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ORIGINAL PAPER

# Non-audit Engagements and the Creation of Public Value: Consequences for the Public Interest

**Bertrand Malsch**[1] · **Marie-Soleil Tremblay**[2] · **Jeffrey Cohen**[3]

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**Abstract**
In this article, we extend the research on the public interest to non-audit engagements performed by accounting firms and public accountants. Our thesis is that non-audit engagements, as private goods, require a distinct approach to the public interest than auditing. We suggest that a public value perspective can be used conceptually to provide substantial criteria for designing non-audit engagements conducive to public value creation and greater accountability. We illustrate the applicability and consequences of a public value perspective by analyzing and contrasting the decision of two judicial opinions deciding whether Deloitte and the lead partner of a consulting engagement failed to act in the public interest in engineering the sale of collapsed British carmaker MG Rover. We advocate for a significant change in ethical codes of conduct by defining public interest obligations, not only in terms of professional attributes, but also in terms of outcomes. Our approach also suggests a requirement regarding planning a non-audit engagement, including establishing a public value proposition detailing the planned nature of the engagement, and extent of the assessment of the intended public value creation. We discuss the aspirational function of codes of conduct to provide accountability other than in terms of technical output, and to maintain the legitimacy and purpose of the profession.

**Keywords** Accounting firms · Public accountants · Public interest · Public value

## Introduction

The public interest has garnered considerable scrutiny in the audit literature, motivated by the steady flow of accounting scandals and the impression that firms and public accountants, in their role as auditors, too often fail in their duty to protect and serve the public (Coffee, 2019). By contrast, adherence to public interest obligations in non-audit engagements has received much less scholarly attention, as if this requirement primarily concerned the provision of audit services. For instance, consulting work is most often discussed tangentially to the public interest, as a threat to the professionalism of auditors by generating commercial pressures and conflicts of interest (Donelson et al., 2020), but only rarely in relation to its own accomplishments.[1] Yet, public interest work is not the exclusive domain of auditing. Codes of conduct represent protecting and serving the public as a general obligation that applies to all types of professional activities performed by public accountants. More generally, as Mahoney, McGahan, and Pitelis (2009, p. 1036) emphasize, in pointing out the interplay between private and public interests, "a large range of private actions have substantive consequences for the public." Accordingly, the plethora of private services offered by accounting firms, including corporate finance and taxation, market transactions, strategy, sustainability assurance, or human capital are potentially subject to significant public interest consequences

✉ Bertrand Malsch
bertrand.malsch@queensu.ca

Marie-Soleil Tremblay
Marie-Soleil.Tremblay@enap.ca

Jeffrey Cohen
cohen@bc.edu

[1] PricewaterhouseCoopers/Tom O'Neill Fellow of Accounting, Smith School of Business, Queen's University, Kingston, Canada

[2] École Nationale d'Administration Publique, Quebec, Canada

[3] Carroll School of Management, Boston College, Chestnut Hill, USA

[1] Audit regulators have shown increasing concerns about the recent "revival of large consulting practices at the Big 4" (Donelson et al. 2020). Since 2012, "[Big Four] firms' combined revenue from consulting and other advisory work has risen 44% compared with just 3% growth from auditing" (Rapoport 2018).

and obligations. Thus, our primary objective in this paper is to extend the research on the public interest to non-audit engagements performed by accounting firms and public accountants.

