

Chapter 5

The case of Norway

This chapter highlights the concerns about post-public employment addressed by the Norwegian Parliament in the late 1990s and puts them into context. It summarises the key steps taken in the development of guidelines for the Norwegian public service and politicians, as well as their key features and mechanisms for implementation. Finally, emerging lessons learned from the application of the two guidelines are highlighted.

Annexes to Chapter 5 are available on line at the links below:

5.A1. Post-Employment Guidelines for Politicians:

<http://dx.doi.org/10.1787/735516772805>

5.A2. Post-Employment Guidelines for the Public Service:

<http://dx.doi.org/10.1787/735536866404>

5.A3. Ethical Guidelines for the Public Service:

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Introduction

Concerns about impropriety in post-public employment and practice of transfers from political positions to the public service reached the agenda of the Norwegian Parliament (*Storting*) in the late 1990s. The process of developing guidelines on post-employment for the public service took several years. The *Storting* asked the government to clarify problems and ambiguity that can arise in transition periods from a political position to a position in the senior civil service, and from a position in the civil service to a position outside the government administration. A report to the *Storting* (St. meld. No. 11 2000-2001) and the following Recommendation (Inst. St. No. 175 2000-2001) outlined possible solutions to be considered.

Following the 2003 OECD Recommendation on Guidelines for Managing Conflict of Interest in the Public Service, the Norwegian government reviewed the proposed solutions and approved the following three Guidelines in 2005 to foster integrity in government:

- first, the Post-Employment Guidelines for the Public Service were issued on 4 July 2005;
- after wide consultation, the Ethical Guidelines for the Public Service were published on 7 September 2005; and
- the Post-Employment Guidelines for Politicians were approved on 29 September 2005 and came into force on 17 October 2005.

An important post-public employment issue was whether a clause of “temporary disqualification” or “abstinence from involvement in certain cases”^{*} in connection with transition to a new post should be included in all employment contracts from the beginning of an employment relationship or only where the nature of the position so requires. Based on advice from legal expertise, the final solution was to use the clause only in certain cases or for certain positions.

When the Post-Employment Guidelines for the Public Service were almost in place, the Government decided that parallel rules should be considered for politicians. Post-Employment Guidelines for Politicians were developed and came into force on 17 October 2005. The change in government in September 2005 provided the first test for the application of the guidelines.

* For definitions and details, see Chapter 1.

The Ethical Guidelines for the Public Service were published and distributed in September 2005 after extensive consultation, including a seminar in spring of 2005 for top executives in central government. These three sets of guidelines can be found in Annexes 5.A1, 5.A2 and 5.A3.

Norwegian government administration: Forward-looking reforms and emerging challenges

Why has the Norwegian government shown such a strong commitment to addressing integrity issues in the public sector over the past few years? Even though there have been fewer cases of corruption in Norway when compared with other countries, the cases that have occurred attracted a great deal of publicity and opened up a broader discussion about the fundamental mission of government and public institutions. It has also revealed the need for more information about existing statutory and non-statutory rules, having an impact on values and ethics in the public service.

Compared with many other OECD countries, Norway has been looked upon as a rather reluctant reformer, due to the fact that the economic situation has not forced Norway to make big changes in the public sector. However, in recent years a considerable number of reforms have taken place, and are still continuing in the public sector, and the government sector was reduced from 167 000 employees in 1994 to 118 000 employees in 2004. Important reform measures include:

- Management by objectives and performance was introduced throughout the State Administration in 1990.
- Sixty units changed their form of affiliation between 1988 and 1998.
- Seventy units underwent major restructuring between 2000 and 2004.

It is an open question whether all these changes, many of them creating new forms of relationship between the public, business and non-profit sectors, have been a contributing factor to the growing interest in the integrity and conduct of public servants. Giving more managerial freedom also increases the possibility for public officials to pursue their private interests and affiliation.

The level of trust in the public sector has been traditionally high in Norway, and surveys show that citizens' trust is higher when it is based on experience of direct contact with the public service. However, recent exposures of fraud and bribery, particularly in local communities, may have affected citizens' views on corruption. A 2005 survey indicated that only 10% of respondents has confidence in the authorities' ability to deter such events in the future, while 40% expressed little confidence in authorities' ability; 50% was of the opinion that corruption had increased in the public sector in Norway.

