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Ethics for Regulators

PART A: Building Regulatory Maturity
PART B: Self-Assessment tool

This paper accompanied the report "Striking the Balance – Upholding the 7 principles in regulation" published by the Committee on Standards in Public Life (Nolan Committee) in September 2016
https://www.gov.uk/government/publications/striking-the-balance-upholding-the-7-principles-in-regulation

Some of the themes are developed in Jackman, D *The Compliance Revolution*, Wiley, 2015

Committee on Standards in Public Life

Introduction

The purpose of this contribution is to provide:

1. A model of regulatory maturity and techniques for embedding the seven principles.

2. An assessment tool or profile for self-evaluation and further development.

A central concern is the degree to which the seven principles are embedded within regulatory organizations and are reflected in everyday practice, particularly in difficult situations where there might be 'grey areas' and in conditions of considerable internal or external pressure.

Regulators develop over time; usually starting with relative straightforward techniques and objectives, supported by fit-for-purpose internal systems and, as they build experience and scope, they will normally become more sophisticated both in deploying a more complex regulatory 'toolkit' and in developing their internal culture and relationship with external stakeholders. The seven principles will, or should, both inform this development and become embedded more firmly as a result. Hence an understanding of where a regulatory organization is positioned on this spectrum provides a framework for considering how effective the seven principles might be and what help or support might be needed. This paper proposes the concept of 'regulatory maturity' as an holistic view of the stage of development. This model is based on experience initially in financial services but then tested across all sectors and internationally.

Cultural change is a complex process and embedding the seven principles is part of wider cultural change. While this is a well-trodden path this paper suggests two methodologies:

1. Creating 'ethical spaces' to encourage and enable individuals and groups to exercise, own and be accountable for their ethical decision-making. This develops professional judgment and helps to embed the seven principles in the course of an ongoing 'spiral of learning'.

2. Structured questioning as a facilitator of effective and practical constructive challenge at all stages and levels of the regulator.

These methodologies should help regulators to progress in terms of overall maturity. As an important aside, these techniques can be built into the construction of rules and regulatory monitoring as part of a conscious development strategy of the compliance maturity of regulates. The embedding of the seven principles is likely to be even more effective if the regulator and regulates develop their maturity in parallel.
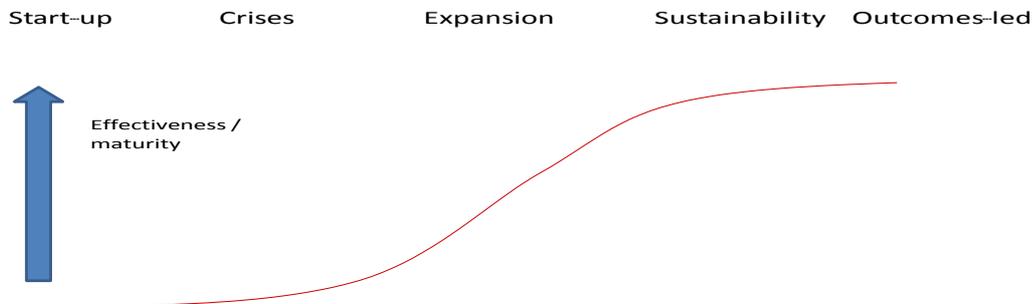
PART A: Building Regulatory Maturity

1. What is Regulatory Maturity?

The commitment of a regulatory body to the seven principles of public life can be considered in the context of the regulator's overall maturity. Three elements of overall Regulatory Maturity are identified:

1. Effectiveness of the regulatory body in delivering its stated objectives, including the sophistication of the regulatory tools and techniques used
2. Maturity of the relationship between regulator and regulated, and other stakeholders
3. Integrity of the internal regulatory culture, including the degree to which the seven principles are embedded

These three strands are connected. As a regulatory body gains experience and develops a more complex set of methodologies it is likely to focus increasingly on prevention. Preventative approaches normally require some attention to XXXegulates' corporate governance, culture and ethics. To be credible and effectivein these areas a regulator would need to develop its own governance, integrity and ethics. This increased emphasis on values will also re-shape the relationship between regulators and regulated. This evolution can be represented in a general model of the development of regulation[1]:

5 stages of regulation

Start-up	Crises	Expansion	Sustainability	Outcomes-led

Effectiveness / maturity

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Start-up	Crises	Expansion	Sustainability	Outcomes-led
1. Straightforward tools for immediate effect and low-hanging fruit: licensing, capital, transparency	Shortcomings or gaps exposed as gaps exposed or unexpected risks crystalize	Ever-widening scope Risk-based approach Some tools address culture eg: training and competence, fit & proper, fair dealing	Rule expansion costly Rationalization --- key risks and prevention New focus on governance, culture	Focus on outcomes and conduct risk rebalances criteria away from systems and controls
2. Establishing credibility, policing role, enforcement led	Intervention / rules increase to restore confidence	Intrusive, costly and bureaucratic box ticking, visit cycle	Supervision proportionate from close to arms-length	Maturity evaluated allowing partnership, lower cost and risk
3. Operational, fit-for-purpose, but resources limited	Fire-fighting, opportunism and short-termism	Increasing focus on process efficiency, CBA and cost	Emphasis on value and culture in conduct risk	Common and holistic model of cultural maturity

[1] Jackman, D 2015, *The Compliance Revolution,* Wiley, Singapore Ch 2

The maturity of internal regulatory culture will be, in part, shaped by its use and commitment to the seven principles.

2. A Model of Regulatory Maturity

The **Model of Regulatory Maturity[2]** below helps to identify four levels of internal cultural maturity, each level reflecting the degree of incorporation of the seven principles:

1. Superficial
- *Question: How can the principles appear to be covered?*
- *Fine words, some tokenism and posturing*
- *Quick fixes*
- *As little transparency as can 'get away with'*
- *Aiming for short term results, limited ambitions*
- *Industry / sector capture – sense of intrusion*
- *Lack of confidence, vision and security*
- *Abdicates individual ownership*

2. Procedural
- *Question: What do we have to do?*
- *Unthinking, mechanical compliance*
- *Dispersed decision-making /decision-sharing*
- *By the book – black or white answers, ticking boxes*
- *Bureaucratic and costly*
- *Jobs-worth, inflexible application of principles*
- *Culture of dependency on policies and procedures*
- *Outsourcing 'conscience'*

3. Embedding
- *Question: How can we be more effective?*
- *Making the business case*
- *Reputational repair or building trust*
- *Helps in delivering on objectives, no just a cost*
- *Part of decision-making at all levels*
- *Staff give space to grow and trusted to make decisions*
- *Judgment led*
- *Public accountability and kpis*
- *Long-term planning of developing principles*

4. Values-led
- *Question: What do we want to do?*
- *Internalize principles*
- *Spirit not just letter, beyond compliance*
- *Well developed individual responsibility and a sense of involvement by (all) staff*
- *Focus on strategic stakeholder outcomes*
- *Good habit not audit driven*
- *Not looking over shoulder*
- *Knowledge sharing within and between sectors*
- *Leadership and innovation*
- *Continued reassessment and learning culture*
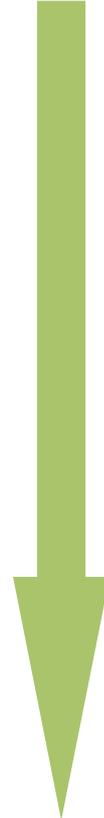
The model provides:

1. A scale for evaluating internal regulatory culture
2. Direction of travel for the development of internal regulatory culture

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[2] Adapted from Jackman, D, 2002 *An Ethical Framework for Financial Services,* FSA, London

Clearly, regulatory bodies do not mature at the same rate or exactly in the same way and there will also be periods of stagnation and regression, but the overall direction provides a consistent vision and direction of travel.

3. Changing culture and embedding the seven principles

The development of a culture that supports the seven principles requires the empowering of everyone in the organization to 'buy-into' the principles' purposes and objectives.