The public interest is a notion difficult to grasp normatively. As Bozeman states (2007, p. 2), "[W]ho could even think about solving a policy problem or administering in the public interest now that we know almost all problems have multiple, competing stakeholders seeking to maximize conflicting values?" Consistent with this pessimistic realization, public interest obligations are typically expressed in terms of skills and behaviors, on which it is much easier to find consensus, rather than in terms of collective ends, where irreconcilable values and interests are more likely to emerge. Accordingly, codes of conduct have reduced the public interest to a short list of professional attributes: integrity, objectivity, confidentiality, and competence (Dellaportas & Davenport, 2008). While these attributes are important safeguards for the quality of work, they provide no guidance for assessing the impact of work. The shared and collective benefits of firms' and public accountants' engagements are therefore presumed but rarely substantiated. Such presumption is less of a concern for auditing than for non-audit work. Considered a "public good" (Stewart, 2006), the benefits of a high-quality audit for the public are relatively evident in reducing agency costs and ensuring a higher level of comparability between companies (Jensen & Meckling, 1976). In contrast, non-audit engagements are "private goods," the immediate benefit of which not only goes to a limited number of agents, but the outcome of which may also be detrimental to a large portion of the public (Mahoney, McGahan, & Pitelis, 2009). High-quality consulting potentially does not lead to enhanced collective benefits. Our overarching question of interest can therefore be stated as follows: How can firms and public accountants fulfill public interest obligations in non-audit engagements?

While recognizing the plurality of definitions of the public interest (Baud, Brivot, & Himick, 2019) and the "multiplicity of interpretations" (Dellaportas & Davenport, 2008, p. 1080), our argument is predicated on a somewhat commonsensical viewpoint. According to the *Oxford English Dictionary* (2019), "public" means "relating to the people as a whole," while "interest" means "the relation of being objectively concerned in something by having a right or title to a claim upon or a share in." By connecting these two definitions, the public interest then emerges as something that all people have the right to share in. Thus, the problem of defining the public interest then shifts from the term itself to identifying the "something" that best fulfills that definition.

Drawing on the seminal work of public administration scholars (Bozeman, 2007; Moore, 2014), we discuss the creation of "public value" as the "something" that all people should have a right to share in as the result of non-audit engagements. The public value perspective initially has emerged as an important line of research to address the question of the worth of the product of government activity and its contribution to society (Witesman, 2016). It has developed along two distinct conceptual approaches, one "focusing primarily on the inputs of the public value chain" (Jorgensen & Bozeman, 2007), in terms of collective justifications for action, while the other "focusing centrally on the outputs" (Benington & Moore, 2011), in terms of evaluable results. In this paper, we link the two approaches to propose a comprehensive integration of the public value perspective for non-audit engagements.

We illustrate the potential relevance and applicability of a public value perspective by considering the consulting role of Deloitte in the sale of collapsed British carmaker MG Rover. More specifically, we analyze and contrast two judicial opinions of the Tribunals of the Financial Reporting Council (FRC) in the UK deciding whether Deloitte and the lead partner of the engagement failed to act in the public interest in engineering the structure of the business transaction. The role of judicial opinions, in "both creating and defending rights" constitutes a significant source of influence in shaping the field of business ethics (Oppenheimer, LaVan, & Martin, 2015).

Our primary contribution is to highlight the nature of non-audit engagements as private goods requiring a distinct approach to the public interest. We suggest that a public value perspective can be used to provide substantial criteria for designing non-audit engagements conducive to greater public value creation and accountability. On a practical level, we advocate for incorporating the importance of collective ends in codes of conduct by defining public interest obligations not only in terms of professional attributes, but also, more critically, in terms of outcomes. We also question whether the diversity of public accountants' professional activities can be governed by the same set of principles and rules. The implication of our analysis is transposable to a variety of non-audit work, such as corporate finance or capital advisory services, in which firms and public accountants may be at risk of overlooking the likelihood of "private interests coevolving with public interests endogenously" (Mahoney et al., 2009, pp. 1037–1038).

