The conduct by which MPs behave matters in a parliamentary democracy, because ultimately it helps achieve the best government in the interests of the people. Associate Professor of Monash University, Dr Ken Coghill, discusses the types of conduct and factors that affect how an MP conducts themselves, plus the various codes and their effectiveness.

As an MP, do you need a code to tell you what is ethically right or wrong? Very few think they do, but if that is so, why are significant numbers of MPs accused of unacceptable conduct and why have so many Parliaments considered, proposed or adopted codes?

Ultimately conduct matters because it helps achieve the best possible government in the interests of the people – the citizens in the democratic system.

This is because our democracies are complex systems founded in the relationships between the people, Parliament and other institutions.

Democracy works best when those relationships are trusting relationships. That is, relationships in which the people trust the Parliament to be acting in their best interests. If the people feel that the Parliament is addressing their concerns, they are more likely to support the parliamentary system, giving it credibility and legitimacy. Where there is such trust, there is a freer exchange of views, beliefs and ideas, more creative policy making and more innovative solutions to problems facing any community.

Parliamentary system integrity

However, Parliament is itself a system – a key sub-system within the broader system of government. As an MP knows, it is not some giant, mysterious “black-box” that can only be judged by its outside appearance. It is the sum of its “parts” – its individual members (MPs) and various internal organizations of MPs such as committees and political groupings (i.e., parliamentary political parties). Whether the people see Parliament as trustworthy largely depends on how MPs conduct themselves and how this is reported to the public. Questionable conduct by even a small number within a large Parliament can be enough to taint perceptions of the whole Parliament.

What types of conduct are seen as misconduct? Some of the following examples deliberately “test the envelope” to help us think through just what we mean.

Clearly, breaches of the criminal law are unacceptable and (at least in Westminster-heritage Parliaments), MPs are liable for prosecution in the normal way. A code is unnecessary for enforcement in cases such as bribery, theft or other misappropriation, or assault. In the same way, courts have found MPs to be public officers who are liable for conviction for the common law offence of misconduct in public office. Illegal actions are regarded as separate from unethical conduct.

As an MP, you are a community leader and are expected to follow higher standards of ethical conduct than the minimum of compliance with the law – common law and statutory provisions. We see this in conduct that...
attracts public attention and which leads to MPs being sanctioned or resigning office. In summary, these may include: conflict of interest; misuse of entitlements; personal behaviour; fiduciary duty; and discharge of a public trust.

Conflicts of interest – potential, perceived, or actual

Conflict of interest arises when an MP is faced with a decision which could either advance the public interest or some special interest but not both. For example, if funds were allocated to a project in which the MP had no personal financial interest but which served the public interest at least as well, or even better, than funding of a different project to be constructed by a particular contractor through which the MP would profit personally. The MP would have two interests in conflict: an obligation to serve the public interest and an incentive to seek personal advantage. Sometimes the special advantage is not direct but may be to a family member, a friend, a business partner or a group with whom the MP has or seeks a relationship. The “relationship” may be as simple as seeking political support for re-election or appointment to a higher office.

MPs involved in fundraising for personal or party campaign funds face particular risk of conflict of interest. It is difficult to avoid the perception, even if not the reality, that donors to political parties hope for favourable treatment when decisions are made affecting their own interests. Likewise, individuals paying exorbitant amounts to attend meals with leading MPs do so in the expectation of privilege access to those MPs and the chance to influence policy or even specific decisions affecting their interests. Where directors authorize donations, legally they exercise their judgment that to do so is in the best interests of that firm, necessarily ahead of the general public interest and thus putting the MPs in a starkly obvious conflict of interest. Whilst MPs may claim that they act ethically and they are not influenced by such conflicts, evidence of human behaviour in other occupations (e.g. scientific testing of medicinal drugs) suggest that people do succumb to such influences all too often, albeit unconsciously.

As an MP, you are expected to avoid not just actual conflicts of interest but perceived and potential ones too.

