

National Commission on the future  
of governance in the public sector

# The impact of the COVID-19 pandemic on governance in the public sector roundtable

Outcomes from the National Commission's cross-sector governance after the pandemic roundtable

## The National Commission

The National Commission is an independent project established to make a unique and necessary contribution to UK public life. We believe a strong and effective public sector is essential to the UK's democratic principles and for a just, sustainable and equitable future.

The National Commission was established out of concern that rapid changes in the world have created enormous threats for the public sector.

The importance of good governance has come into sharp focus during the coronavirus pandemic and the National Commission will provide the fresh thinking needed to drive change in the post-pandemic world.

The commission is built around three pillars: place, digital and citizens. They provide the basis for our framework of enquiry. These capture the central issues facing the public sector in the next decade and will be used as lenses to explore a range of topics that are essential to good governance, including: sustainability, ethics, accountability, policy, leadership and regulation.

Place focuses on issues that are specific to a locality, community or neighbourhood. At the level of place, public sector organisations and partners come together to achieve local social, environmental and economic outcomes.

Digital covers technological transformation, artificial intelligence, machine learning and innovation. The future of good governance must go beyond organisational transformation and tackle issues of legitimacy, ethics, trust, power and data ownership.

Citizens relates to ordinary people's engagement with governance and their changing relationship with public institutions. Public sector governance is struggling to embrace the consequences of increasingly engaged citizens. We're here to explore whether there are alternatives to the current models.

The commission produces evidence-based reports and stimulus papers which make recommendations for the public sector. We hold events that bring together leaders from across society to explore the role of governance in securing a positive future for the public sector.

To help develop a vision for this future, the Good Governance Institute established the National Commission on the future of governance in the public sector.

The Commission was established and continues to be supported by the Good Governance Institute as part of its mission to create a fairer, better world.

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## Purpose of the roundtable

The pandemic has led to challenges which cut to the core of governance. The interconnected issues of accountability, ethical decision-making and citizen engagement are fundamental to the public sector. The National Commission has been working on many of these areas, but is yet to fully address the impact of the pandemic on governance. Indeed, few individuals or organisations have explicitly examined the last year through the lens of governance. We do not want to miss this opportunity. The decisions made during and after the pandemic will define our public sector in the coming decades, from the mechanisms of accountability to sources of legitimacy, as well as ethical choices over finances and the climate.

Across the public sector, organisations have needed to take enormous decisions during the pandemic. As such, much attention has gone into the removal of regulatory barriers and the increased speed of decisions, yet there has been relatively little focus on the complex ethical issues with which we have grappled.

We see good governance as a key enabler of better, sustainable and relevant public services and not as an aim in itself. Good governance is one of the catalysers enabling rapid change to be achieved whilst safeguarding ethics and legitimacy. It should provide the grounds for organisations to challenge norms and do things differently.

We believe a truly rigorous evaluation of the public sector necessitates a move away from the short-term, tactical approaches to key issues in our country, which so often mirror economic or electoral cycles, and instead towards a longer-term view accounting for the precedents and patterns that emerge during a crisis.

Following the one-year national lockdown anniversary, the time was right to take stock of the decisions made in the past twelve months. The roundtable was intended to stimulate thought and explore the key issues coming out of the events of the last year and begin to ensure the public sector is robust and sustainable for the future.



## Roundtable themes

The discussion revolved around **six themes**. These are captured in single statements behind which was a detailed discussion that is summarised in the following pages.

### 1. Taking ethical decisions

Given the gravity of many choices made during the pandemic, ethics has been a crucial part of public sector decision making in the last year. However, this increased awareness of ethical has also shown the public sector is not always clear what its ethical considerations are when taking decisions.

### 2. The use of ethical frameworks

Many of our attendees felt that ethical frameworks were underused in the public sector and while there were some instances of their successful employment, leaders and organisations often lacked the tools to comprehend the ethical dimensions of their decisions. As such, ethical frameworks can provide a guide for decision-makers to know the process they have adopted has satisfied all ethical considerations.