Cultural change is a complex matter and requires the coordinated action of staff, management and the board, and all stakeholders. Each element of culture needs to work together to change assumptions, mind-sets and habits. This is a cumulative and cooperative process. No one is passive. Everyone's work is shaped by culture and also helps shape it – so all have a responsibility for embedding the seven principles and what they deliver.

Only by engaging in the processes of learning will anyone become bought-in, committed and engaged. Once engagement stops other influences will emerge and the mind-set will revert to previous tried and tested ways. So constant work supported by the right kind of infrastructure is required.

Crucibles

Crucibles or ethical spaces are internal systems frameworks that provide the necessary structure for cultural change.
The concept of the crucible focuses on the development and empowerment of staff but within safe limitations.
The more 'crucibles' there are built into regulatory systems the greater the opportunity for cultural change and constructive challenge. The aim is to encourage individual and collective questioning and a higher quality judgments about the application of the seven principles, within careful boundaries.
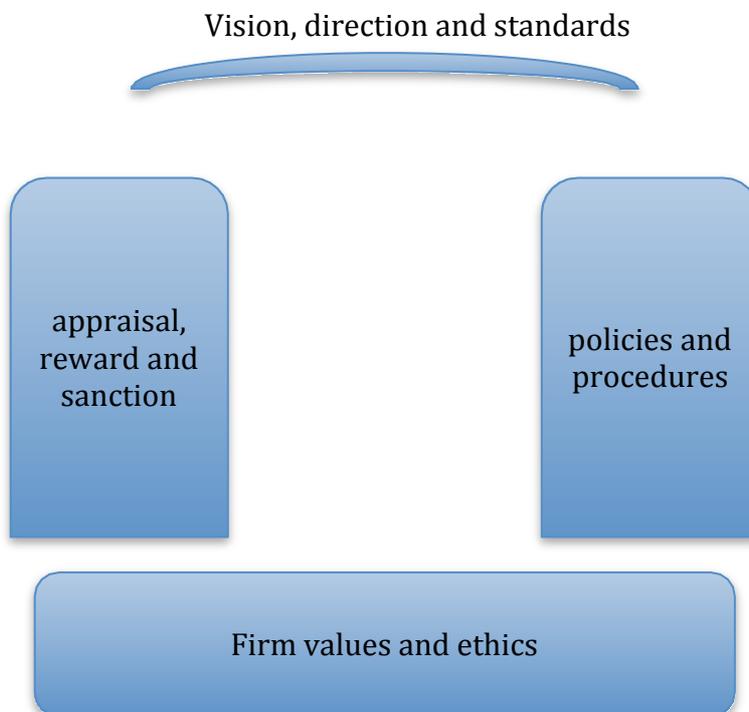
Parts of a crucible:

1. Strong boundaries – the limits of the crucible need to be robust and are constructed of secure elements such as strategic objectives, public direction and the standards of public life (represented below by the lid). The underpinning reference points come from the regulator's values and ethics (the base). These are supported by appraisal, reward and sanction policies (side 1) and policies and procedures based on principles that provide clear boundaries for unacceptable behaviour (side 2).

2. Space --- within the crucible individuals and teams are enabled to look for suitable input and consider options and creative solutions. Within the boundaries they are empowered to make decisions that they can then

own and be accountable for. This requires policy prescription to be reduced or relaxed over time so that pre-determined 'right answers' are not always available. Without removing rote answers and box ticking staff will not mature and gain their sense of responsibility.

Mistakes will be made but these are essential for learning and the reward and sanction implications must be sensitively and appropriately handled.

3. Constructive Challenge – structured questioning (see section 4) together with the communication of positive and negative cases, continual training and education including the logging of learning creates the conditions for effective challenge and long-term learning.

Vision, direction and standards

appraisal, reward and sanction	policies and procedures

Firm values and ethics

This entire process needs the trust and support of senior management.

Crucibles create an environment where difficult issues and questions are raised regularly so that they become part of everyday, normal conversation and culture e.g. in team meetings, at board level in external relationships and in interventions with XXXegulates.

This is a partnership with regulatees and stakeholders.