Fair – but to whom?

A slightly different question rarely asked in our Westminster tradition concerns the very nature of representation. We accept that the Parliament’s basic functions include representation, legislating and scrutiny of the political Executive i.e. the government. Accordingly each individual MP has corresponding roles. In our tradition, representation goes beyond acting as a trustee of the constituency in debating and voting on legislation; it includes taking up grievances with the government on behalf of constituents.

Not all democratic systems accept this as ethical. In Executive presidencies, the president and his or her Executive (ministers or other title) are deliberately separated from
the Parliament by the constitution. MPs do not have a Westminster-type relationship with the Executive. In at least some such presidencies, MPs believe it is unethical to favour some constituents by taking up their grievances with the president’s Executive, thereby giving those citizens an advantage not available to all.

Does that issue have relevance in Westminster-heritage systems? Perhaps we could consider cases in which travel resource limits do not enable an MP to meet and hear the grievances of constituents remote from the capital city. As an MP, is it ethical to advantage some constituents over others who have limited access to their MP whether due to location or political allegiance?

Allowances, entitlements
How as an MP you have used entitlements to allowances is a common reason for claims of unethical behaviour. Here we are thinking of the rights to receive money for purposes related to duties as an MP, including in the constituency, or to be reimbursed for funds so spent, in both cases from public funds. Whether the MP is right to use or claim public funds for carrying out responsibilities as an MP is the key test for these entitlements. It is clear cut if the MP participates in an event because of his or her constituency, subnational or national role and status.

Less clear and therefore demanding better ethical judgement are cases such as the costs of maintaining a second home close to Parliament in order to attend sittings, committee meetings and other capital city activities, if the MP lives too far away to commute from home. Claiming the costs of uncommonly expensive housing or house maintenance, such as infamously dredging the moat at a then UK MP’s estate, may be within the “black letter” of entitlement rules but is unlikely to be seen as reasonable or ethical.

Whether and to what extent personal behaviour is seen as unethical varies widely. Local culture plays a part and that may change over time. We have seen instances of personal behaviour in private life cause severe embarrassment, or worse, in some countries whilst revelations of similar behaviour in another country or at another time have passed with barely a ripple.

These first three types of unethical conduct are relatively obvious and straightforward. Some other types of conduct raise deeper issues.

A fiduciary duty?
Fiduciary duty requires that someone who has power to make decisions affecting others should not put their own interests above those of the people affected. The principle is widely applied in the duties of, for example, company directors. In the public sphere, historically it obliged the British monarch to put the interests of British subjects ahead of the interests of the royal family. Although the Glorious Revolution, Bill of Rights and subsequent democratic reforms tended to supplant that fiduciary...
duty, we should ask: does the very notion of democratic rule imply that the Parliament and the elected representatives who fill its benches have a fiduciary relationship with the people? In other words, if democracy means rule which is responsive to the preferences of the people, each citizen having an equal voice, then should the decision-makers entrusted with making decisions act consistently with the best interests of the society as perceived by its citizens? If this argument is accepted, then it is unethical, but not illegal, for MPs to put special interests ahead of the public interest in the legislative and other decisions they make in Parliament or as members of the political Executive.

This argument could be extended further, to include choices between the public interest having regard to the preponderance of scientific or other evidence or populist decisions which carry emotional appeal and associated electoral support. Here we must ask: is this a question of ethics or more properly a matter for democratic political discourse? Who should answer that question: those with vested interests in the answer (MPs, or more particularly, a parliamentary majority) or the citizens and if the latter, at the ballot box? If it is the MPs, does a code have a role?

Public trust?
The exercise of a public trust is another, deeper issue. In a similar manner to the argument that Parliament has a fiduciary duty to the citizens, so it can be argued that it exercises a public trust in that it acts as a trustee to protect matters which are shared in common by the community, such as public lands, waterways and the atmosphere. Again in this case, in making decisions about the use or management of such an item, the Parliament and its MPs are expected to put the public interest ahead of special interests.