### 3. Ethics at organisational and system level

Given the increase in cross-sector collaboration involving the public sector that has occurred in recent years, many of the principles of public life such as Nolan or those of good governance, now appear slightly limited or individualised. There is a need for new, updated ethical principles, as well as other standards for the public sector, that reflect the trend towards partnership working.

### 4. Ethics and accountability

Accountability is key to building ethical leadership. It requires leaders to develop perspectives that correspond with the needs of those they serve through behaviours like fairness, integrity and due regard to sustainability. This will enable us to get the best use out of the increasingly used and relatively new technologies like algorithms.

### 5. Ethics and transparency

An equally important aspect of ethical decision-making is those impacted by the decisions you have taken understanding the process and trade-offs that have gone in to reaching that judgement. This can bolster trust in organisations through greater public awareness of the difficult decisions being made and also boost legitimacy by directly informing the priorities and frameworks used to make decisions.

### 6. Principles-based regulation

Regulating the use of ethical frameworks can be incredibly difficult. There is a danger that a rigid compliance checklist does not allow organisations enough scope to account for the complexities of ethical decision-making or leads them away from a mindset that focuses on ethics and instead towards fulfilling regulatory expectations. To adopt these across the public sector, regulators should institute a principles-based approach that provides high-level standards for organisations, with the flexibility to focus on the issues at hand.

## Summary of discussions

### **1. Taking ethical decisions**

“The pandemic has shown it is not always clear what the public sector’s ethics are in taking decisions”

“We have ethical conversations, but don’t realise it”

“We can only aim for ethically optimal decisions”

“There is remarkably little attention paid to ethical considerations in leadership programmes”

“When we’ve said that’s a highly ethical issue, people have been surprised”

“One of the impacts of the pandemic has actually been that people have reached out and sought ethical support service”

Given the gravity of many choices made during the pandemic, ethics has been a crucial part of public sector decision making in the last year.. However, this increased awareness of ethics has also shown the public sector is not always clear what its ethical considerations are when taking decisions, not only in the case of political decisions made by ministers, but also those being made by the boards of public institutions.

This is not to say that all ethical considerations have been absent throughout the pandemic. We heard from a number of contributors about the work that has been done by ethics committees, but this largely pertains to advice on issues that are strictly ethical, rather than the ethical dimensions of multifaceted decisions. In this regard, leaders need to consider issues in a more systematic and structured way by being explicit about the ethical aspects of problems they face.

Many in our panel agreed that during the last year there was a steadily growing appetite among the public sector to engage with these questions and the importance of bringing these lessons from the crisis into administration over the next decade. Yet it is crucial that individuals have the correct tools to think about these issues and governance that maintains a focus on the ethical issues at hand rather than drawing attention away towards mere process.

### **2. The use of ethical frameworks**

“Governance should bring an ethical culture, bring better control and add to legitimacy”

“Even if people recognise something as intrinsically ethical, we don’t always use a full range of thinking available to us”

“It never gets to the point of spelling out what the trade-offs are”

“There’s very little help given in the legislative framework about how to deal with clashes between various rights given in legislation”

“There is the gap between developing a framework and breathing some life into it so it is in people’s day-to-day behaviours”

A remedy to the lack of clarity and systematisation regarding ethical decision making can be to institute an ethical framework. Ethical frameworks are a set of values and principles that provide the basis for ethical governance. While these provide a systematic basis on which to assess whether decisions being taken are ethical, they do not give a definitive answer to a complex question, rather produce an ethically optimal decision whereby people are aware of those trade-offs, discuss them, and are willing to be accountable for these.

Some parts of the country have produced ethical frameworks during the pandemic. Yet even in these cases, our contributors felt that they seldom filter down to managers or those on the frontline. So not only do organisations need to produce frameworks, but also need to consider very carefully how they can be communicated to staff and the public to ensure they are fully realised.