Guidelines to address post-employment concerns

The importance of mobility between the public and the private sectors without unnecessary impediments for the public service and for politicians is underlined in the introduction to both guidelines. It is also assumed that very few situations will arise that might call for the use of such measures in connection with employees moving to a new position outside the public service. Nonetheless, it was considered particularly important to take advantage of such options in cases in which special circumstances merit their use.

In connection with public officers moving from the public to the private sector, it is important to maintain public confidence both in the state administration and in civil and public servants. Integrity and impartiality are basic prerequisites for any undertaking in the public service. The public service is required to be impartial and independent and it is equally important that citizens perceive the public service as acting fairly, objectively, impartially and in compliance with established rules.

The post-employment guidelines requiring temporary disqualification and abstinence from case involvement are supplementary to a number of rules intended to protect the integrity and impartiality of the public service, including the provisions in the Public Administration Act, such as:

- competency rules;
- rules on employees' loyalty obligations;
- the general fairness requirement in the public service (including the principle against abusing authority);
- the obligation of professional secrecy;
- the management prerogative of the employer.

However, the rules concerning competency in the Public Administration Act refer to a situation where a conflict of interest may arise in the handling of a case and when the decision is made by the public service. After an employee has moved to a new position outside the public service, any conflict-of-interest situation may arise. This situation is no longer covered by the Public Administration Act.

The duty of loyalty could also place constraints on using knowledge acquired in a former employment relationship, but it is not clear how far the scope of the duty of loyalty actually extends. The obligation of professional secrecy in Article 13 of the Public Administration Act protects personal matters and trade secrets, but information about in-house conditions in the public service is rarely considered a trade secret that is subject to the obligation of secrecy.

The Post-Employment Guidelines for the Public Service

Although state administrative agencies do not normally operate in a competitive market, they may, in the same way as an employer in the private sector, have justifiable need for post-employment clauses in employee contracts. The following box (Box 5.1) presents the circumstances that could justify restrictions.

Box 5.1. Norway: Circumstances that could justify post-employment restrictions

There are three special factors in Norway that might justify actions such as temporary disqualification and/or abstinence from involvement in certain cases from the state employer:

- The need to protect internal information: The State must seek to prevent other organisations from gaining knowledge about an administrative agency's strategies and plans (e.g. on the formulation of policies, rules, etc.). Such knowledge could result in illegal competitive advantages.
- The need to protect other organisations' trade secrets: The State must seek to prevent one organisation from gaining access to confidential information about other organisations, including trade secrets, etc. as such knowledge could result in illegal competitive advantages.
- The need to safeguard the general public's confidence in the public service: State administrative agencies must seek to prevent suspicions that a civil servant has taken advantage of his or her position to gain special advantages for an organisation. Such suspicions could impair the general public's confidence in the administration's integrity and impartiality.

Source: Post-Employment Guidelines for the Public Service, 2005 and Post-Employment Guidelines for Politicians, 2005.

Where the nature of the position so requires a clause on temporary disqualification and/or abstinence from involvement in certain cases in connection with transition to a new position will be included in the employment contract from the beginning of an employment relationship. Such a clause will primarily be relevant for:

- key jobs, executive positions or positions with a special responsibility and influence;
- positions in close contact with the positions mentioned above;
- positions with authority to negotiate or purchase.

The guidelines provide a national framework for post-employment restrictions. However, individual employers may issue complementary post-employment guidelines as necessary. The following box (Box 5.2) presents the new measures introduced by the two guidelines.

Box 5.2. Norway: Post-employment prohibitions

Two sets of post-employment guidelines established new measures for politicians and public servants, namely:

- “Temporary disqualification”: This refers to a ban for up to six months after leaving office, on an employee being employed by, or performing services for, an organisation outside the public service that has or can have contact with the employee’s sphere of responsibilities as a civil servant or politician. The same applies to organisations outside the public service that, for other reasons, have or could have special advantages due to the employee’s position as a civil servant or politician.
- “Abstinence from involvement in certain cases”: This refers to a ban for up to one year after leaving office, for an employee to become involved in cases or areas that involve the employee’s spheres of responsibilities as a civil servant or politician.

Source: Post-Employment Guidelines for the Public Service, 2005 and Post-Employment Guidelines for Politicians, 2005.

The clause in the contract requires the employee to inform the employer of any offer of new positions that he or she might consider. The employer may grant full or partial exemption from temporary disqualification and/or abstinence from involvement in certain cases based on an application from the employee.

The employee has the right to remuneration during the period of temporary disqualification. The remuneration shall correspond to the salary on leaving the position plus holiday pay.

