



A review of the ethical framework
guiding public employees

April 2020



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List of Abbreviations

AG	Auditor General
EU	European Union
MT	Malta
NAO	National Audit Office
OECD	Organisation for Economic Cooperation and Development
PPS	Principal Permanent Secretary
PSMC	Public Service Management Code
TI	Transparency International

Executive Summary

1. The promotion of ethical conduct and integrity in the management of public affairs aligns with the National Audit Office's strategic goal to contribute towards ensuring accountability in the use of public resources. Through this review, we assessed the effectiveness of the ethical infrastructure that guides public employees. Our assessment of the provisions regarding ethical guidance was based on the Public Administration Act, the Code of Ethics and the Public Service Management Code (PSMC). We analysed how these documents fit together and whether they provide a comprehensive guidance framework. The provisions of these documents were assessed against international benchmarks to identify gaps. We focused on four principles, namely, conflicts of interest, gifts and gratuities, post-public employment, and reporting, monitoring and sanctioning.
2. Collectively, the 2019 Public Administration Act, the Code of Ethics, the PSMC and other supporting documents, provide guidance that addresses the key elements of ethical conduct for public employees. In general, the Act and the Code are more oriented towards value-based guidance, whereas the PSMC provides specific rules that are to be adhered to. Although the ethical framework is comprehensive, there exists scope for improvement. While it is evident that the Act, the Code of Ethics, the PSMC and other documents are to be read together, the public employee may be better guided if a framework on how these documents fit with one another was provided. Another aspect that warrants review are instances where the 2019 Act and Code were somewhat incongruent with the PSMC. These incongruencies may create ambiguity for public employees. We also noted that the guidance in place at times provided vague information on certain issues and while the ethical principle was clear, definite parameters were lacking.
3. Regarding conflicts of interest, the ethical framework is reliant on individual integrity and self-declarations. Differences in the provisions defining the extent of where a conflict of interest situation arises may create anomalies for public employees in assessing a potential conflict. Moreover, the ethical framework can only be effective if processes are in place to follow up and act on declarations submitted by public employees.
4. Differences in the provisions regarding the acceptance of gifts stipulated in the Code of Ethics, which are limited to public employees, and those in the PSMC, which extend to any member of the household were noted. This, together with the lack of a clear definition of what is meant by gifts and gratuities, and what is deemed as acceptable and what is not, create further uncertainty. Our concerns can be addressed through better regulation, particularly through the establishment of a common understanding of what a gift entails and the setting of thresholds.

5. The Public Administration Act, the Code of Ethics and the PSMC provide suitable guidance in relation to post-public employment. Provisions regulating the reporting, monitoring and sanctioning elements of the ethical framework that guides public employees are also in place. However, their effectiveness depends on the extent to which these are enforced.

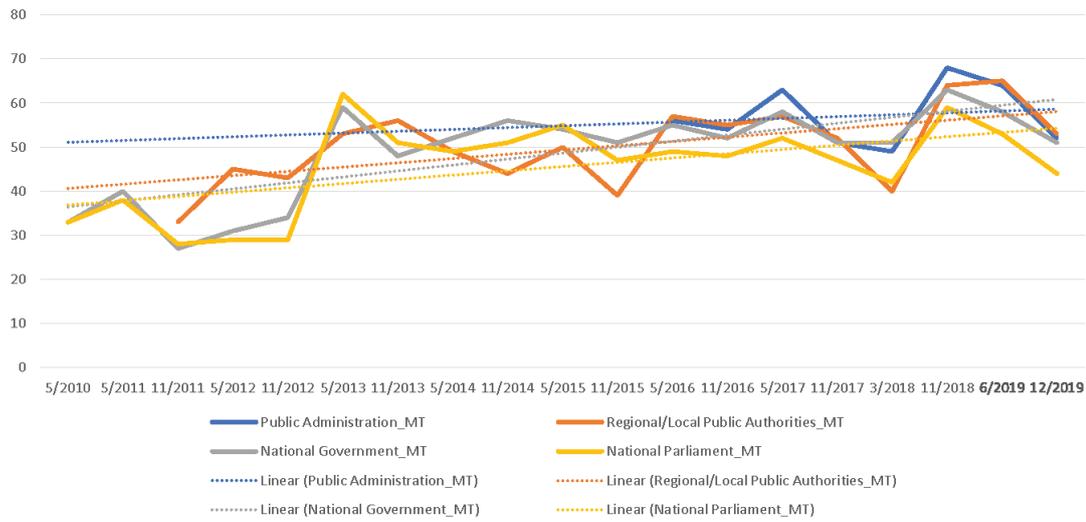
Chapter 1

The relevance of ethics in public administration

The need for ethics

- 1.1 Although government's functions are continuously evolving and becoming more complex, the need for ethical conduct and integrity in how it carries out its business remains constant. However, the changing landscape within which government conducts its business has created new risks that render the assurance of ethical behaviour and integrity in the delivery of public services more challenging. New ways of delivering public services are being devised, through partnerships with the private sector for the provision of critical services, the re-establishment of departments as statutory authorities and the extended utilisation of digital technology. The impetus driving such reforms is to improve efficiency, yet this also presents significant risk in terms of ethical standards of conduct and integrity in the public service.
- 1.2 The Organisation for Economic Cooperation and Development (OECD) argues that public service is based on trust, with citizens expecting public employees to serve the public interest with fairness and to manage public resources efficiently and effectively. Transparent, accountable and fair public services inspire public trust. In this context, public service ethics are a prerequisite to public trust and a fundamental element of good governance.
- 1.3 The latest Eurobarometer Survey (Autumn, 2019) captures a dip in the trust rating of the Maltese with respect to Parliament, Government, the public administration and other authorities (Figure 1 refers). Although there is an upward trend in public trust, with an increase of several points registered over the period 2010 to 2019 with respect to all institutions, it is evident that the level of trust in these institutions fluctuated considerably during this time. If one were to compare the level of public trust in each institution, Parliament ranks lowest with an average rating of 46 per cent, followed by Government (49 per cent) and public authorities (50 per cent). The public administration enjoyed the highest trust rating (57 per cent). At a macro level, these fluctuations correspond to the wider socio-economic and political environment within which our institutions operate; however, at a micro level, a link can readily be drawn to the conduct of public employees, whose behaviour, ethical or otherwise, conditions the level of trust afforded to the institutions that these employees represent.