### **3. Ethics at organisational and system level**

“Ethical questions are not confined to single organisations, they are system-wide”

“Nolan only talks about the individuals”

“Some of the best collaboration is very fragile, we need new principles to support it”

Partnership working is increasingly important to the public sector, with many organisations beginning to see the benefits of collaborating to deliver services. This presents organisations with very different challenges and obligations, and will continue to do so as partnership working becomes more embedded. Institutions may have to consider their responsibilities in relation to wider goals and remits of partner organisations, rather than their narrower interests. Consequently, this changes considerations for ethical decision-making.

Yet an examination of the principles and frameworks that organisations should employ when looking to make ethical decisions underlined the individuality of many on offer. The Nolan Principles, for example, were highlighted as very individualistic in their focus on singular organisations. This was supported in wider examples of ethical judgements during the pandemic. A contributor described how having information from an individual organisation’s ethics committee was not effective because all of the dynamics needed to be considered were across their NHS Integrated Care System, a much larger area than any one NHS organisation is responsible for. To address this issue, the participants’ organisation created an ethics committee across the whole system to take a more holistic view of the challenges at hand.

The importance of approaches like this was echoed by many of our attendees, who felt there was certainly a willingness among individuals to think about ethics, but that there were few collective mechanisms for doing this and little thinking in this area.

Crucially, these observations also raise the question of other aspects of governance and mindsets that will need to be updated and evolve to meet the demands of partnership working. As these collaborations become increasingly entrenched, they may come into conflict with standards and principles that continue to single out organisations, rather than assessing process and performance in concert.

### **4. Ethics and accountability**

“Ethical issues will be central to the independent inquiry into social care during the pandemic”

“Algorithms do very well in identifying and compensating for the limitations in human perceptions and judgements. They can synthesise a large number of human judgements into an overall judgement. Algorithm shouldn’t be a dirty word.”

“We must remember the most important principle: being responsible to those who we serve”

“The public should have the right to appeal decisions made through automation”

“COVID has accelerated this process given that it’s not just been digital first, it’s been digital only in the provision of these services”

Ethical decision-making is not just about the final product of deliberation, it is also about having structures which ensure the processes for taking judgements are ethical. As such, accountability is a core component of taking ethical decisions. Accountability requires leaders to develop perspectives that correspond with the needs of those they serve.

This is a particularly important aspect of the increasing relevance of algorithms in public sector decision-making. Indeed, this is a subject that will only gain salience as the impact of artificial intelligence and equivalent technologies on public life grows.

There was much discussion as to how the public sector should balance the use of these technologies. There are clearly plenty of positives around efficiency gains, and consistency, but there are also well-documented controversies regarding bias or lack of subtlety to individual circumstances.

Crucially, technology should not be used without accountability. Denmark and Flanders were cited as examples in which AI committees are staffed by people to oversee fully automated decision-making processes and to supervise training. Importantly, serious attention must be given to some form of accountability mechanism in the case of dissatisfaction with a judgement reached by a machine to deliver a public service.

Artificial intelligence must also be ethical and explainable. The public and independent arbitrators must have the capacity to appeal decisions that are reached automatically, but this is not always the case. Therefore, we need not have governance arrangements which facilitate these behaviours.

New technologies challenge so many aspects of good governance and to get the best out of them over the next decade, leaders will need to have a comprehensive understanding of both their advantages and limitations. The latter should not hold them back from the great advances that are made possible, but they also necessitate strong accountability mechanisms.

## **5. Ethics and transparency**

“The UK government rely on a small group of people that we trust with the freedom to give us frank advice. That means being not transparent”

“it’s about being transparent and honest about the difficult decisions that organisations are making. It’s important the public have a voice in this”

“If you are running a public institution, you can’t be over-informed about what the population wants or thinks”

Similarly to accountability, transparency is key to organisations making ethical decisions.

Transparency is essential to building a strong, trusted relationship with the public that an organisation serves. Given the nature of the very difficult decisions which public sector leaders must make, being open and honest with the trade-offs can help to maintain organisations’ legitimacy. Our contributors noted that their experiences of public engagement during the pandemic had yielded very positive responses from the public, who were very willing to contribute to these processes and cognisant of the dilemmas faced during the crisis.