However, current litigation in USA takes this further and seeks judicial support for a positive responsibility to protect crucial natural resources from harm, in accordance with the Public Trust Doctrine. Atmospheric Trust Litigation (ATL) launched in many States and federally by teenagers and young adult supported by Our Children's Trust, argues that state Legislatures (Parliaments), governors and federal agencies should be compelled to protect the atmosphere from pollution that is causing global warming and climate change. ATLs have been upheld in some courts and continue to be fiercely contested. At its heart is an ethical question: do MPs have an ethical responsibility to take positive action to prevent harm or should this be a matter for political discourse?

Why codify?
These examples set the scene to consider whether it is enough to rely on you as an MP to know, understand and practice the ethical standards that you are expected to uphold in your conduct both individually and collectively as a member of the parliamentary institution. Alternatively,
should these standards be codified i.e. written into a code and subject to some form of sanction if breached? In either case, should you as an MP be offered support in developing your capacity to recognize ethical issues and apply your own unique values to addressing ethical issues (ethical competence).

Let us first deal with codification. It has an ancient lineage. The 1215 Magna Carta was a codification of the relationship between the monarch and the British people. It continues to be a foundational code establishing the accepted conduct of the monarch. Its principles have contributed to the incremental evolution of our parliamentary democratic system.

If we think of it from a systems perspective, we recognize that systems operate more effectively – lead to better outcomes – where there is a moderate level of regulation within the system.

A society (social system) without internal controls to restrain power tends to degenerate into severe inequality, dominated by oligarchies (i.e. by a small number of very powerful individuals or groups and large numbers of powerless, disaffected subjects) and lesser overall well-being. Of course the reverse can be as bad, albeit different: a society with strong, oppressive internal controls tends to rigidity, inflexibility and incapacity to respond innovatively to society's problems.

Some will argue that very few MPs behave unethically and therefore they do not need a code to avoid wrong-doing. Whilst it may be true that overall few offend, the record shows that some do, that sometimes large numbers do and that instances and even what seem like outbreaks of unethical conduct are unpredictable. A few examples make the point: cash for questions (UK, 1995); abuse of entitlements (UK, numerous MPs; pre 2010 elections); inappropriate claims of entitlement (Australia, numerous MPs and Senators, 2012); diversion of public funds to political party via government contracts (Canada, 1993 to 2003); improper intervention in regulation of broadcasting (Canada, 2013); numerous, diverse breaches of fund-raising disclosure and other provisions (USA).

The abuse of entitlements by British MPs was especially widely reported and it is difficult to believe that any MP anywhere could have been unaware of them and of the clear indication that the behaviour was unacceptable.

These breaches demonstrate that despite MPs own values and their near-certain knowledge of breaches elsewhere, breaches remain all too common. It is important to note that some MPs enter a parliamentary career with very little experience in dealing with the types of ethical issues discussed here and hence limited relevant skill.

Just as the continuing occurrence of criminal acts necessitates criminal law, so measures are necessary to help define unethical conduct, guide MPs in their observance and provide sanctions for breaches. These measures may take a number of forms including programmes to help MPs develop their ethical competence, advisory services, codes, provisions for investigation of alleged breaches and provisions for sanctions.

Ethical advice
Ethical programmes for MPs are unlikely to succeed if designed as instruction on conduct that is acceptable or deemed unethical. Rather programmes should aim to facilitate the development of a culture of integrity amongst MPs and should help each MP to develop ethical competence i.e. to develop his or her own values, to use them to recognize issues requiring ethical judgement and to apply moral reasoning to resolving those issues.

As an MP, advice from a trusted, disinterested source can be invaluable. In Australia that is available from the St James Ethics Centre, completely confidential and cost-free. However many MPs prefer a service directly linked to the Parliament, such as the Parliamentary Commissioner for Standards (UK), the Conflict of Interest and Ethics Commissioner (Canada), and the Queensland Integrity Commissioner (Parliament of Queensland, Australia). They are not empowered to investigate or make findings on alleged breaches of a code.

