

Chapter 1

Post-public employment: Practices and concerns

This chapter provides the context for post-public employment and explains the nature and implications of major types of post-employment problems. It also defines important terms used throughout this book and sets out the scope and structure of developing principles and good practice framework.

Post-public employment: A practice on the rise

A growing challenge across OECD countries has been how to attract the “best and brightest” workforce to serve the public interest in public organisations. In line with new public management practices, several countries have encouraged movement of personnel between the public sector and the private sector and opened up recruitment in middle and higher-level positions. As a result, movement between sectors is on the rise. For example, over 75% of new entrants in senior positions came from outside the civil service in the United Kingdom and, after a period of four to five years, sought to return to the private or non-profit sectors.

Facilitating the development of civil servants’ skills and competencies through gaining experience in the private sector is supported by public opinion in many countries. For example, a French survey indicated 70% support for putting in place a system that obliges civil servants to get experience in the private sector during their career (Institut CSA, 2006). In fact, skill development and “removing barriers to labour market participation has become the key priority for most OECD countries” (OECD, 2006a).

In the past 20 years, most countries have opened up the recruitment of their public services, either through the move towards more position-based systems, with all positions open to outside applicants; the move of parts of their systems to more position-based employment systems (such as in agencies in some systems); or the opening of senior positions to more lateral entries. Even in countries that traditionally have relatively closed career-based systems, *e.g.* Belgium, France, Ireland and Korea, the recruitment of large parts of senior-level positions has been opened up to applicants from the private sector.

Leaving public office, however, also raises legitimate questions about the potential use or misuse of the special knowledge and insights of public officials when they leave office and – either temporarily or permanently – work in the private or not-for-profit sectors. The knowledge of commercially sensitive information, for example, could provide unfair advantage over competitors. Suspicion of impropriety, such as the potential misuse of “insider information” (defined as information not available to the public, such as classified government information, *e.g.* on policy intention, national security, etc.; data on personal privacy; and commercially sensitive information, *e.g.* trade secrets) for the illicit benefit of former public officials is a widely shared concern across OECD countries, as it could endanger confidence in

public decisions and public service in general. Post-public employment could become a particularly highly sensitive issue during government transitions or periods of outsourcing and downsizing.

Maintaining citizens' trust in government – a key concern across OECD countries¹ – requires ensuring that officials persistently serve the public interest. What instruments and mechanisms can achieve this aim when public officials leave office? Identifying, preventing and managing conflict of interest (defined as “a conflict between the public duty and private interests of public officials, in which public officials have private-capacity interests which could improperly influence the performance of their official duties and responsibilities” [OECD, 2004, p. 15]) in post-public employment is critical to defending the public interest and controlling potential breaches to integrity when officials leave the public sector, be it temporarily or permanently.

Post-public employment offences occur when public officials use, or appear to use, information or contacts acquired while in government to benefit themselves, or others, after they leave government. However, conflict of interest related to post-employment can also occur before officials actually leave public office. For example, a serving public official can give preferential treatment to a business firm with a view to obtaining employment with that firm after leaving government. If the official is successful in obtaining that employment and leaves government, he or she had an actual conflict-of-interest situation related to post-public employment. The former official, for example, can also use confidential information obtained while in government to the benefit of his or her new employer. Thus, conflict of interest related to post-public employment can arise both from:

- the use of someone's current public office for private gain (*e.g.* making a biased decision to benefit a prospective employer);
- the wrongful exploitation of someone's previous public office (*e.g.* misusing sensitive official information for the illicit benefit of the former public official or his or her new employer).

More examples of what can happen as personnel move between the public and the private sector (otherwise known as the “revolving door” phenomenon) can be found in Box 1.1. The focus of this book, however, will primarily be on the behaviour of former public officials in their relations with public organisations.

Box 1.1. **Movement between the public and private sectors: The “revolving door” phenomenon**

The movement of key actors between the private and public sectors is often called the “revolving door” phenomenon. Executives of corporations and representatives of special interest groups have built up close relationships with government institutions, in particular those that oversee or regulate the sector concerned. Forms of the revolving door phenomenon include:

- *From private sector-to-government revolving door*: the appointment of corporate executives and business lobbyists to key posts in government agencies. This phenomenon, also known as the “reverse revolving door” may establish a pro-business bias in policy formulation and regulatory enforcement in governmental posts that oversee their former industry or employer.
- *From government-to-private sector revolving door*: when public officials move to lucrative private-sector positions in which they may use their government experience and connections – while they are still in office or after leaving public office – to unfairly benefit their new employer (e.g. in matters of public procurement, regulatory policy, etc.).
- *From government-to-lobbyist revolving door*: movement of decision makers (e.g. former lawmakers and executive-branch officials) to become well-paid advocates and to use the inside connections of former officials to advance the interests of corporate clients.