Figure 1: Trust level in parliament, government, public administration & authorities, MT 2010-2019



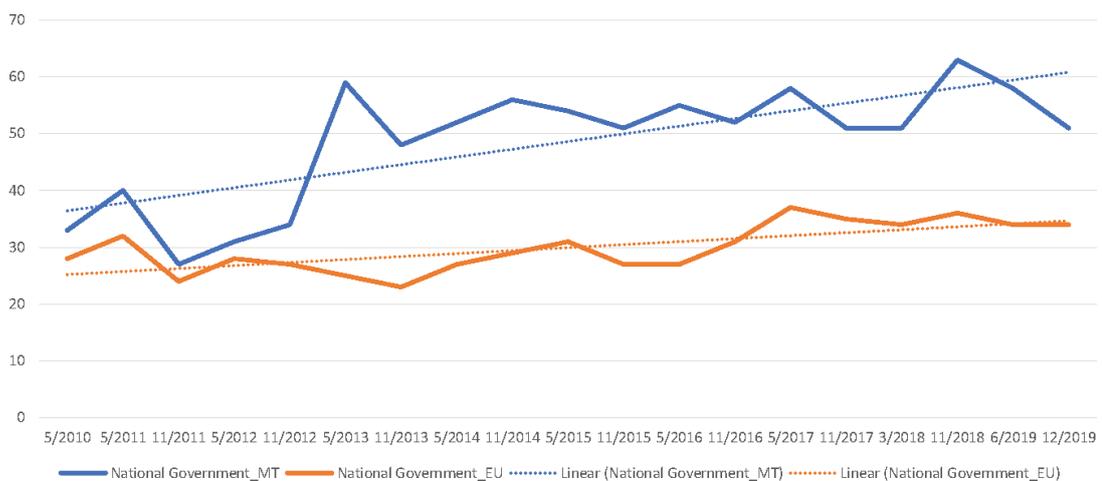
Source | Eurobarometer, European Commission

Note

1: Data relating to public administration is only available as from Spring 2016.

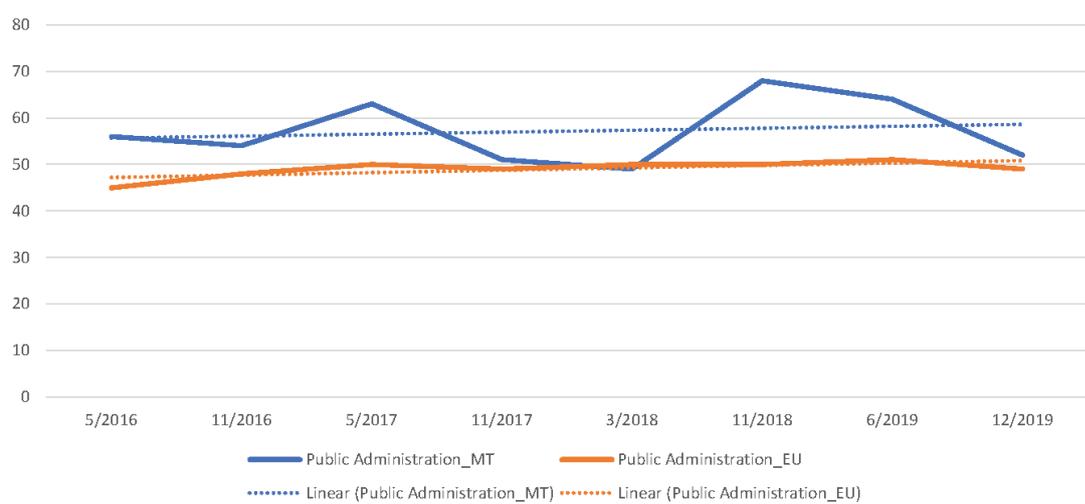
1.4 The Eurobarometer Survey provides a benchmark based on the members of the European Union (EU) against which Malta can assess the level of public trust in its institutions. Over the period 2010 to 2019, Malta fared generally better than the EU benchmark with respect to all institutions captured in this review. Nonetheless, a positive trend in trust levels was registered across the EU in this period. A comparison of the trust levels in national government and in the public administration for Malta and the EU are presented in Figure 2 and Figure 3, respectively.

Figure 2 | Trust level in national government, MT & EU 2010-2019



Source | Eurobarometer, European Commission

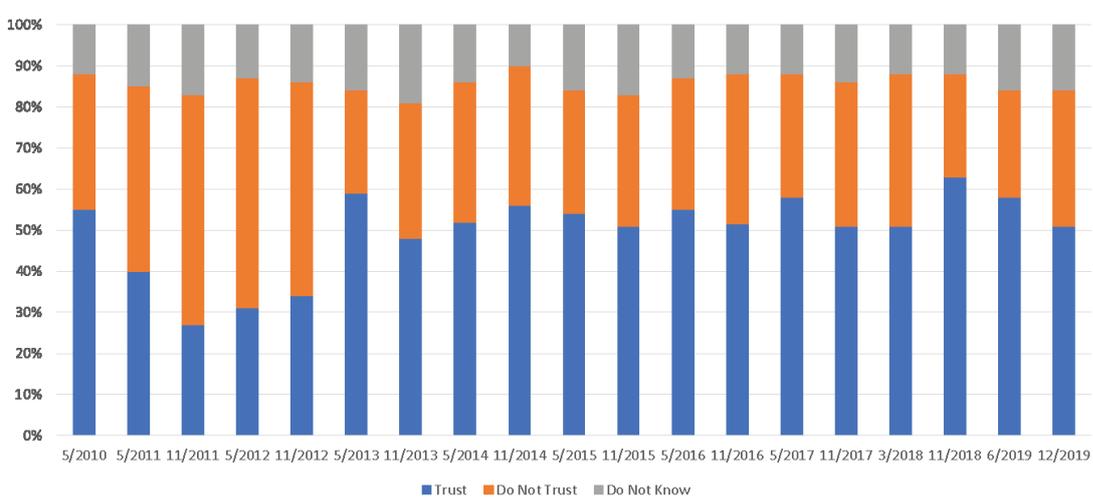
Figure 3 | Trust level in public administration, MT & EU 2016-2019



Source | Eurobarometer, European Commission

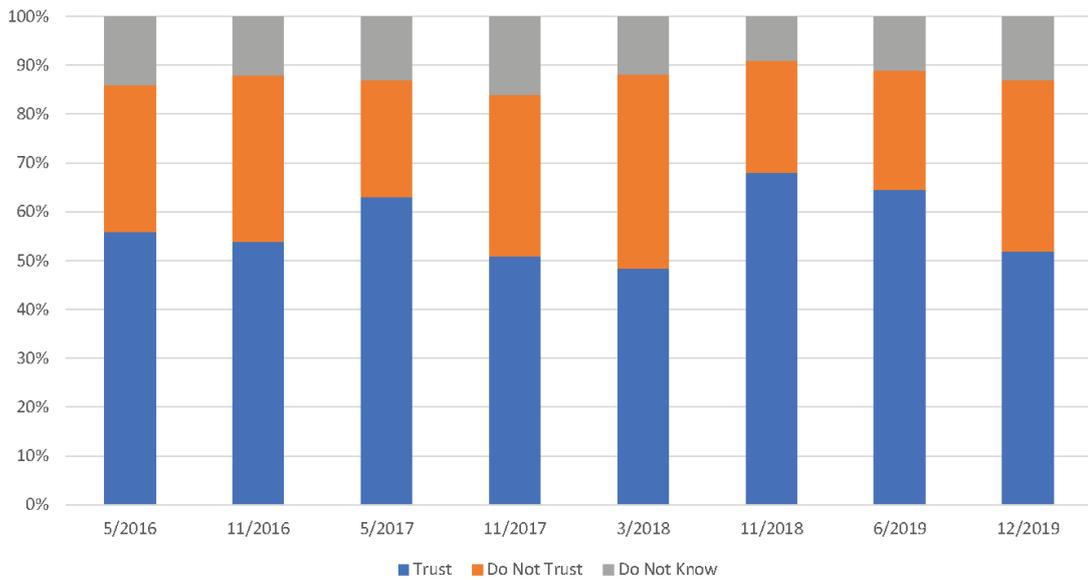
1.5 Further analysis of the responses captured in the Eurobarometer Survey with respect to trust levels in government and the public administration are presented in Figure 4 and Figure 5, respectively. These Figures provide a better understanding of the instances where a lack of trust was expressed, indicating the extent of responses where there was no trust and others where uncertainty was noted.