## Non-audit Engagements as Private Goods

In contrast with auditing services, non-audit engagements are fundamentally "private goods that can be divided up and sold because they have easily defined property rights" (Stewart, 2006, p. 330). They must be bought for consumption and their ownership and use is limited to the organization or individuals who purchased them (Morrell & Clark, 2010). For instance, sophisticated tax planning services

offered to multinational corporations represent the private provision of private goods that are clearly not "a shorthand signal for shared benefit at the societal level" (Morrell, 2009, p. 543). However, private goods are not immune from public interests. Their production is often largely dependent on a variety of global public goods (i.e., "nonexcludable goods across borders, generations, and population groups"), including "knowledge flow, health, peace, security, and a clean environment" (Mahoney et al., 2009, p. 1035). They may also have substantive consequences for the public. Pharmaceutical discovery and development of a vaccine, even when entirely supported by private funds, has a clear public interest component (Folkers & Fauci, 1998). Mahoney et al. (2009, p. 1039) provide the example of the initial stabilizing interventions of financial markets, following the subprime crisis, that "was designed by the Federal Reserve in the public interest and was facilitated by Goldman Sachs' private action." From this point of view, non-audit engagements benefiting from existing public goods or involving private actions with potential implications for public welfare are unlikely to be "independently private" (Mahoney et al., 2009, p. 1035).

Professional codes of conduct constitute an important source of normative authority to catalyze the alignment of non-audit work with the public interest. Protecting and serving the public is generally formulated as an obligation that is not limited to auditing. For instance, according to the code of the AICPA (2014), "members [of the profession] should act with integrity, guided by the precept that when members fulfill their responsibility to the public, clients' and employers' interest are best served." Similarly, CPA Australia (2010) states in its preamble to the ethical requirements that "[A] distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest."

While they are clearly recognized, the content of public interest obligations remain poorly defined, leaving considerable room for interpretation and application (Baud et al., 2019). In the absence of much clarity and precision, the complexity of the public interest has become increasingly simplified and codified by reference to a short list of professional attributes reflecting a mixture of individual virtues and quality assurance (i.e., principles of integrity, objectivity, competence, etc.) (Dellaportas & Davenport, 2008). As noted, this codification is less of a concern for audit engagements than for non-audit work. Audit goods possess important features of public goods (Stewart, 2006).[2] In particular, they are non-excludable and non-rivalrous, meaning that when properly executed, audit output are inherently valuable to the public.[3] Audit quality can therefore be smoothly blended with the public interest "expressed as a function of auditor competence/expertise (the likelihood of detecting fraud) and auditor independence/objectivity (the likelihood of reporting accounting failures)" (Knechel, Thomas, & Driskill, 2020, p. 17). Public interest service becomes a question of individual skills, technical training, and organizational design aimed at mitigating the risks of not detecting and/or not reporting material misstatements or frauds. Of course, the existence of commercial pressures and quality problems suggests the existence of structural deficiencies in addressing these risks (Donelson et al., 2020). However, the intended benefit for the public inherent in the audit oversight function provides at least a solid backdrop for a sense of collective purpose and critical evaluation.

A comparable approach focusing on quality and task execution is much less applicable to non-audit engagements. Acting with integrity, competence, or diligence, even in the best-possible manner, is unlikely to offset the outcome of a non-audit engagement that is fundamentally undesirable or detrimental to the public. For instance, PwC's involvement as a consultant to the Dos Santos family in Angola, alongside other high profile consulting firms such as BCG or McKinsey, has not been criticized for a perceived lack of objectivity or competence in providing advice, but because the purpose of helping the family of a dictator manage his assets blatantly conflicts with the interests of the Angolan public (Cotterill, 2020). Likewise, tax planning services have come under scrutiny not because of technical or professional failures in the actual delivery of the service, but because of a perception that by enabling tax optimization or tax evasion, accounting firms have been continuously acting against the spirit of the law by contributing to depriving the people from a significant amount of resources (Sikka, 2008). Not all consulting or tax engagements are subject to the same level of controversy and publicness. However, the less standardized nature of non-audit work and the fact that the terms of reference and the expected outcome are privately determined by clients require a much greater ability for firms and public accountants to figure out the public's point of view and not let technical standards or market forces be the arbiter of the public interest through the pursuit of technical excellence and economic activity. In the next section, we examine the notion of "public value" as a conceptual ground on which to build an evaluative framework for integrating the public interest in non-audit engagements.