4. Constructive challenge tool

One way of enhancing internal Regulatory Maturity is to provide frameworks that enable an increasing level of constructive challenge --- about purpose, outcomes and practices. If these questions are structured and relevant they can be embedded in everyday work to encourage individuals or committees and boards to raise ethical concerns and introduce the seven principles into practical cases and situations.

These structured questions can be raised in meetings of all kinds and can aid the formulation of individual professional judgments. Pre--decided and pre--agreed question structures also help to de--personalize the challenge process and thereby reduce some barriers or concerns (such as potential career limitation) that may prevent the seven principles being raised.

An example set of structured questions developed around the seven principles

Selflessness

1. When do we act unconditionally?
2. How do we demonstrate our commitment to the seven principles where there may for no particular advantage for us personally, or for the organization?
3. How do we ensure that we remain committed to the interests of others even when that commitment may involve a significant cost?
4. Do we treat others as we would wish to be treated?
5. Do we act ethically because we 'should' or because we want to?

Integrity

1. How do we demonstrate we are independent from political and other stakeholder influence?
2. How do we proactively avoid regulatory capture'?
3. How do we ensure that everyone in the organization, at all levels, understands, buys--in to and 'lives' these values consistently?
4. Would others recognize in us what we say we stand for?
5. How do we identify, report and resolve conflicts of interests?

Objectivity

1. Who benefits from what we do – who loses out? Should they?
2. How do we identify, reduce and eradicate implicit or embedded bias, prejudice or discrimination?
3. What does inclusivity, accessibility and diversity mean to us?
4. How do we demonstrate an independence of view and judgement?
5. What examples can be seen of our particular care for vulnerable groups and individuals?

Accountability

1. How do we encourage a sense (and reality) of ownership for decisions and actions?
2. How do make roles, rights and responsibilities clear internally and externally? Are there any gaps right now? Is responsibility habitually dispersed? Who bears the brunt in a crisis?
3. Who or what is our community? Where are we rooted? How do we belong?
4. How do we make difficult decisions? How do we hold different interests 'in tension'?
5. Do we create space for individuals to make and stand by their values-led decisions? How do we deal with inevitable mistakes? How do we (all) learn?

Openness

1. How do we act when no one is looking? What would we be happy for others (outside the organization) to see? What do we do about the rest?
2. Who do is left-out or kept in the dark – why?
3. What efforts do we make to proactively educate external interested parties understand about our objectives, limitations, decisions and actions?
4. What do we like to obscure, obfuscate, fudge or delay– is there a reason? Why do we ever use small print or legalese or jargon?
5. Are we listening –or just hearing?

Honesty

1. How do we first react to problems or inaccuracies?
2. How do we handle criticism or requests for information?
3. Who do we feel we are honest with? Are there others where this is not the case? Why?
4. What do 'long-term', 'sustainable', 'shared' outcomes look like?
5. What can we do so that people or stakeholders can trust us more?

Leadership

1. How are our values and standards developed and applied at the 'top level'? Are they openly discussed at board level? How does the 'tone at the top' support a values-led organization?
2. Do recognize when enough is enough?
3. Under pressure do we swap co-operation for coercion or oppressive behaviour? When do we co-operate rather than compete? What are the results?

4. How do we lead the sector, and internationally, particularly in respect of the seven principles? How are we innovative and creative? Do we take risks? How do we affect the behaviour, standards and commitment of other organizations' in embedding the seven principles?
5. What really drives the organization? What's the ultimate purpose and vision? Is it worthwhile?

These questions can be considered one by one or taken together to enable a form of 'ethical triangulation'. With numerous perspectives being brought to bear users can narrow in on an 'optimal' ethical course of action.

It is useful to record the views and rationales that result from using this question set as it provides a store of collective wisdom or corporate memory that can be applied to future cases. It is also important to continually revise and adapt the set of questions to fit the organization's needs and changing circumstances. This should be an open and inclusive process.