Figure 4 | Trust level in national government, MT 2010-2019



Source | Eurobarometer, European Commission

Figure 5 | Trust level in public administration, MT 2016-2019

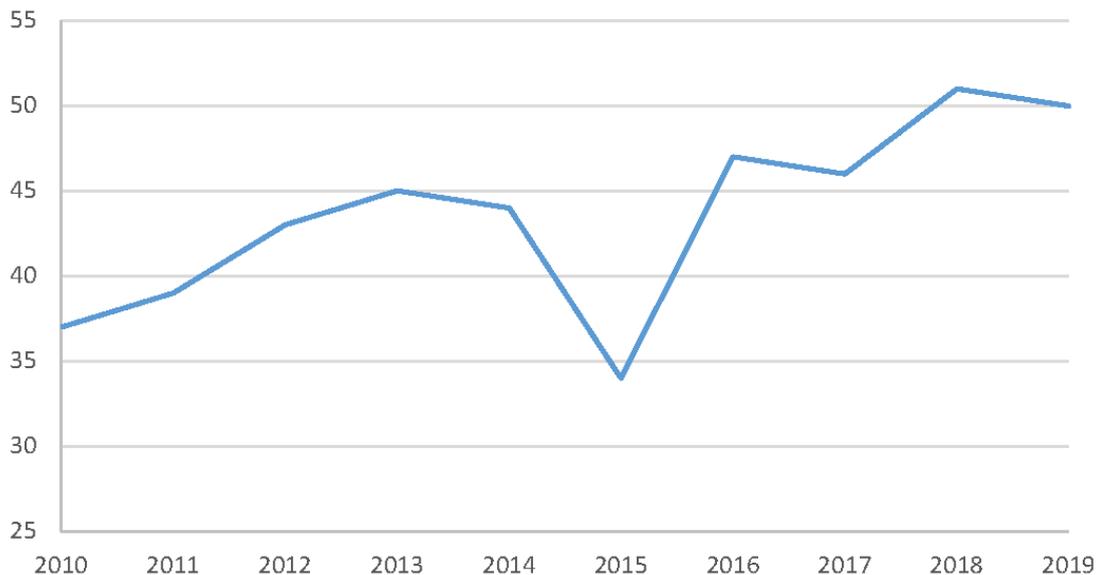


Source | Eurobarometer, European Commission

Components of an ethical framework

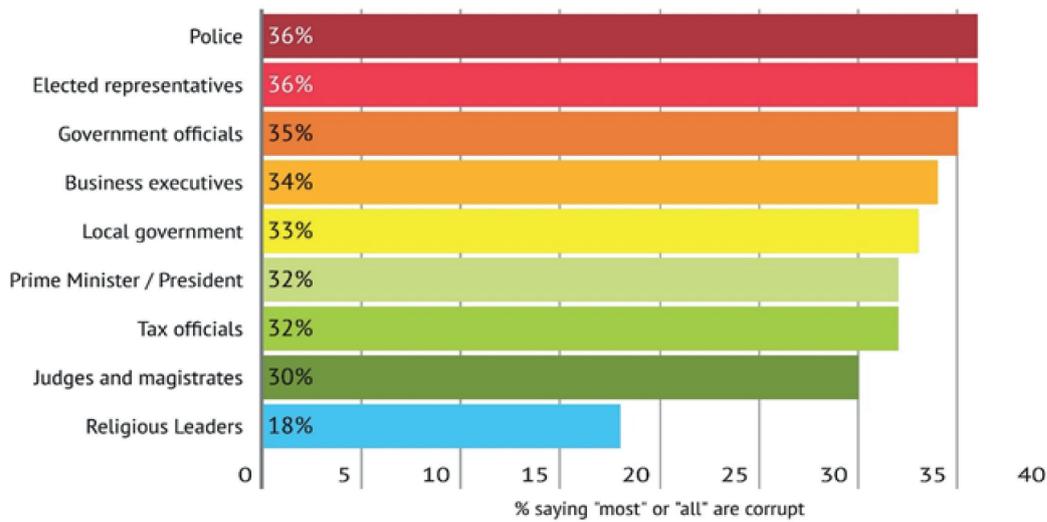
1.6 The prevalent lack of citizen confidence in the integrity of public institutions ought to be of concern. According to the Corruption Perception Index issued by Transparency International (TI) in 2019, Malta ranked 50th out of the 180 countries reviewed, fluctuating between 34th in 2015 to 51st in 2018 (Figure 6 refers). The Global Corruption Barometer 2017, also published by TI, indicated that public officials are seen as the third-most corrupt group after the police and elected representatives (Figure 7 refers). In our opinion, a robust ethical framework can help address this trust deficit.

Figure 6 | Corruption Perception Index, MT 2010-2019



Source | Transparency International, Corruption Perception Index 2010-2019

Figure 7 | Key public sector institutions seen as corrupt, Transparency International 2017



Source | Transparency International, Global Corruption Barometer 2017

1.7 Ethical frameworks are often considered in terms of two approaches, value-based and rule-based. The value-based approach is geared towards the promotion of ethical decision-making through enhanced values. In this approach, broad ethical principles are established and detailed lists of prohibited behaviours or sanctions are generally not specified. On the other hand, the rule-based approach focuses on rules and procedures aimed to reduce violations through compliance. However, according to the OECD, irrespective of which approach is adopted, two minimal criteria ought to be in place. The first is clarity in expectations relating to ethical conduct, to ensure a common understanding. The second is accountability, that is, having the means to hold public employees accountable for their actions.

1.8 Of interest and relevance is the public integrity model developed by the OECD, which defines public integrity as the consistent alignment of, and adherence to, shared ethical values, principles and norms for upholding and prioritising the public interest over private interests in the public sector. The components on which the public integrity model is based comprise the building of a coherent and comprehensive public-integrity system; the cultivation of a culture of public integrity; and the enabling of effective accountability. This model, as represented in Figure 8, captures the complexity of the public integrity landscape. In turn, this influences the ethical framework that is adopted.

Figure 8 | Building blocks of public integrity, OECD



Source | OECD

- 1.9 According to the OECD, a robust ethical framework entails three main functions, namely, guiding, monitoring and controlling. The first function is better captured as defining, determining and guiding towards ethical behaviour and integrity. In the defining and determining aspect, one considers which values are important for the organisation and which rules should be obeyed. The guiding aspect establishes how the organisational members can be guided and coached so that they know what is expected from them in terms of integrity and how they are encouraged to act accordingly. The second function, monitoring, is intended to identify divergences from set standards of behaviour through the establishment of channels of reporting and through initiatives that actively pursue the detection of ethical violations. The third function corresponds to the control element of the ethical framework through the implementation of corrective action and the enforcement of integrity and ethical behaviour. A holistic approach is essential to achieve the desired results, with each function working in coordination with the others to ensure a sustained culture of public integrity that enables and promotes effective accountability.
- 1.10 Applying the rule-based and value-based approaches to the guiding, monitoring and controlling functions results in a matrix of possible instruments that can be applied within the ethical framework. Figure 9 illustrates how the approaches and the functions of the ethical framework interact.