[2] As further specified by Stewart (2006, p. 329): "Audit output, of which a key feature is auditor independence, has many of the characteristics of a public good (analogous to clean streets), but in contrast to other public goods, all costs are borne by the audit client."

[3] See Roberts (2009) about the fundamental limits of transparency and accountability, or Power (2021) for a recent critique of the audit society.

## Public Value Perspective

Two schools of thought have emerged in the public value literature. The first one, promoted by Bozeman (2007), emphasizes the values relevant to public sector work and which are mobilized by public managers and organizations as collective justifications for action. As further explained by Witesman (2016, p. 9), "the reason the term value is invoked in this approach is that some of these justifications for the rationalization of action may be valued more than others." Accordingly, public value is created when "more valued justifications" (i.e., public values) are met through decisions and actions, "where these are some combination of input, process, output, and outcome measures" (Bryson, Crosby, & Bloomberg, 2014, p. 449). The creation of public value involves therefore identifying and ordering justifications reflecting a high degree of normative consensus "about the rights, benefits, and prerogatives to which citizens should be entitled" and/or "the principles on which governments and policies should be based" (Bozeman, 2007, p. 13). A variety of sources are generally considered in evidence of such justifications, including legislations, constitutions, regulations, policies, jurisprudences, or opinion polls (Jørgensen & Bozeman, 2007).

By contrast, public value is also understood by a second stream of literature more literally as "what the public values" (Benington, 2011, p. 31), which "can be very different from some notions detailed in a constitution, or written down in human rights charters" (Meynhardt, 2009, p. 206). Accordingly, the term value captures "a concept of worth, utility, or goodness […] with higher levels of value being good and lower levels of value being bad" (Witesman, 2016, p. 10). Rather than identifying collective justifications and preferences at the outset, the focus is more on the end result, in terms of needs and well-being, as experienced and perceived by the impacted public. Creating public value therefore requires a strategy not only in terms of performance output (i.e., what the organizations' services or activities produce), but also in terms of outcomes (i.e., the value and impact for the public made by the outputs; Mills-Scofield, 2012). Hence, a dialogue between service producers and the impacted public is essential to enable a summative evaluation to be conducted and to determine a sense of public satisfaction and contribution of higher quantities of public value than others.

The two perspectives on public value(s), despite having a distinct conceptual origin, are complementary rather than conflicting (Bozeman & Johnson, 2015). As Witesman (2016, p. 25) observes: "public value and public values are indelibly linked: public value sees the fruition of the seeds sown by public values, and evaluates those fruits based on the criteria established by public values." Similarly, we maintain that public interest obligations and public value obligations are indelibly linked.[4] To carry substantive implications, public interest obligations should translate into the creation of public value. More specifically, we propose that to integrate a robust public interest dimension into non-audit engagements, each engagement should be contingent on the development of a public value proposition demonstrating intended public value creation around two interrelated dimensions (see Fig. 1): (1) Identifying collective justifications for actions supporting the engagement; (2) Outlining the expected benefits of the engagement from the public's viewpoint and establishing post-engagement evaluative mechanisms.

Pursuing such public value propositions is unlikely to be a perfect exercise. One can easily figure out the numerous issues of measurement, multi-subjectivity, and analytical distinctions that may undermine the identification and assessment of public value(s) (Witesman, 2016). Thus, like most ethical frameworks, a public value perspective commands a sense of modesty by acknowledging the moral plurality of today's society (Baud et al., 2019) and recognizing the inherent limits of what can be measured. Clearly, identifying the entire universe of public values or predicting the exact amount of value that could be created as a result of a non-audit engagement would be both a pointless and elusive exercise. However, such epistemological and methodological pitfalls should not serve as an excuse for turning the search of a public value(s) proposition into a unicorn (Mahoney et al., 2009). First, there are a number of collective justifications for action that are widely agreed upon. For instance, normative ideals of professionalism, democracy, or economic and social development are typically seen desirable by a very large portion of the public in societies, and reflected in a great variety of public institutions (Jørgensen & Bozeman, 2007). Second, public values cannot be expected to be viewed positively by all individuals in society, especially if one of these values diminishes an individual's perceived rights (Bozeman, 2007). Accordingly, the fact that public consensus cannot be totally achieved is not necessarily a problem. Third, measuring and evaluating public perceptions is not always a complicated task, especially in cases of significant public value destruction when public frustration is strong, and when accountability is much needed. Fourth, writing public value propositions would certainly constrain the competitiveness of firms. However, greater selectivity in the client acceptance decision could result in better quality clients and less exposure to reputational risks and legal