This was particularly true of the NHS, where public engagement has contributed to forming a set of expectations and principles of care, based around what matters most to people.

As such, transparency is not only important to informing the public, but can be a behaviour that is instrumental to developing organisations' priorities when taking difficult decisions. Used well, this approach can bring new voices into the debate, from young or minority communities that previously have not had input into these key questions.

However, many felt that a lot of political choices taken by central government lacked such transparency and engagement. While this may reflect a desire to receive advice from scientists with the freedom to speak honestly, this also impacted public trust and compliance with government restrictions, as it was not always clear what the rationale was for taking decisions, the evidence base or the priorities behind actions.

Attendees also noted that these complex issues that directly impact the public in a highly visible way are going to persist in the coming years. The public may want to input into those choices and may demand more transparency if issues like NHS waiting lists and waiting times, and post-pandemic resource allocation, become politicised and of greater salience.

## **6. Principles-based regulation**

"Just abiding by rigid targets is not sufficient"

"The principles-based framework explicitly gives space for ethical considerations"

"It's crucial to understand the difference between principles-based and rules-based regulation"

The complex nature of incorporating ethical nuances into decision-making is incredibly difficult to mandate. As previously discussed, utilising ethical frameworks do not necessarily lead to clear answers, but instead allow leaders to know they have exhausted all the necessary processes to render their decision ethical. Given not only the complexity of the issues which organisations may face, but also the focus on process that instituting these frameworks may lead to, there is a danger that any requirement for their use leads to burdensome compliance requirements. Our discussion touched on the example of the US Joint Council for the Accreditation of Care Organisations, producing a necessity for organisational ethical frameworks to approve or accredit healthcare organisations, how this led to a burgeoning compliance industry and weighed heavily on leaders' time.

Indeed, this is a danger across much of the public sector's history, that regulations with very positive intentions result in inappropriate targets or an industry that's aiming for compliance rather than grappling with the realities of the ethical questions that are faced. As such, our contributors noted the importance of principles-based regulation of ethical frameworks, meaning a move away from a prescriptive checklist of rules that organisations must demonstrate they have followed, and instead towards a higher-level broader set of standards. In doing so, they would allow organisations to realise the ethical dimensions of the problem they are faced with, whilst also providing them the flexibility to respond appropriately to the issue, accounting for the specifics of the challenge at hand.

Importantly, boards, leaders and regulators must consistently revisit these arrangements to get the best out of them. It was noted that rules or processes are accrued over time and, consequently, individuals lose sight of the ethical principles underlying the regulation, leaving organisations with rigidity but without ethical awareness.



## Concluding comments

Truly getting to grips with the complex questions of ethics and accountability requires public sector leaders to think differently, particularly around their legitimacy. It is essential to maintaining focus on citizens' interests and perceptions by ensuring the trade-offs and priorities in decisions are clearly communicated to the public.

Leaders will also need to be given the freedom to make these changes. This issue reflects wider tensions which have been a theme of the National Commission's work on how much autonomy organisations can be allowed by the centre. Indeed, to realise the best outcomes for citizens, it is often best that public sector leaders can be given the flexibility to take decisions and serve their populations without restrictive directions, but rather broader outcomes-focused assessments.

Equally leaders need to be prepared to be proactive when using their power. To achieve the most success and realise the deep societal impact their organisations could make, they will need to appreciate the great impact they could have if they think with agility and move beyond direct instructions and central government diktats. Organisational autonomy and public sector leaders and organisations using the power they have to go beyond any direct instructions or centralised advice.

The National Commission firmly believes that governance should not just be a case of following a set of laws and obligations, but should facilitate an ethical culture and enable leaders to engage with their moral duties to their constituents. In this sense their decisions represent the conscience of an organisation, which goes above compliance with regulation or spending money effectively. The pandemic should provide a stimulus to think outside the guidelines given to organisations and consider the ethics and the legitimacy of their decisions.

## Participants

**Chair:** Stefan Stern, Visiting Professor, The Business School, City, University of London

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Angus Hanton, Co-founder, Intergenerational Foundation

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