Figure 9 | Ethical framework instruments

	Defining, determining & guiding	Monitoring	Controlling and enforcing
Rule-based approach	<ul style="list-style-type: none"> - code of conduct - conflict of interest policy - gifts and gratuities policy - post-employment arrangements - signing of oaths - function rotation and similar measures - rule-based integrity training 	<ul style="list-style-type: none"> - whistle-blowing policy - complaints policy - inspections - early warning systems - inspections and measurement of integrity violations - recording of complaints 	<ul style="list-style-type: none"> - set procedures for handling violations - formal sanctions
Value-based Approach	<ul style="list-style-type: none"> - analysis of ethical dilemmas - code of ethics - non-written standards - exemplary behaviour by management - integrity coaching and counselling - emphasising integrity and including it in regular discourse 	<ul style="list-style-type: none"> - informal probing for ethical issues among staff 	<ul style="list-style-type: none"> - informal sanctions

Source | OECD

Scope and methodology

- 1.11** The promotion of ethical conduct and integrity in the management of public affairs aligns with the National Audit Office’s strategic goal to contribute towards ensuring accountability in the use of public resources. Through this review, we plan to assess the effectiveness of the ethical infrastructure that guides public employees. This review is structured in three parts in accordance with the distinct functions of the ethical framework, that is, guidance, monitoring and control. While this report focuses on the guidance function, the Office intends to follow this review with an assessment of the monitoring and control functions.
- 1.12** Our review was primarily based on the analysis of the Public Administration Act (Chapter 595), the Code of Ethics for Public Employees and Board Members, and the Public Service Management Code (PSMC). The Public Administration Act was intended to, “... affirm the values of public administration as an instrument for the common good, [and] to provide for the application of those values throughout the public sector ...”. Appended to this Act is the Code of Ethics for Public Employees and Board Members that, “serves as an ethical benchmark and compass for action and behaviour in relationships with seniors, peers and subordinates ... [and] outlines the principles and values governing the conduct of individuals and corporate bodies by describing behavioural expectation ...”. The PSMC “... aims to define and regulate the people management function, as well as the rights and obligations of [public] employees”, with aspects relating to conduct and discipline of interest in our review.

- 1.13 Our assessment of the provisions regarding ethical guidance outlined in the Act, the Code of Ethics and the PSMC was undertaken to determine how these documents fit together and whether they provide a comprehensive guidance framework. The provisions of these documents were assessed against international benchmarks to identify gaps.
- 1.14 A comparative analysis of other ethical frameworks and codes was undertaken to identify the most prevalent principles. We referred to the United Nations International Code of Conduct for Public Officials, the Council of Europe Code of Conduct for Public Officials, the United Kingdom Code of Service, the Code of Conduct for Board Members of Public Bodies in the United Kingdom, the Value and Ethics Code for the Public Service of Canada, as well as reports drawn up by TI and the OECD as benchmarks. We then compared the ethical framework that guides public employees in Malta with these benchmarks, with attention directed to the principles cited by the OECD and TI. The following principles were deemed to be of interest in this respect:
- a. conflicts of interest;
 - b. gifts and gratuities;
 - c. post-public employment; and
 - d. reporting, monitoring and sanctioning.

Chapter 2

The ethical framework in public administration

From a code of ethics to a law

- 2.1 While the underlying principles of ethical frameworks are universal, the codes of ethics that organisations abide by vary according to context. Codes are tailored according to the specific nature of the organisation and the ethical concerns that characterise the wider environment in which such organisations operate. Distinctions are sometimes drawn between codes of conduct and codes of ethics. Codes of conduct generally adopt a rule-based approach, specifying the expected standards of behaviour, enforcement procedures and sanctions for violations. On the other hand, codes of ethics are more targeted towards promoting and instilling good moral and ethical values. When the context of an organisation is taken into account, codes of conduct are generally adopted when there is a need to implement detailed guidelines, while codes of ethics are a better fit in the case of well-regulated organisations, where values complement the written rules. Nonetheless, the most common arrangement is often a balance between the two.
- 2.2 The ethical framework that was to regulate the Maltese public administration was first codified in October 1994, through the ‘Code of Ethics for Employees in the Public Sector’. This Code complemented other codes for ministers and board directors in force at the time. Together, these provided a framework of standards of correct behaviour expected of persons engaged in public life. Although the Code of Ethics for Employees in the Public Sector set out provisions that were to regulate performance, it was indicated that the Code only provided direction and a self-imposed vigilance was required to achieve the highest standards of ethical conduct. Notwithstanding this, various sanctions, ranging from counselling to criminal action, depending on the seriousness and nature of breaches, were listed in the Code.
- 2.3 All public officers and employees in the wider public sector, irrespective of the position held within the organisation, were to be governed by the provisions of this Code. Public officers comprised all those employed directly or seconded with central and local government on a full-time, casual or part-time basis, as well as those on definite or indefinite contracts. Employees of public authorities and limited liability companies in which Government held the majority shareholding, and who were directly involved in a public service function, were also deemed as public officers for the purposes of the Code.

- 2.4 The Code of Ethics for Employees in the Public Sector addressed ten specific areas, namely:
- a. values and principles;
 - b. conflicts of interest;
 - c. acceptance of gifts or benefits;
 - d. personal and professional behaviour;
 - e. fairness and equity;
 - f. public comment and the use of official information;
 - g. use of official facilities and equipment;
 - h. outside employment and termination;
 - i. political participation; and
 - j. sanctions.

A summary of these provisions is provided in Annex 1.

- 2.5 A renewed Code of Ethics for Public Employees and Board Members was integrated in the Public Administration Act (Chapter 497), enacted in 2009. The Act captured the values that were to characterise the public administration in its organisation and execution of functions. More specifically, it laid down the values which were to guide the way in which public services were to be provided, public functions carried out and public resources managed. However, in addition to the value-based approach, the specific provisions included therein also reflected a rule-based element.
- 2.6 The Code of Ethics was presented as a Schedule to the Act. The specific areas cited in the 1994 Code of Ethics were retained in that annexed to the Act. The only difference of note related to the terminology defining the intended users of the Codes. While the 1994 Code was intended for public officers and other employees in the wider public sector, the 2009 Code referred to public employees. Here, public employees included public officers, deemed to be the holders of any public office or persons appointed to act in any such office, and employees of government agencies and entities.
- 2.7 Article 5(4) of the Public Administration Act stipulated that the Principal Permanent Secretary may issue directives aimed at upholding and ensuring compliance with the Code. Through Article 17(1), the Act specified that a Permanent Secretary was to ensure that

departments under his or her remit were managed in accordance with the Code of Ethics, as well as with other laws, values, policies and directives.

2.8 Also cited in the Act were the values that were to guide public employees in the execution of their duties, namely to:

- a. exercise any powers vested in them by law, and deliver services to the public, courteously, expeditiously and impartially;
- b. provide objective and knowledgeable advice on matters within their competence;
- c. efficiently and effectively implement the policies of the government of the day;
- d. contribute towards the co-ordination of government policy in conjunction with departments, agencies, government entities and local councils; and
- e. contribute through their own conduct to making their workplace one which recognises talent, develops skills and abilities, rewards performance, avoids discrimination and offers safety.