PART B: Self-Assessment tool

1. Development matrix

There is unlikely to be one simple measure of regulatory maturity, nor is it possible to easily quantify commitment to the seven principles, so a development matrix approach can be used as a self-assessment tool to provide an overall picture. By providing a number of indicators and characteristics for maturity levels 1-4 for each of the seven principles, it is possible to build up a maturity profile for a regulatory organization. The profile is a basis for self-evaluation, and to a degree, comparison. The strength of such a framework is that it is not pass/fail but a complex identification of strengths and weaknesses. Importantly, it is not static and the criteria may shift to the right over time as general standards uplift.

The matrix produces a profile i.e. a regulatory organization will 'score' differently for each of the principles thus producing a zigzag line, not a simple pass/fail result. The profile will enable the organization to see what it is good at and to prioritize areas that are 'lagging'. In this sense it is a route-map for progress and further development. It is possible to see the 'next step' and plan on that basis. It could also be useful format for reporting.

The following illustrates how the development matrix works:

4 levels of maturity
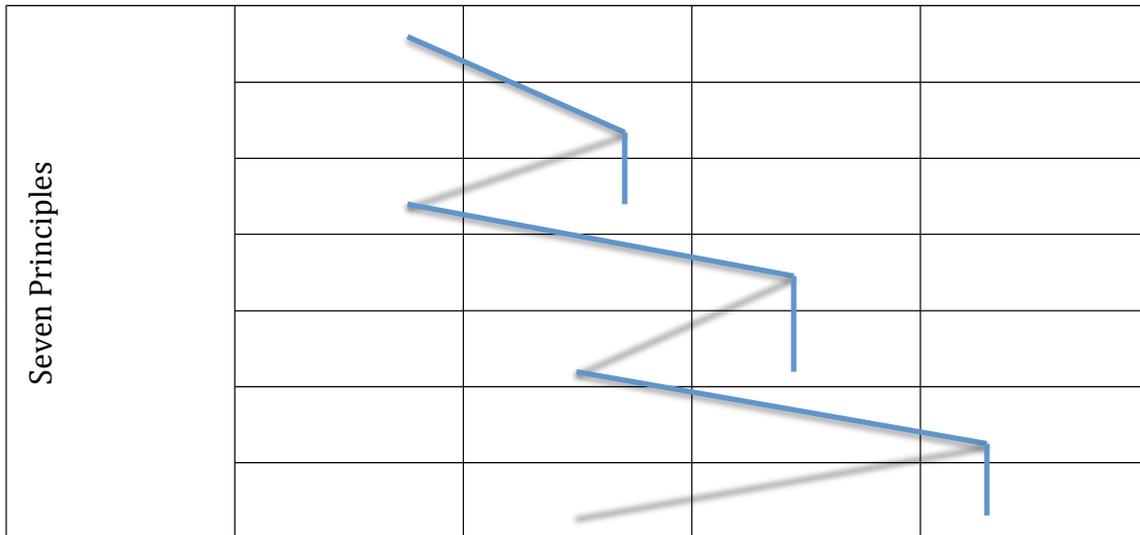
Seven Principles

This can also be presented as a spider diagram with each spoke being one of the seven principles and the rings being the four levels of maturity:

Ethical Toolkit, Regulator A
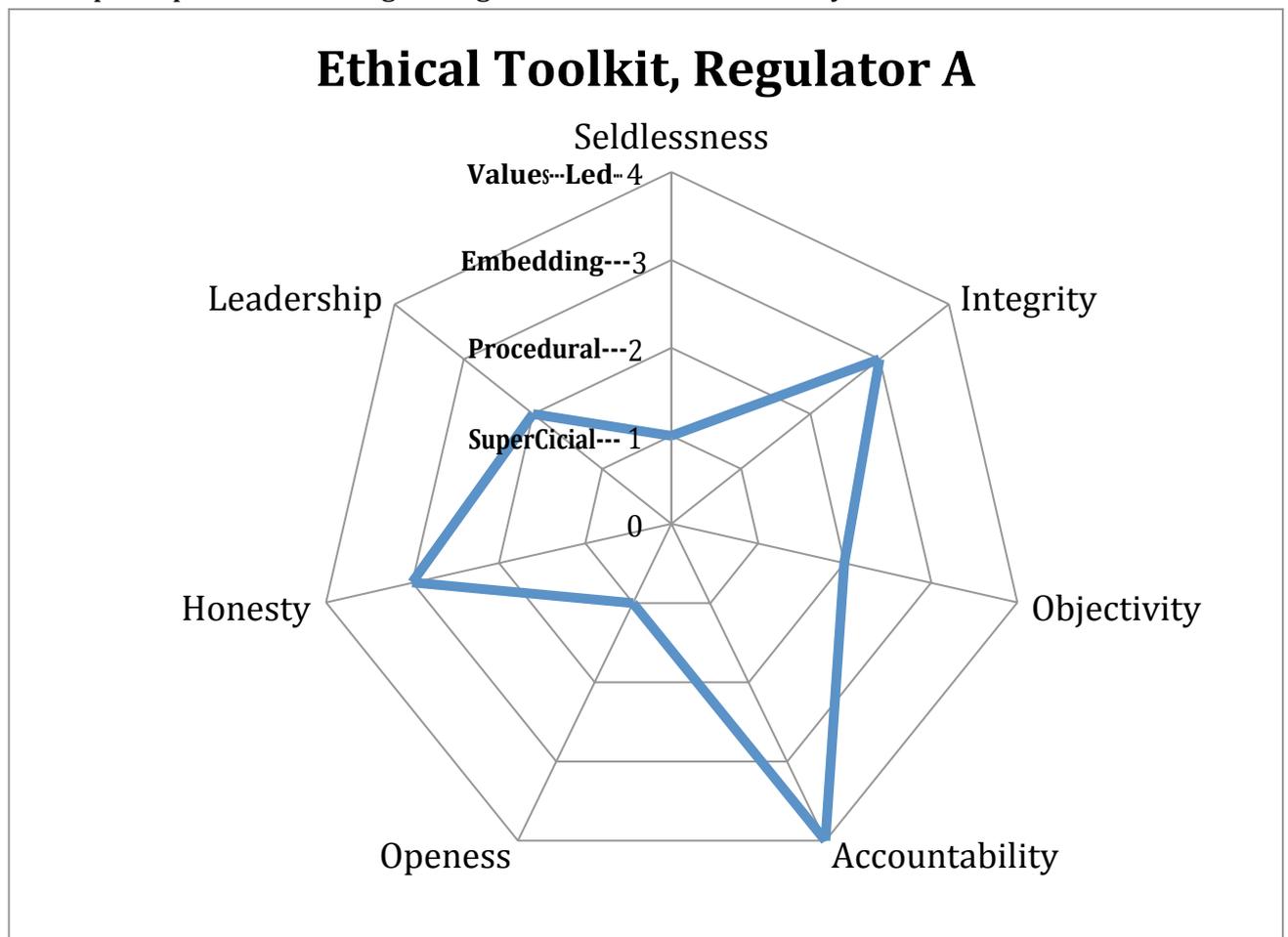
An outline suggested Development Matrix for embedding the seven principles withinregulatory bodies is attached below:

Principles	*Superficial*	*Procedural*	*Embedding*	*Values-led*
Selflessness	• Conditional --- delivers 'win-wins' • Acts for own benefit • Cynical manipulation • Low credibility / trust	• Rigid and bureaucratic • Rule following • Committee decisions • Resort to legal opinion	• Values-led • See wider stakeholder aims • Live vision and values • Learning organization	• Inspiring commitment • Internalizing values as 'way we operate' • Unconditional 'spirit' • See 'common good'
Integrity	• Risk-managed ethics – deployed to advantage • Values reflect external expectations/ political pressures rather than internal motivations • Regulatory capture • Ethics opportunist, faddish, eclectic • Contradictory actions and statements • Gap between board and front line • Staff / public cynicism and disaffection • Ethics of convenience	• Compliant, to the letter • Avoiding any cost, inconvenience • Scope creep • Comfort from ticking boxes that avoid further thought or constructive challenge. • Audit-based three lines of defense • Risk dominated • Cost-benefit analysis • Reactive firefighting	• Overly conscientious • Plenty of training • Toolkit approach • Outcomes led • Career regulators • Fit and proper test and financial show independence of office holders, boards and decision-makers • Sometimes smug self-congratulation • Gifts and hospitality registered and limited • Revolving door issues	• Unconditional --- applying principles even when no one is looking --- even where they may be a cost or not contributing to any particular personal or organizational material benefit • Find the 'right thing to do' • Internal compliance almost redundant. • Limited people risk. • Greater flexibility, creativity and innovation • Space for judgments and owning imaginative solutions. • Clear independence of financial position and career