An employment contract also covers agreed damages if the employee behaves at variance with the temporary disqualification or abstinence from involvement in certain cases, or breaches the obligation for mandatory reporting.

The Post-Employment Guidelines for Politicians

The Post-Employment Guidelines for Politicians are almost identical to the guidelines for the public service with some exceptions, primarily regarding the process and decision making on post-employment prohibitions.

The Standing Committee on Outside Political Appointments has the authority to decide that a politician should not work or provide services for an organisation outside the public service after his engagement as a minister, political secretary or political adviser. To ensure the independence of its decision making, the members of the committee are appointed by a royal decree, and they cannot be given instructions by the government.

The Standing Committee on Outside Political Appointments can rule on the following measures:

- Temporary disqualification – up to six months – will only be requested in certain cases and when there is a clear connection between the politician's previous spheres of responsibilities or duties and the relevant organisations' interest. The Standing Committee on Outside Political Appointments can also determine that a politician cannot work or provide services for an organisation outside the Norwegian public service for up to six months after leaving if special circumstances exist in connection with the person's earlier duties and responsibilities that have given or could give the organisation special advantages, or that might undermine confidence in the public service in general.
- Instead of being subject to temporary disqualification, a politician can be ordered to abstain from involvement in certain cases for up to one year, provided this adequately safeguards the interest that must be protected. The term "abstinence from involvement in certain cases" refers here to a ban on the politician becoming involved in a case or in an area where he or she has been directly involved by virtue of being a politician.

At least two weeks before starting the new position, the politician is required to voluntarily inform the committee on:

- starting a new job or accepting a position outside the public service; or
- starting a business.

This requirement does not apply if it is obvious that temporary disqualification or abstinence from involvement would not be a viable option. The obligation to provide information applies to all new positions taken up within one year of leaving public office.

Where temporary disqualifications are ordered, the politician – similarly to public servants – shall receive remuneration during the temporary disqualification period corresponding to the net salary he or she received on leaving, plus holiday pay and pension costs.

If the obligation for providing information is breached or the politician has behaved at variance with an imposed disqualification or abstinence from involvement in certain cases, the Standing Committee on Outside Political Appointments can require agreed damages to be paid to the State.

Standing Committee on Outside Political Appointments: Administrative procedures and experience of their application

When the new Government came into office on 17 October 2005, approximately 70 politicians from the former government left their offices, namely:

- the Prime Minister;
- 18 ministers;
- 34 state secretaries;
- 21 political advisers.

As of October 2008, 76 politicians raised formal cases for the Standing Committee on Outside Political Appointments. These figures also include politicians from the government that came into power on 17 October 2005. Six of the politicians were former ministers. In addition to the formal cases, the Secretariat of the Committee has also provided advice on the rules and procedures concerning the Post-Employment Guidelines for Politicians to other politicians.

Most of the politicians have raised one case, but two of them have raised six and seven cases, mostly related to their membership in boards. In two cases, the politicians have made a statement and asked the Committee to look at their case once more, referring to Article 7.2 of the Guidelines.

In the first year of application, 13 politicians, including 4 ministers, were temporarily disqualified – ranging from 3 to 6 months – and/or asked to abstain from involvement – up to 12 months – in certain cases.

All formal correspondence between politicians and the committee is open to the public, and copies of letters from the committee to the politicians are published on the Internet.

Experience so far shows that the new guidelines are taken seriously. There have been discussions in the media about some of the cases, both before and after the Committee has made its decisions. In 2007, the Committee was scheduled to submit its first report to the Ministry of Government Administration and Reform about its activities in 2005 and 2006, and also provide comments on their experience with the Post-Employment Guidelines for Politicians.

It could be said that beyond the successful application of the guidelines in individual cases it is more important that a high degree of transparency be ensured in the handling of these cases. An ongoing public debate about these issues is one of the most important measures to draw out how the implementation of the whole system is perceived.

The Ethical Guidelines for the Public Sector

Aims of guidelines

High ethical standards for the provision of services and the exercise of authority are prerequisites for citizen trust in the public service. The goal of these general ethical guidelines is to ensure that all state employees are aware of this. The ethical guidelines are to be of a general nature, rather than provide detailed rules. They are intended to provide general guidelines that call for reflection on the part of the individual employee. For example, the Ethical Guidelines for the Public Service provide guidance on how employees should act when former employees contact them.

The provisions included in the guidelines are not always exact, but rather specify legal standards. Norway has a number of legal rules (statutory and non-statutory) that have an impact on values and ethics in the public service. The ethical standards that apply at any given time have an impact on the framing of legislation and other regulations. From this perspective, the guidelines complement existing legal rules.