2.9 Failure to observe these values could constitute grounds for disciplinary proceedings. As regards sanctions, the only reference was that sanctions may be applied for breaches in the Code of Ethics.

The Public Administration Act, 2019

2.10 In February 2019, the Public Administration Act (Chapter 497) was repealed and replaced by another act, namely, the Public Administration Act (Chapter 595). Specified in Article 3 of the 2019 Act was that employees of departments, agencies and entities performing functions on behalf of the State were to be governed by the provisions of this Act and the Code of Ethics appended therewith.

2.11 Of interest is that the provisions of the Public Administration Act 2019 were to guide behaviour within and beyond the public administration, also addressing the virtual world through its regulation of online activity. Furthermore, the Code of Ethics as stipulated in the Act was not limited to public employees and employees of state agencies and government entities but extended to all employees working with ministries and parliamentary secretariats, chairpersons and members of standing boards, as well as public employees seconded to bodies outside the public administration. Moreover, the Principal Permanent Secretary could extend the applicability of the Code to commercial partnerships or companies in which the government had a controlling interest. On the other hand, the Principal Permanent Secretary could also exempt a public employee or a board member from specific provisions of the Code.

2.12 Also specified in the 2019 Act was that the Prime Minister could amend or substitute the Code of Ethics, while the Principal Permanent Secretary could issue directives aimed at ensuring compliance with the Code. Furthermore, the Principal Permanent Secretary could, in concurrence with the minister responsible for a board or commission, issue directives with respect to such boards or commissions. Other directives could be issued by the Principal Permanent Secretary for positions deemed to be of a high-risk nature, which positions were specified in a schedule to the Act.

2.13 A significant difference between the Public Administration Act of 2009 and that of 2019 was the extent of importance assigned to the public administration values. Article 4(1) of the 2019 Act specified the following values that public employees were to uphold and promote: integrity, respect, loyalty, trust, quality, accountability and non-discrimination. These values formed the basis of the Code of Ethics appended to the 2019 Act. In this context, the 2019 Code of Ethics described the framework that defined the behaviour and actions of the public service and the wider public sector (Figure 10 refers).

Figure 10 | Adaptation of the First Schedule of the Public Administration Act (Chapter 595)

Value	Expected behaviour
Integrity	<ul style="list-style-type: none"> - act with diligence and honest - use public resources conscientiously, in the public interest - use official authority, information and resources to reach their goal and execute their responsibilities fairly, impartially and equitably - refuse any gift, payment, compensation, privilege unless being a token in nature and not intended to serve as an inducement or influence over the duties of a public employee - ensure that no conflict arises between official duties and other occupations, activities or interests that they or close relations may have - former employees bound by an undertaking shall not, for a period of up to two years after leaving public employment enter into a relationship of profit with any private enterprise or non-governmental body with which the former employee dealt in an official capacity during a period of up to five years immediately prior to leaving public employment
Respect	<ul style="list-style-type: none"> - treat others with respect and work in a spirit of co-operation and teamwork - avoiding discrimination or harassment - safeguard their own health and safety and that of others
Loyalty	<ul style="list-style-type: none"> - observe and act in accordance with the Constitution, policies and directions and implement them effectively
Trust	<ul style="list-style-type: none"> - safeguard confidential information, in particular personal data

Quality	<ul style="list-style-type: none"> - develop skills and keep abreast of changes in the area of expertise in order to bring continual improvements in the overall quality of service delivery - exercise discretion in the interpretation of rules to avoid a ‘one-size fits-all approach’ - co-ordinate activities to improve efficiency in the public administration as a whole - take steps to identify and, or address poor performance, misconduct or misuse of resources
Accountability	<ul style="list-style-type: none"> - act in a transparent manner in line with applicable laws, regulations, directives, policies and procedures - be ready to have their actions judged and give a clear explanation of their judgements, actions and behaviour to any stakeholder authorised to demand such explanation - report violations of the Code of Ethics and co-operate with investigations by any authorised person or entity - shoulder responsibility for their actions and behaviour appropriate to their posts - assign responsibilities to subordinates and monitor to hold them accountable
Non-Discrimination	<ul style="list-style-type: none"> - treating everyone with dignity and respect and not discriminate in any manner, nor act in a manner that impairs one’s enjoyment of fundamental rights and freedoms
Impartiality	<ul style="list-style-type: none"> - acting in line with Government policy, remaining loyal to the Government of the day in the execution of duties and never act in a manner which diminishes public confidence in the Government in any way - ensuring the right of every person to have one’s affairs handled impartially and fairly and that decisions are objective free from personal bias, conflict or prejudice which would favour one person over another - maintain political neutrality and ensure that any public comments, including social media, or participation in political activities, do not undermine the competence and impartiality of the public administration, bring the public service into disrepute or conflict with duties to impartially serve the Government of Malta

2.14 With the greater emphasis placed on the values that were to characterise the conduct of public employees in the 2019 Code of Ethics, a shift towards a more value-based approach was made. While certain provisions listed in the previous Codes were incorporated under these values, others did not feature as prominently, were omitted, or were captured in broader terms. However, further ethical guidance was incorporated in the Public Service Management Code (PSMC), the point of reference for all public employees in relation to all aspects of their employment with government. It is in this context that the 2019 Code

of Ethics specified that it should be read together with directives or any additional rules or regulations that may apply. Assigned the legal status of a directive under the 2009 Public Administration Act, the PSMC was binding on all public employees.

2.15 Of direct relevance to ethical considerations are the provisions relating to conduct and discipline outlined in the PSMC. According to the PSMC, public employment carried with it an obligation to the public interest that demanded that public employees attain and maintain standards of professional behaviour that fostered public confidence and trust. In this regard, the PSMC provided guidance to public employees on:

- a. fostering positive attitudes:
 - office attire
 - dealing with the public and internal clients;
- b. avoiding conflicts of interest:
 - acceptance of gifts or benefits
 - political participation and communications with the media;
- c. use of official data, information and resources:
 - access to personal data
 - retention policy for employee documents
 - use of official e-mail and internet
 - use of public resources and personal effects;
- d. expenditure on government hospitality;
- e. union activities and industrial action; and
- f. discipline:
 - delegation and jurisdiction
 - liability to disciplinary proceedings
 - withholding of Treasury pension
 - confidentiality.

2.16 In addition to the 2019 Code of Ethics and the PSMC, guidance in relation to the use of social media is provided in a separate policy. According to the policy, social media contributes in making the public service more accessible to the public, be more transparent and accountable. The policy outlines a set of principles as a guide for its appropriate use within the public service, to minimise risks to the reputation of the individual and that of the public service and to its confidential or proprietary information. In this regard, public employees were to:

- a. use social media appropriately;
- b. respect information sensitivity and share information carefully;
- c. protect individual reputation and that of the public service;
- d. provide identification and be responsible;
- e. think before engaging;
- f. respect standing laws, directives and policies;
- g. be honest and transparent; and
- h. use the public service official social media platforms diligently.