The trust and value placed on the services of such an adviser is based on the total confidentiality of any conversations they have with MPs.

Function of codes
Codes serve a different function. They represent the Parliament’s definition of the limits of acceptable conduct. A summary of several recent codes was prepared by Deirdre McKeown of the Australian Parliamentary Library and published in 2012.

 Those and other codes have a range of titles reflecting differences in their objectives and provisions e.g.: Members of Parliament code of conduct (UK); Code of Conduct [forthcoming 2014], Lok Sabha, Code of Conduct, Rajya Sabha (India); Conflict of Interest Code for Members of the House of Commons (Canada); Code of Conduct with regard to Financial Interests, South Africa; Rules of the House of Representatives Code of Official Conduct, and the Senate Code of Official Conduct (USA); requirement for disclosure of pecuniary interests provided for in the Standing Orders of the House of Representatives (New Zealand); proposed Members of Parliament Code of Conduct (Australia). At a supra-national level, the EU has the Code of Conduct for Members of the European Parliament with respect to financial interests and conflicts of interest (EU).


Although codes do vary, almost all include provisions for the avoidance of conflicts of interest. There is usually a requirement to disclose assets and sources of income, which are recorded in a register and made public. The variations between codes provide opportunities for Parliaments to learn from each other’s experience.
and adapt the better features of code design to their own culture and practice.

Codes of ethics or codes of conduct are liable to become a dead letter (i.e. ineffectual) if they serve only as a guide to unacceptable behaviour and there are no sanctions for breaches.

There are several different ways of dealing with allegations of a breach of a code. In some instances the Presiding Officer (Speaker or President of the Chamber) has authority suspend an MP for a short period or to “name” the MP following which it is customary for a resolution to be carried to suspend the MP for one or more days. These cases usually relate to conduct during proceedings.

In more serious cases of misconduct, it is common for allegations to be made to the Presiding Officer and referred to an all-party committee (e.g.: Privileges Committee; Committee on Ethics) for investigation and report. Where sanctions are available, these systems fail if the culture of the committee or the Parliament encourages partisan considerations to prevail over applying principles of justice. Failure to apply sanctions in cases of clear breaches risks rendering a code ineffectual.

Sanctions are applied by the Parliament itself (if bicameral, the MP’s chamber) on the recommendation of the committee. The Parliament’s decision is final, due to its sovereign status.

Enforcement of codes by the Parliament is fundamental to the effectiveness of codes in ensuring that a Parliament fulfils its role within and in support of the broader democratic system.

Whilst proven breaches are infrequent, parliaments do apply sanctions where allegations have been proven to its satisfaction. For example, U.K. MPs were suspended without pay in the “cash for questions” scandal, and a U.S. Congressman was forced to submit to a humiliating admonition in front of the House of Representatives. In a somewhat different case, the Massachusetts State House recently expelled a Member after he was jailed for six months after a criminal conviction unrelated to his role as a legislator, and so was unable to take his seat.

However, sanctions are the final resort, and apply only where all other steps to ensure ethical conduct has failed.

**Protecting the parliamentary system**

An MP’s greatest protection against breaches is his or her ethical competence. Most are elected with considerable life-experience and well-developed understanding of how to recognize ethical issues and resolve them. However, reports of apparent breaches demonstrate that not all do. Some Parliaments have implemented induction or professional development programmes to assist MPs develop their ethical competence. Further, a measure of ethical competence, developed by Uppsala University’s Professor Kavathatzopoulos, can be used to help MPs better understand their own capabilities. Parliaments may find it desirable to bring in specialist expertise to assist with such programmes and some may find it preferable for political groupings to provide them.

Parliaments and their democratic systems stand to deliver better outcomes for their people where each MP is supported through professional development and codes which facilitate ethical conduct by all MPs.