience, and the projects should not be embarked upon unless such skills are available and utilised.*

•Bills and other outgoings should be checked and validated before payment is made. They should be supported by evidence that the goods or services have been supplied.

•*There should be adequate arrangements to ensure that monies owed are properly monitored and pursued.*

### *Failure to comply with rules*

•Payments of grants on the basis of insufficient evidence as to entitlement.

•*Provision of redundancy benefits.*

•Robust procedures should be in place and applied so that entitlement is clearly established and documented.

•*Public bodies should ensure that they do not exceed their delegated powers in making provision for redundancy and other benefits.*



- Ex-gratia payments made without authority on termination of employment, sometimes in circumstances where disciplinary action might have been more appropriate.

- Provision of official cars to senior executives without requiring them to pay for private motoring.*

- Failure to secure full recovery of benefits provided to senior executives to which they were not entitled.

- As well as seeking authority from sponsoring departments for any payments to staff going beyond their delegated powers, public bodies should ensure that any such exceptional payments can be fully justified in all the circumstances.

- Public bodies should ensure that they follow the rules laid down for the provision of official cars.*

- Public bodies should pursue full recovery of all such benefits.

### *Inadequate stewardship of public money and assets*

- Failure by departments to establish effective monitoring of non-departmental public bodies which they fund and sponsor, leading to failure to detect waste and irregularities.*

- Inadequate oversight by those in authority (failure to obtain information, infrequent meetings, decisions not properly reached and recorded).

- Departmental Accounting Officers should identify the key information they need on the way in which non-departmental public bodies conduct their business, and ensure they obtain and use such information.*

- Chairmen and Members (including non-executives) of public bodies should receive adequate training to enable them to discharge their responsibilities.

•*Failure to ensure that delegation of responsibility is accompanied by clear lines of control and accountability, leading to the waste of large sums of public money.*

•Over-dominant chief executives and senior executives.

•*Failure to hold individuals personally accountable for their actions*

•Failure to take prompt corrective action when things begin to go wrong.

•*Failure to conduct regular reviews of the necessity and functionality of particular expenditure programmes, and to draw appropriate conclusions from their failure to date.*

•*Chairmen and Members should ensure that chief executives and senior executives are clear what their individual responsibilities are.*

•Chairmen and Members need to ensure that chief executives and senior executives are regularly and effectively accountable to them.

•*Those who have delegated their responsibilities need to ensure that individual responsibility for management decisions can be established, and that such responsibility is made properly accountable so far as the individual is concerned.*

•Robust reporting arrangements from all levels of delegated responsibility need to be secured.

•*Public bodies should conduct regular internal examinations of the programmes on which they are spending public money, and should, where appropriate, draw into such examinations the employees or contractors who are engaged on the programmes concerned.*

- Lack of evenhandedness when taking disciplinary action against individuals.

- Concealing information.*

- The case for dismissal or other disciplinary action needs to be fully considered in a fair and objective way, irrespective of the seniority of the individual concerned.

- Fear of embarrassment is no justification for withholding information the release of which would be in the public interest.*

### *Failure to provide value for money*

- Inadequate management of major building projects, contributing to overspend and failure to identify and address problems as they arise.

- Embarking on ambitious computer projects on the basis of inadequate appraisal, and failing to ensure that the system delivers what is required.*

- Inadequate re-appraisal of computer etc projects in response to changing circumstances and requirements.

- Project management needs should be carefully assessed and met throughout the lifetime of the project.

- Rigorous financial and risk appraisal should be carried out before computer projects are approved, and care taken to ensure that users are fully consulted and the system thoroughly tested at each stage.*

- Project managers should carry out careful re-appraisals of the continuing validity of the project when change occurs.

• *Generally accepted principles of full and open competition not always observed when privatising or contracting out the provision of goods and services.*

• Failure to secure arms' length relationships with private sector consultants, leading to conflicts of interest in decisions to spend public money.

• *Full and open competition should be applied in all save the most exceptional circumstances (eg where no alternative supplier is available) in order to secure the best the market can provide at the most competitive price.*

• Care should be taken to avoid actual, potential, perceived or perceivable conflicts of interest when employing consultants and staff.

## **Related reading**

This is simply a list of some related documents, most of which have been mentioned in the handbook:

**“The Responsibilities of an Accounting Officer” and “The Responsibilities of a NDPB Accounting Officer”.**

**The Civil Service Code and the model code for staff in executive non-departmental public bodies.**

**“Code of Best Practice for Board Members of Public Bodies”.**

**“Code of Conduct for NHS Boards” and “Code of Accountability for NHS Boards”.**

**Committee of Public Accounts Eighth Report, 1993-94, “The Proper Conduct of Public Business”.**

**Nolan Committee First Report, “Standards in Public Life”.**

**Nolan Committee Second Report, “Standards in Public Life: Local Public Spending Bodies”.**