Chapter 3

Analysis of key issues

- 3.1 We compared the 2019 Code of Ethics and the PSMC to other ethical frameworks and codes to identify the most prevalent principles. Particular attention was directed to the work of the OECD and TI in this regard. Following this analysis, we decided to focus on conflicts of interest, gifts and gratuities, post-public employment, as well as reporting, monitoring and sanctioning.

Conflict of interest

- 3.2 According to TI, conflicts of interest ought to be covered comprehensively in codes of ethics, given that they are a common cause of unethical conduct by public employees. TI further specifies that codes of ethics should stipulate what would constitute a conflict of interest and outline procedures to detect and act on identified breaches. The OECD maintains that organisations ought to provide enough information about situations and conditions that would give rise to conflicts of interest. An example of how such guidance can be provided is through checklists that could aid an individual's decision-making when faced with such a situation. In addition, the OECD notes that organisations should have in place disclosure procedures for the declaration of private interests that could give rise to possible conflicts of interest. Such declarations could be scheduled at intervals in one's career, or on an ad hoc basis when such conflict is deemed to arise. According to the OECD, guidelines should also assist supervisors in deciding how declarations of possible conflicts of interest are to be acted on and what measures can be taken when such a situation arises.
- 3.3 Conflicts of interest are addressed as part of the discussion on integrity in the 2019 Code of Ethics and under the heading of 'Professional Standards: Avoiding Conflicts of Interest' in the PSMC. Both provide a general definition of what constitutes a conflict of interest and when it is deemed to arise (Figure 11 refers).
- 3.4 While the 2019 Code limits its input on the matter to this general definition, the PSMC delves into specific aspects that relate to the occurrence of conflict of interest situations. These included matters such as private work and investments, the attainment of police licences for business premises, service provided as court experts and the provision of advice to third parties, the registration of non-political clubs and the acceptance of gifts. The PSMC specified detailed procedures that were to guide public employees when faced with such situations, some of which are dealt with in further detail in this report.

Figure 11 | Definition of conflicts of interest, Code of Ethics 2019 and PSMC

<p>Code of Ethics</p>	<p>Public employees and board members shall ensure that no conflict, real or apparent arises between their official duties and any other occupations, activities or interests (financial or otherwise) that they or their close relations may have. Such a conflict arises if a public employee or board member’s ability to faithfully discharge their duties is, or can be reasonably be, called into question on account of such other occupations, activities or interests, including instances where the public employee or board member is placed in a position to be biased or is seen as potentially being biased.</p> <p>If such a conflict arises, the public employee or board member shall make this conflict known to their superiors and take such action as may be necessary to resolve the conflict.</p>
<p>Public Service Management Code</p>	<p>The Code of Ethics defines conflict of interest as a situation in which a public employee has a private or personal interest, sufficient enough to influence or appear to influence the objective exercise of his/her duties. In many cases, only the individual employee is aware of the actual or potential conflict. Therefore, it is the responsibility of the employee to inform one’s Permanent Secretary, in writing, and within a week from assuming office or upon a change in duties/circumstances.</p> <p>Consonant with professional ethics, it is the practice to avoid having in the same unit, members of the same family or persons with business ties where the relationship can impinge on the official duties and may cause potential conflict of interest.</p>

3.5 In our analysis of the 2019 Code of Ethics and the PSMC, we identified a difference in the extent of where a conflict of interest situation arises. The 2019 Code referred to other occupations, activities or interests, financial or otherwise that public employees, board members or their close relations may have, which could conflict with the duties of the public employee or board member. Emphasis is hereby made on the fact that in the 2019 Code, the public employees’ close relations are also considered in a possible conflict of interest situation. On the other hand, while the PSMC refers to the definition cited in the 2019 Code, it limits the private or personal interest to the public employee.

3.6 Although the 2019 Code of Ethics and the PSMC stipulate that conflicts of interest are to be reported, we noted certain differences between the provisions cited in each. The 2019 Code stipulates that if a conflict of interest is detected, it is to be reported by the public employee or board member to their superior and action be taken to resolve the conflict. On the other hand, the PSMC provides further details in its guidance when stipulating that should a conflict of interest arise as a result of a change in duties or circumstances, including on taking up office, the public employee shall inform the Permanent Secretary

in writing within one week from the change. This notification shall include all relevant personal, financial, business or other interest, in particular, any directorship, partnership, agency or any shareholding, any interest in any activity or business in which or with which the organisation is engaged, or any interest in goods or services recommended or supplied to the organisation. Also acknowledged in the PSMC is the practice of avoiding having members of the same family or persons with business ties in the same unit.

Gifts and gratuities

- 3.7 Policies regulating the acceptance of gifts and gratuities are often deemed an integral part of efforts at addressing the rise of conflict of interest situations. The general understanding is that public employees are expected not to ask for or accept gifts or gratuities from third parties that may condition their impartiality. However, in practice, it is not realistic or desirable, to categorically prohibit all gifts or gratuities. Certain gifts are of a token nature and their strict prohibition could lead to an adverse effect on the management of integrity, trivialising debate thereon. According to the OECD, rather than enforcing a rigid 'zero gift policy', organisations are encouraged to develop a more nuanced policy.
- 3.8 A central component of such a policy identified by the OECD relates to the establishment of a maximum value for gifts. The OECD notes that the setting of a maximum amount should be supported with additional regulations and guidelines. These additional provisions would safeguard against the potential circumvention of the maximum limit through the acceptance of several gifts below the threshold value that collectively constitute a significant amount. Furthermore, the OECD highlighted the importance of maintaining a register to record gifts of a certain value. These considerations were echoed by TI in their promotion of the setting of clear thresholds that take into account country norms and other context-dependent factors of relevance in the acceptance of gifts. TI also emphasised that codes of ethics should provide a clear definition of gifts, which understanding should encompass physical gifts as well as hospitality and services.
- 3.9 Provisions relating to the acceptance of gifts are addressed as part of the discussion on integrity in the 2019 Code of Ethics, and under the heading of 'Acceptance of Gifts or Benefits' in the PSMC. In the latter, this featured as part of the consideration of professional standards and the avoidance of conflicts of interest. A broad perspective regarding the acceptance of gifts by public employees is presented in the 2019 Code and the PSMC, with no threshold set in either document (Figure 12 refers).

Figure 12 | Definition of acceptance of gifts or benefits, Code of Ethics 2019 and PSMC

<p>Code of Ethics</p>	<p>Refuse any gift, payment, compensation, privilege or any form of solicitation unless, where gifts are concerned, they are token in nature and are not such as to serve as an inducement or influence the execution of the duties of a public employee or board member, now or in the future.</p>
<p>Public Service Management Code</p>	<p>No public employee, or any member of his/her household, should accept gifts or services or any promises of such, which could create an obligation, real or perceived. A gift can be interpreted as an inducement or a reward simply because of its intrinsic value. Therefore, only token gifts may be accepted. This principle does not apply in cases of public employees who, on the occasion of their retirement receive a gift from their colleagues.</p> <p>Gifts received from foreign dignitaries are to be handed over to the State, and when received on behalf of the State, these are to be included in the Directorate’s inventory. Any reciprocated gifts are to be given at Government’s expense.</p>

- 3.10 The 2019 Code adopted the general view that public employees and board members were to refuse any form of solicitation, including gifts, payments, compensation or privileges that could influence the execution of duties. Only token gifts were considered as acceptable under this provision.
- 3.11 The PSMC extended the limitation imposed on public employees to any member of the household, specifically excluding gifts presented to public employees by their colleagues on retirement. Also specified in the PSMC was that gifts received from foreign dignitaries were to be handed over to the State and recorded in inventory when received on behalf of the State.
- 3.12 Other provisions relating to gifts and gratuities are addressed through circulars issued by the Office of the Prime Minister. One such circular relates to the giving of Christmas gifts by public employees to their superiors, which practice is prohibited under any form.