The guidelines have evolved from ethical values and norms of universal validity such as justice, loyalty, honesty, reliability, truthfulness and the golden “do unto others” rule.

Consequences of breaching the guidelines

Breaching the general Ethical Guidelines does not carry special sanctions, but, for example, breaches of the provisions that apply to conflicts of interest could result in a decision being declared invalid. An act or failure to act in the service could be considered a dereliction of duty, and could lead to service sanctions. An act or failure to act in the service could also be so serious that it could lead to prosecution and punitive sanctions. Clear-cut breaches of statutory provisions will normally also constitute breaches of ethical and administrative guidelines of universal validity.

Even if a civil servant does not breach a law or formal regulation, the breach of the Ethical Guidelines could be detrimental to his/her career. Where Ethical Guidelines have been made known throughout an organisation, not least to individuals, breaches of the guidelines will be a factor that can be emphasised, for example, in an overall assessment of the relevant public official's suitability for a position or in connection with an internal application for a new position, where it is fair to require compliance with the organisation's Ethical Guidelines.

Employers, managers and employees

As an employer (represented by the Ministry of Government Administration and Reform), the State has the ultimate responsibility for providing ethical guidelines and ensuring compliance. Top management in ministries and subordinate organisations bears special responsibility for follow up. This is primarily because managers, through their words, actions and management style, exert a strong influence on the culture and standards of conduct that apply in an organisation. Secondly, it is because top managers can be put in situations where choices and decisions call for ethical reflection and wisdom. Thirdly, it is because top managers are responsible for ensuring that the entire organisation is aware of the ethical standards that apply, and for ensuring that the organisation addresses any breaches of laws or regulations immediately in order to avoid the emergence of unfortunate customs or culture.

Individual employees are required to familiarise themselves with the provisions and instructions that apply to their positions at any given time, and they are personally responsible for the best possible compliance with the guidelines.

The legal context of guidelines: Their relationship with legislation

The guidelines were developed to complement the existing rules of law. Ensuring coherence of guidelines with relevant pieces of legislation was a particular consideration in the drafting process. Consequently, some of the most important rules of this area are specifically mentioned in the guidelines, namely:

- **The Public Administration Act** contains a number of administrative procedures that cover ethical aspects. Norway has provisions regarding the thoroughness of administrative decisions, among other things, that a case is to be explained as much as possible prior to administrative decisions. There are provisions about notification of the person(s) to which a case refers. The party shall also have an opportunity to make a statement before any decision is taken and has the right to appeal an administrative decision. The Public Administration Act also has competency rules intended to maintain trust in the public service. In the event that circumstances arise that can serve to weaken the impartiality of decision makers, the person in question must step aside. Moreover, the Public Administration Act contains rules about parties' right of access documents and the duty to provide guidance and confidentiality.
- **The Freedom of Information Act** has provisions regarding transparency and public access to government information and documents. These rules assign responsibilities and rights to administrative bodies and parties and thereby translate ethical principles into practical administrative procedures.

- **Non-statutory administrative principles**, for example knowledge about the misuse of authority, set standards regarding how judgement should be exercised. Public officials shall take into account all relevant considerations, treat identical cases equally, not take extraneous or arbitrary considerations into account and not adopt unreasonable decisions. Moreover, Norway has general non-statutory principles of “good practice”.
- **The General Civil Penal Code** contains a provision on corruption and trading. Serious forms of corruption have a sentencing framework of up to ten years. The code contains rules about “felonies in the public sector”.
- In this context, reference is also made to the **Human Rights Act** that gives a number of international conventions the same status as Norwegian Law, for the protection of human rights and fundamental freedom.
- There is also a paragraph in the **Civil Service Act** that forbids public officials to accept gifts, commissions, services or the like that is appropriated to, or intended by the donor to influence actions in their public service capacity.
- **The Working Environment Act** contains provisions about preserving the lives and health of the individual employees and ensuring the protection of the working environment. Among other things, employees have a duty to inform their employer, safety delegate and, insofar as necessary, other employees about faults or defects that could potentially endanger life and health, etc. In December 2005 the Ministry of Labour and Social Inclusion presented a proposal concerning new rules for whistle-blowing in the Working Environment Act. The proposal has now been made law, and gives employees a right to report corruption, breach of safety rules and other critical conditions in the organisation. The proposal also bans employers from punishing an employee for whistle-blowing.

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