Objectivity	• Everything 'a good deal' • Possibility of pre‑selected conclusions • Finding supporting evidence • Selective listening and restricted engagement	• Negotiated compromises • Well presented in media and externally • Influenced by strongest voices or parties with indirect or direct influence • Reputational risk uppermost. • Evidenced‑based approach emerging	• Impartial – predetermined criteria for decision‑making, procuring • Decisions meritocratic • Zero tolerance on discrimination, prejudice or bias • Research based and objective data • Reviews independent	• Outcome driven – relating decisions to end‑user/consumer impacts and sustainability • Taking into account full range of interested and affected groups • Regard for inter‑ and intra ‑‑‑ generational equity. • Special attention to vulnerable groups
Accountability	• Closed ‑‑‑ Limited appetite for accountability • Confidentiality paramount (which may be appropriate in certain circumstances). • Obfuscation by use of bland and general language • Small print mentality • Legal protections emphasized	• Legalistic • Not providing decision trail • Unclear roles, interests and responsibilities • Information released on a case‑by‑case basis	• Permeable ‑‑‑ allowing insight into decision‑making processes and participants, respective roles, responsibilities, reporting lines and eventual rationale • Sanctions publically taken • Open to public scrutiny.	• Engaging – seeking to increase the amount of information publically available • Building capacity of the public to understand • Assisting media, education and other dissemination bodies • To listen and test new expectations of accountability.
Openness	• Shy – information released historically,	• Transparent‑ disclosure in line with legal or	• Accessible – makes available more than	• Proactive • Seeking out those who

	possibly only under pressure • Limited discloses, using jargon or inaccessible language or formats. • Language restrictions • Use of small print and excessive length • Charging for certain types of information.	industry requirements, exactly to the standards and levels / frequency defined. • Unlikely to explain reasons for decisions in systematic way • Note: there are situations where it is lawful and necessary to withhold some information	minimum levels of information in a variety of formats to suit different accessibility needs • Uses plain or clear language – to a standard that may be certified by a third party. • Avoids any small print or excessive length • Uses assurance frameworks where appropriate and helpful • Makes valid cross-sectoral, cross-cultural, historic and international comparisons where significant and helpful.	may have a reasonable or legitimate interest • Explain the implications of the information to the receivers • Educate interested parties over the long term about the issues that affect them, their options and their reasonable expectations • Feedback welcomed and the reasons given for deciding /acting / responding in a certain way so that dialogue maintained and enhanced • Responses published with 'answers' • Respondents listed or published.
Honesty	• Relative – according to convenience and situation • Information provided selectively to support cause or personal advancement	• Record-driven • Unclear as to what is not recorded, when and why • Contagion managed	• Truthful at a premium • Demonstrated by declarations, internal and external audit • Clear audit trails • Willingness to release information in timely	• Honesty taken as a given as basis of integrity and professionalism. • Any suggestion of wavering treated seriously and tough sanctions internally

			and open way	without needing external intervention or inquiry.
Leadership	• Limited view of wider role or responsibilities • Short-term success criteria. • Decision-making confined to a few • Competitive view of peers • Confidential, isolated and lack of information-sharing or partnership • Follower	• Hierarchical and siloes approach • Leadership possibly tribal or territorial, may be for self-protection or advancement • Loyalty rewarded over merit	• Strong code of conduct and well-developed internal standards. • Structure of constructive challenge embedded • Principles exhibited in individual and corporate behaviour • Good examples documented, rewarded and communicated	• Strategic tone-from-the-top. • Willingness of all levels to challenge behaviour and outcomes • Lower staff turnover and attractive to values conscious, • Example to sector / peer organizations.

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