Post-public employment

- 3.13 The movement of employees from employment in the public sector to the private sector creates a certain element of versatility in the labour market, strengthening the development of skills and competencies. However, this movement also raises concern regarding the possible use of knowledge and insights gained in public office to create an unfair competitive advantage for the private sector employer over its competitors. The movement from public

to private sector employment, often referred to as the ‘revolving door’ phenomenon, may create suspicion of improper conduct, particularly if the exploitation of inside information is possible.

- 3.14 Concerns relating to post-public employment identified by the OECD include public officials seeking future employment, post-employment lobbying, the use of insider information, as well as the re-engagement of former public employees. The OECD noted that the management of post-public employment offences was challenging as most offences are committed by former public employees and therefore beyond the control of government. Good practices established by the OECD intended to mitigate conflict of interest situations arising in relation to post-public employment identify four main problem areas. These comprise problems that arise while officials are still in public employment, problems arising after officials leave public employment, the duties of public employees when dealing with former public officials and the responsibilities of organisations that employ former public officials. Further details on the measures proposed by the OECD that address post-public employment are provided in Annex 2.
- 3.15 The issue of post-public employment is referred to in the 2019 Code of Ethics and the PSMC. The 2019 Code refers to post-public employment in considerations relating to ‘Integrity’. The Code further specifies that measures intended to mitigate risks arising from post-public employment are applicable to public employees bound by an undertaking, that is, employees in posts of a regulatory or inspectorate nature. In the case of these employees, the Code prohibits a relationship of profit with any private enterprise or non-government body, with whom they would have dealt officially in their public role during the last five years prior to their leaving public employment. This provision applies for a period of two years after leaving public employment.
- 3.16 Cited in the 2019 Public Administration Act is that the designation of the posts requiring an undertaking shall be carried out by a board composed of a chair and two members, which board is also responsible for the implementation and monitoring of such undertakings. The Board is also tasked with giving rulings on whether a relationship constituted a breach of the undertaking. Nonetheless, the NAO noted that such a ruling was to be requested by the official subject to an undertaking.
- 3.17 Also specified in the 2019 Act is that a two-year cooling-off period applies in the case of termination, resignation and retirement from public employment. Moreover, the Act further stipulates that, while the undertaking shall be considered as a condition of employment of the post it applies to, it shall remain in force if the incumbent takes up a different post in the public service. Any breaches were to result in a penalty equivalent to three years’ salary, which provision was to be specified in the undertaking.
- 3.18 Limited reference was made to post-public employment in the PSMC. In this respect, a limitation placed on former public employees through the PSMC is that they should not

accept work or engage in activities that cast doubt on their integrity, that of the department with which they were engaged, or the public administration in general. Figure 13 captures this understanding together with that specified in the 2019 Code.

Figure 13 | Definition of post-public employment, Code of Ethics 2019 and PSMC

Code of Ethics	Former public employees bound by an undertaking shall not, for a period of up to two years after leaving public employment as specified therein, switch sides by entering into a relationship of profit with any private enterprise or non-government body with which the former public employees dealt in an official capacity during a period of up to five years immediately prior to their leaving public employment.
Public Service Management Code	Former public employees must ensure that they do not accept employment or engage in activities which may cast doubts on their own integrity or that of the department/directorate/organisation in which they were previously employed or of the Public Administration in general.

Reporting, monitoring and sanctioning

- 3.19 While defining and setting standards to maintain integrity is vital, the OECD maintains that it is essential to monitor and assess the extent of adherence to such standards. The OECD distinguishes between passive and active monitoring. In passive monitoring, organisations establish channels for their members or other stakeholders to report on issues relating to integrity. On the other hand, in active monitoring, organisations take specific initiatives to search for and identify violations, taking the necessary corrective action where necessary.
- 3.20 Under the heading of ‘Accountability’, the 2019 Code of Ethics specifies that public employees shall report violations by other employees or board members. No other reference to reporting measures was made in the Code. However, we noted that reference to reporting was made in the Public Service Commission Disciplinary Regulations (Subsidiary Legislation Const. 03), which specify that misconduct shall be reported to the head of department not later than five working days after the officer becomes aware of the offence.
- 3.21 Reference to the monitoring aspect was made in the 2019 Public Administration Act. Article 17(1)b places the responsibility of ensuring management in line with standing laws and directives, as well as observance of the Code of Ethics and the public administration values, among others, on the Permanent Secretary, who is charged with the supervision of one or more departments listed in the Act. Furthermore, in terms of Article 19, the 2019 Act stipulates that within each ministry there shall be a Higher Executive Service constituted of the ministry’s senior management team who, collectively, were responsible for promoting and upholding the public administration values and the Code of Ethics, among other responsibilities. Moreover, members of the Higher Executive Service were held individually

responsible for their area of responsibility and were liable to proceedings under the Public Service Commission Disciplinary Regulations in case of failure to take steps to prevent or correct misconduct or negligence by subordinates.

- 3.22 Regarding sanctions, Article 4 of the 2019 Public Administration Act stipulates that non-observance of the public administration values would constitute grounds for disciplinary proceedings under applicable rules and procedures. The Code of Ethics, which also promotes these values, further indicates that disciplinary proceedings in the case of non-compliance could comprise the termination of appointments to boards and the imposition of certain conditions stipulated on appointment, the execution of relevant provisions deriving from any applicable undertaking, and/or the initiation of criminal proceedings in serious breaches of trust or non-compliance.
- 3.23 On the other hand, given the legal status of directives, the provisions of the PSMC are binding and enforceable in terms of Article 15(2) of the Public Administration Act. The Article stipulates that failure to comply with directives will make public officers liable to proceedings under the Public Service Commission Disciplinary Regulations. An indicative albeit inexhaustive schedule of offences and consequent penalties was also listed in the Act. The offences were categorised in terms of unprofessional or unethical behaviour, disrespectful behaviour, and neglect or dereliction of duty. Penalties ranged from a written warning to dismissal in case of minor offences, and from suspension without pay to dismissal in serious cases, including criminal conviction.

