

Factsheet: The Public Interest

What is the Public Interest?

The public interest is a concept with various connotations. It could be regarded as a socially derived concept that considers matters in which the community and general public as a whole has a pecuniary interest in which their rights or liabilities / welfare or well-being are affected. It has the implication that a matter resolved in the public interest maximises the benefit for society.

Is the Public Interest Clearly Defined?

'The Conversation' is a collaboration between academics and journalists. It is the world's leading publisher of research-based news and analysis. An article published in 2017 (Johnston) suggested:

The public interest is...a complex and tricky concept to navigate because it has intentionally evolved as ambiguous and mutable. It has no overarching definition because it is contextually determined in scope and purpose.

This means, in any particular instance, political, legal and regulatory authorities make judgement calls. And what may be deemed in the public interest today may not be in a decade – it changes with social mores and values.

For example, during the UK's Leveson Enquiry into the media, the public interest came under close scrutiny. The inquiry found media practice should better reflect the contemporary views of the British public.

Legal bodies and judgements also steer clear of definitions. The Australian Law Reform Commission expressly noted that 'Public interest should not be defined.'

In a Federal Court Freedom of Information case, Justice Brian Tamberlin wrote 'The public interest is not one homogenous undivided concept. It will often be multi-faceted and the decision-maker will have to consider and evaluate the relative weight of these facets before reaching a final conclusion as to where the public interest resides.'

The public interest is an abstract notion. Asserting that an action is in the public interest involves a judgment as to whether the action or a requirement to change behaviour will

benefit the public overall – a far greater set of people than can be interacted with directly. It may involve interference with people's ability to go about their business or, sometimes as a positive policy decision, non-interference in the face of alternative actions.

What are Ethical Approaches to Decision-Making?

Implicitly a decision about whether something is in the public interest will depend on the ethical approach a decision-maker applies. There are many such approaches:

- › Utilitarianism – A theory of morality that promotes the greatest good for the greatest number of people.
- › Rights – The rights determined by society as a whole are protected and given the highest priority.
- › Virtuous Character – Good actions are those that embody character traits such as courage, loyalty and wisdom.
- › Social Justice – A moral approach that focuses on the concept of fairness in relations between individuals in society and equal access to wealth, opportunities and social privileges.
- › Deontology – A theory based on the concepts of universal moral laws such as 'Do not lie / Do not cheat / Do not steal'.

Each approach is equally valid and the approaches do not produce the same outcomes.

Is there Other Guidance on the Public Interest?

A policy position paper from the International Federation of Accountants (IFAC) takes a broadly utilitarian approach to the public interest, defining it as 'the net benefits derived for, and procedural rigor employed on behalf of, all society in relation to any action, decision or policy'. The implication of this is that a decision in the public interest may run contrary to the interests or rights of individuals or a significant group within society.

What is the True Measure of the Public Interest?

Invoking the public interest requires justification of an ability and right to decide what is for the greater good, in the face of a natural suspicion that those proposing an action in the public interest are actually acting in their own interest or in pursuit of a personal or political view.

The true measure of whether a person or an organisation is acting in the public interest lies in the confidence of those affected, not those making the pronouncements. To argue and be able to hold out that an action or inaction is in the public interest requires consideration of a number of complex factors and imposes a burden of proof.

Trust in those making assertions that they are acting in the public interest is vital as:

- › A validation.
- › A motivation to comply.
- › Ultimately, to reduce the need for evidence to support the assertion.

There are safeguards that need to be applied by a proponent of a public interest action which should generally include measures to improve process and accountability, which could include for example:

- › Transparency of process.
- › Stakeholder engagement and consultation.
- › Impact analysis.
- › Feedback enabling learning from past errors.
- › Sense checking.
- › Oversight, including disciplinary actions when necessary.

What might be Public Interest Dilemmas?

A dilemma occurs where a difficult choice needs to be made between two or more alternatives, especially where one or more alternatives may be undesirable.

Case Study 1

- › If a person obeys the speed limit on a road, they could be said to be acting in the public interest.
- › If a police car pursues a criminal they could be said to be acting in the public interest.
- › If the police car crashes and an innocent person is killed, was the police officer acting in the public interest by pursuing the criminal?

Case Study 2

- › If a multinational company operating in Australia pays its taxes it could be said to be acting in the public interest.

- › If a multinational company operating in Australia chooses to minimise the tax it pays in Australia through tax arrangements in another country, it might be doing nothing illegal, but is it acting against the public interest of Australia?
- › Is it acting in the public interest of the other country?
- › What should the internal auditor of that multinational company do – should they try to act in the public interest?

Conclusion

The public interest is a nebulous subject which cannot be readily defined. To suggest or mandate that organisations and individuals should always act in the public interest is a difficult proposition as the public interest cannot be clearly defined. This opens 'a can of worms' meaning it potentially causes a lot of problems when you start to deal with it. It is a difficult proposition as it is fundamentally impossible without a universal ethical stance – it has been established over many years this is impossible.

The public interest is a culturally determined concept and it can be readily determined that regardless of the ethical construct adopted, no standard is universally applicable or acceptable to every group or everyone.

This extends to the internal audit profession and it would be difficult for an internal auditor to practice in the public interest when the term cannot be defined. The best that an internal auditor can do is support their organisation. If the organisation does not align with the internal auditor's own principles, they can resign. Personal or political views on what constitutes the public interest or the values that organisations and individuals should adopt should not be imposed on internal auditors or the organisations for which they work. Internal auditors need strong guidance that is not equivocal and open to interpretation.

Useful References

Bonde, S. & Firenze, P., 2013. *A Framework for Making Ethical Decisions*. [Online]

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Schwartz, M. S. & Saiia, D., 2012. *Should Firms Go "Beyond Profits"?* Milton Friedman versus Broad CSR. *Business and Society Review*, 117(1), pp. 1-31.