Source: Revolving Door Working Group (2005), “A Matter of Trust: How the Revolving Door Undermines Public Confidence in Government – and What to Do About It”, www.revolvingdoor.info.

Concerns: Undermining the public interest

There are several causes of increased public and governmental concern about post-public employment conflict of interest.

First, concern about post-public employment is part of a broader concern in countries around the world about integrity of public officials and, in particular, about bias resulting from conflict of interest in public decision making. The OECD recognised this concern and developed principles and policy recommendations in the form of a Recommendation on Guidelines for Managing Conflict of Interest in the Public Service (see Box 1.2) in 2003. Moreover, a set of practical tools (OECD, 2005) was designed to assist governments putting conflict-of-interest and integrity policies into daily practice. In reviewing progress made in implementing the 2003 Recommendation, post-public employment conflict of interest and lobbying were identified as emerging issues that needed to be addressed by the OECD because there had been no comparative studies of post-public employment policies and practices.

Box 1.2. **OECD Guidelines for Managing Conflict of Interest in the Public Service**

The OECD Guidelines for Managing Conflict of Interest in the Public Service help policy makers review and modernise existing conflict-of-interest policy and practice for public officials, including public servants, civil servants, employees and public office holders. The Guidelines reflect, in particular, policies and practices that have proved effective in OECD countries, and are designed to:

- help government institutions and agencies to develop an effective conflict-of-interest policy that fosters public confidence in their integrity, and the integrity of public officials and public decision making;
- create a practical framework of reference for reviewing existing solutions and modernising mechanisms in line with good practices in OECD countries;
- promote a public service culture where conflicts of interest are properly identified and resolved or managed, in an appropriately transparent and timely way, without unduly inhibiting the effectiveness and efficiency of the public organisations concerned;
- support partnerships between the public sector and the business and non-profit sectors, in accordance with clear public standards defining the parties' responsibilities for integrity.

The Guidelines provide a suite of core principles, policy frameworks, institutional strategies and management tools for managing conflict of interest, arranged in three sections:

- managing conflicts of interest: aims, approach, definitions and principles;
- developing the policy framework;
- implementing the policy framework.

*Source: OECD (2004), *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences*, OECD, Paris.*

A significant concern about post-public employment offences, like conflict of interest in general, is that they could significantly undermine public trust in government. In democratic societies, potential decline of citizens' trust in public institutions and confidence in public decision making justify strong and concerted actions to promote good public governance. The development and implementation of effective measures to prevent breaches to integrity, such as post-public employment offences, can help maintain or re-establish public confidence in the integrity of governmental activities.

This task is made more difficult by an increased concern about post-public employment, namely the citizens' perception that certain public sector reforms have brought some public officials into unduly cosy relationships with business and non-profit organisations and created grey areas with risks to integrity. New approaches to public sector management, including the substantial expansion of public-private partnerships, sponsorship, privatisation, concession and contracting out arrangements, have resulted in close interactions with the private sector and increased opportunities for conflict-of-interest situations, especially those related to post-employment of public officials. Moreover, urging public servants to treat citizens as "customers" or "clients" may prompt some of them to provide "special service" in the hope of improving their post-public employment prospects.

Last but not least, making use of insider information and improperly employing former public officials during their "cooling-off" period may also result in an "unfair advantage" over competitors and could endanger competition in the private sector.

As an example, Box 1.3 presents important reasons why the public should pay more attention to post-public employment, as found by the U.S. Revolving Door Working Group.

Public sector career: Changing patterns

Emerging concerns about post-public employment are also related to the ongoing changes in the career patterns of public servants who leave traditional lifelong public service careers. In a growing number of countries, the traditional notion of career public service in the sense of security of tenure has diminished or disappeared as a result of substantial public sector reforms as well as staff cutbacks associated with government downsizing (OECD, 2008). The decrease in public servants' perception of their probable job security encourages them to pay much more attention to employment opportunities outside the public sector.

At the same time, encouraged by many government initiatives to develop skills and acquire broader knowledge and experiences, the concept of a modern career increasingly includes employment in both the public and private sectors. Employees are moving much more frequently between public and private sector jobs, both as a normal aspect of their working lives and, in some jurisdictions, as part of government-sponsored exchange programmes. This means that more and more public servants will be open and attentive to emerging private-sector job opportunities in order to develop new skills and obtain unique experiences, as well as to boost their career prospects. However, many of them do not expect to permanently leave the public sector. On the

Box 1.3. Six reasons for paying more attention to personnel movement between the private and public sectors

The report of the Revolving Door Working Group in the United States, “A Matter of Trust: How the Revolving Door Undermines Public Confidence in Government – and What to Do About It”, reviewed issues related to movement between the federal government and the private sector and listed six important reasons why the public should pay more attention to the “revolving door” phenomenon:

1. It can provide a vehicle for public servants to use their office for personal or private gain at the expense of the American taxpayer.
2. The revolving door phenomenon casts grave doubts on the integrity of official actions and legislation. A member of Congress or a government employee could well be influenced in his or her official actions by promises of a future high-paying job from a business that has a pecuniary interest in the official’s actions while in government. Even if the official is not unduly influenced by promises of future employment, the appearance of undue influence itself casts aspersions on the integrity of the federal government.
3. It can provide some government contractors with unfair advantages over their competitors, due to insider knowledge that can be used to the benefit of the contractor, and potentially to the detriment of the public interest.
4. The former employee may have privileged access to government officials. Tapping into a closed network friends and colleagues built while in office, a government employee-turned lobbyist may well have access to power brokers not available to others. In some cases, these networks could involve prior obligations and favours. Former members of Congress even retain privileged access to the Congressional gym, dining hall and floors of Congress.
5. It has resulted in a highly complex but ultimately ineffective framework of ethics and conflict-of-interest regulations. Enforcing those regulations has become a virtual industry within the government, costing significant resources but rarely resulting in sanctions or convictions of those accused of violating the rules. As a result, ethics rules offer little or no deterrent to those who might violate the public trust.
6. The appearance of impropriety exacerbates public distrust in government, ultimately causing a decline in civic participation. It also demoralises honest government workers who do not use their government jobs as a stepping stone to lucrative employment government contractors or lobbying firms.

Source: Revolving Door Working Group (2005), “A Matter of Trust: How the Revolving Door Undermines Public Confidence in Government – and What to Do About It”, www.revolvingdoor.info.

contrary, they intend to return to the public sector after working for a few years in the private sector: this in itself can raise new possibilities for conflict-of-interest situations.

Post-employment restrictions versus employment freedom: Striking a balance

There is a clear need to better identify, prevent and manage the more frequent post-public employment problems that result from increased personnel movement between the public and private sectors. Equally important, however, is the need to strike an appropriate balance between promoting integrity (defined here as “the proper use of funds, resources, assets, and powers, for the official purposes for which they are intended to be used” [OECD, 2005, p. 7]) in the public sector through strict prohibitions and restrictions in the post-public employment system on the one hand, and preserving a reasonable measure of employment freedom for current and former public officials on the other.

Given the increasing competition between the public and private sectors for knowledge workers and the increasing motivation of, and need for, public servants to enhance their skills and knowledge through private sector experience, governments must be careful to strike an adequate balance and not to impose post-public employment prohibitions and restrictions that are unduly stringent. Consequently, prohibitions and restrictions may be considered as temporary solutions, and policy makers might seek to establish reasonable time limits – for example in the form of a “cooling-off” period – tailored to the gravity of actual and potential risks.

Structure and scope

Post-public employment offences involve activities primarily by former rather than current public officials. In some countries post-public employment is described as “post-office employment” or “post-separation employment”. While politicians are not included in the term public “employees”, the term post-public employment is applied in common usage to cover both politicians and public servants. The term “public officials” is used throughout this book to include both public servants and politicians either elected or appointed.

Based on OECD country experiences, the following chapters review the relevant aspects of practice and components of a comprehensive framework for preventing conflict of interest in post-public employment. Specifically, it will:

- outline the concerns driving the policy review and update;
- analyse current approaches and existing standards (*e.g.* prohibitions and restrictions) for preventing conflict of interest in post-public employment;

- review existing solutions – for example by examining their strengths and weaknesses – to measure the effectiveness of arrangements for implementing and enforcing post-public employment prohibitions and restrictions, in particular the procedures, incentives and sanctions.

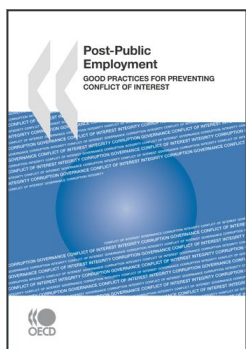
Chapter 2 explains the nature and implications of five major post-public employment problem areas. Chapters 3 and 4 examine the management of these problems. Chapter 3 provides principles for managing post-public employment problems and Chapter 4 provides a framework of post-public employment guidelines for developing an effective post-public employment system that includes instruments, procedures and structures in the form of policies and practices to manage post-public employment conflict of interest.² Chapter 4 also explains the pillars of the good practice framework for implementing the principles and presents examples of selected good practice. The good practices discuss topics such as selecting implementation instruments, covering risk and enforcing sanctions.

Notes

1. “Strengthening Trust in Government: What Role for Government in the 21st Century?” was the central theme of the ministerial meeting of the OECD Public Governance Committee in 2005 in Rotterdam, Netherlands. Further details on the meeting are available at www.modernisinggovernment.com.
2. Post-employment policies and practices are an essential part of the integrity framework in public organisations, as outlined in *Towards a Sound Integrity Framework: Instruments, Mechanisms, Actors and Conditions for Implementation*, OECD, GOV/PGC/GF(2009)1.

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