Chapter 4

Conclusions and recommendations

- 4.1 We acknowledge that collectively, the 2019 Public Administration Act, the Code of Ethics, the PSMC and other supporting documents, provide guidance that addresses the key elements of ethical conduct for public employees. In general, the Act and the Code are more oriented towards value-based guidance, whereas the PSMC provides specific rules that are to be adhered to. While we considered policies relating to conflicts of interest, gifts and gratuities, post-public employment, as well as reporting, monitoring and sanctioning, there are other aspects that are guided through the ethical framework regulating the public administration. These include the use of social media, expenditure on government hospitality, as well as the use of official data, information and resources.
- 4.2 Although we consider the ethical framework as comprehensive, we are of the opinion that there exists scope for improvement. While it is evident that the 2019 Public Administration Act, the Code of Ethics, the PSMC and other supporting documents are to be read together, the public employee may be better guided if a framework on how these documents fit with one another was provided. Another aspect that warrants review are instances where the 2019 Act and Code were somewhat incongruent with the PSMC. These incongruencies may create an element of ambiguity for public employees. We also noted that the guidance in place at times provided vague information on certain issues. In such cases, while the ethical principle was clear, definite parameters were lacking.
- 4.3 The ethical framework concerning conflicts of interest relies largely on individual integrity and self-declarations based on how the individual perceives the situation. Differences in the provisions defining the extent of where a conflict of interest situation arises may create anomalies for public employees in assessing a potential conflict. Moreover, the ethical framework can only be effective if processes are in place to follow up and act on declarations submitted by public employees.
- 4.4 We noted differences in the provisions regarding the acceptance of gifts stipulated in the Code of Ethics, which are limited to public employees, and those in the PSMC, which extend to any member of the household. This, together with the lack of a clear definition of what is meant by gifts and gratuities, and what is deemed as acceptable and what is not, create an added element of uncertainty. Our concerns regarding the absence of a definition of gifts and gratuities and the possible inconsistency that may arise in relation thereto, can be addressed through better regulation. To ensure that public employees are treated fairly and equally, we recommend that clarity is provided in what constitutes a gift and that thresholds are set. As an example, employees of the European Commission may

accept gifts worth less than a specified value without requiring any permission. Gifts that marginally exceed this value may be accepted provided permission is granted, while those with a value that substantially exceeds the threshold shall not be accepted.

- 4.5 While the 2019 Public Administration Act and the Code of Ethics usually provided general ethical guidance, capturing the principles and values that public employees were to adhere to, and the PSMC provide detailed rules, the inverse was the case in the consideration of post-public employment. Aside from this anomaly in form, we considered the substance of the guidance provided with respect to post-public employment as valid.
- 4.6 Provisions regulating the reporting, monitoring and sanctioning elements of the ethical framework that guides public employees are in place. However, their effectiveness depends on the extent to which these are enforced. This assessment forms the basis of the second part of our review of ethics in the public administration.

Annex

Annex 1 | Provisions in the Code of Ethics for Employees in the Public Sector, 1994

Values and principles

The values cited were integrity, honesty, loyalty to the public interest, fairness, conscientiousness and compassion. The principles noted in the Code were public confidence, responsibility to the government of the day and public officers' rights.

Conflict of interest

The Code defined a conflict of interest as a situation in which a public officer has a private or personal interest sufficient to influence or appear to influence the objective exercise of his or her official duties. Listed in the Code were the provisions that were to guide public officers' behaviour, including action to be taken when a conflict of interest materialised.

Acceptance of gifts or benefits

The Code stipulated when and what kind of gifts were acceptable. Further specified was that this provision did not apply only to public officers but extended to their families and partners.

Personal and professional behaviour

The Code stipulated provisions related to the performance of public officers in their day-to-day duties. Public officers also had a duty to report unethical behaviour.

Fairness and equity

Provisions under this category dealt with those instances when discretionary power was exercised by public officers.

Public comment and the use of official information

Specified in this respect was what constituted public comment, when public officers could disclose official information and what could be disclosed.

Use of official facilities and equipment

Considerations relating to the use of public resources and facilities utilised by public officers were defined.

Outside employment and termination

Cited in this regard were the provisions that were to guide public officers in their consideration of outside employment.

Political participation

Stipulated were the factors that were to be considered by public officers prior to their participation in political activities, particularly potential conflicts of interest.

Sanctions

This provision indicated that sanctions may be applied with respect to breaches of the Code, depending on the seriousness and nature of the breach. Of note was that while the introduction indicated that sanctions would be applied if the Code was breached, the provision related to sanctions was less categorical, indicating that sanctions could be applied if public officers were involved in breaches of the Code.

Annex 2 | OECD principles for post-public employment

Problems arising primarily while officials are still working in government

- Public officials should not enhance their future private sector employment prospects by giving preferential treatment to potential employers.
- Public officials should notify the appropriate government authority if they receive offers of employment that could constitute a conflict of interest.
- Public officials should give notice to the appropriate government authority of their intention to accept an offer of private sector employment that could constitute a conflict of interest.
- Public officials who have decided to take up private sector employment should, where feasible, be excused from any current duties that could constitute a conflict of interest with their likely responsibilities to their future employer.
- Before leaving government, public officials who are in a position to become involved in a conflict of interest should have an exit interview with the appropriate government authority to discuss possible conflicts of interest and, if necessary, determine appropriate remedies.

Problems arising primarily after public officials have left government

- Public officials should not use confidential or other insider information after they leave government.
- Public officials who leave government should be restricted in their efforts to lobby their former governmental colleagues and subordinates. An appropriate time limit or 'cooling off' period may be imposed.
- Public officials who leave government should be restricted in their acceptance of appointments to such entities as boards or directors of business firms or non-profit organisations with which the officials had significant official dealings before they left government. This is another instance in which a cooling-off period may be required.
- Public officials should be prohibited from switching sides and represent their new employer on a contentious issue for which they were previously responsible after they leave government.

Duties of current officials in dealing with former officials

- Current public officials should be prohibited from granting preferential treatment, special access or privileged information to former officials.
- Current public officials who engage former public officials on a contractual basis to do essentially the same job as the former officials performed when in government should ensure that the hiring process has been appropriately competitive and transparent.
- Former public officials who are re-employed after receiving a redundancy payment should usually be required to return the payment.

Responsibilities of organisations that employ former public officials

- Private firms and non-profit organisations should be restricted in using officials who have left government to lobby former colleagues, acquire confidential information or switch sides.

2019 - 2020 (to date) Reports issued by NAO

NAO Work and Activities Report

April 2019 Annual Report & Financial Statements 2018 - Works and Activities

NAO Audit Reports

March 2019 Performance Audit: A Review on the Contract for Mount Carmel Hospital's Outsourced Clerical Services

June 2019 Joint Audit: An Evaluation of the Community Work Scheme

July 2019 Cooperative Audit: Are adequate mechanisms in place for the designation and effective management of Marine Protected Areas (MPAs) within the Mediterranean Sea?

October 2019 Information Technology Audit: The Effective use of Tablets in State, Church and Independent Primary Schools

October 2019 Follow-Up Reports by the National Audit Office 2019

November 2019 Report by the Auditor General on the Workings of Local Government 2018

November 2019 Performance Audit: An analysis of issues concerning the Cooperative Movement in Malta

December 2019 Report by the Auditor General on the Public Accounts 2018

December 2019 An investigation of contracts awarded by the Ministry for Home Affairs and National Security to Infinite Fusion Technologies Ltd

January 2020 Performance Audit: Community Care for Older Persons

February 2020 Performance Audit: Assessing the Public Transport Contract and Transport Malta's visibility on the service

March 2020 Information Technology Audit: ICT Across Local Councils

March 2020 The disposal of the site formerly occupied by the Institute of Tourism Studies