[4] Although governments and state-related organizational actors perform a special role "as guarantor of public values," Jørgensen and Bozeman (2007, pp. 373–374) recognize that the latter "are not the exclusive province of the government, nor is government the only set of institutions having public value obligations."

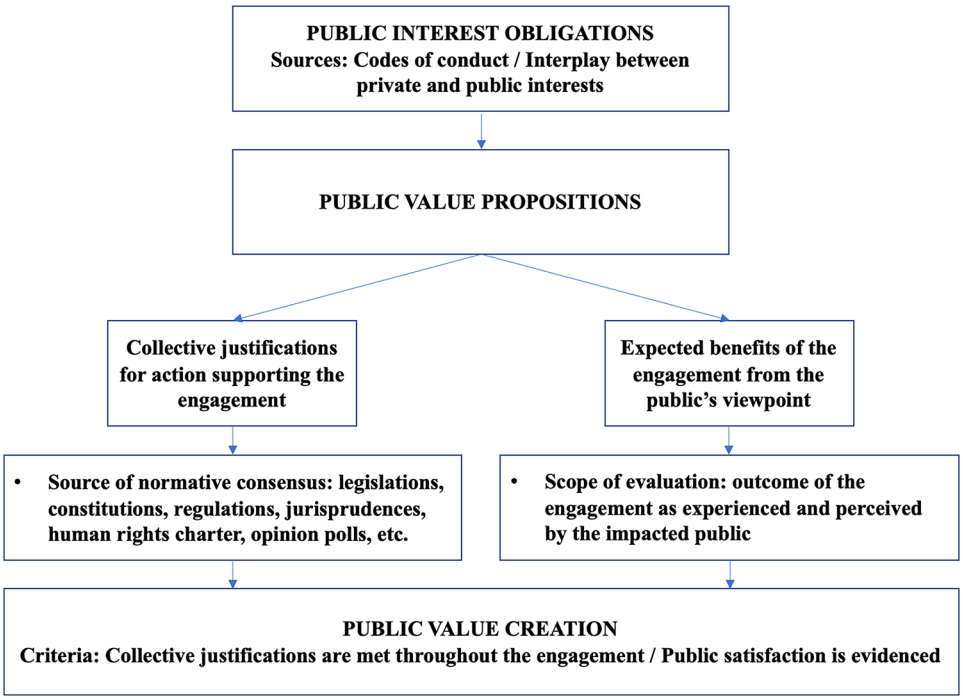


**Fig. 1** Integrating public value perspectives into non-audit engagements

liabilities. Thus, "maybe a fuzzy concept of public value is as good as it gets" (Rutgers, 2015, p. 40), but it is maybe good enough to get a standard for actions with effective public interest implications. Indeed, as we show next, in examining the role of Deloitte in the sale transaction of collapsed British carmaker MG Rover, the application of public value criteria could have significant implications for holding firms and public accountants accountable for their non-audit work.

## Methods

### Methodology

The method we use to examine the potential impact of a public value perspective draws on a content analysis of two selected judicial opinions from the Tribunals of the Financial Reporting Council (FRC). Judicial opinions can be defined as "detailed repositories that show what kinds of disputes come before courts, how the parties frame their disputes, and how judges' reason to their conclusions" (Hall & Wright, 2008, p. 90). Accordingly, "qualitative analysis is particularly well suited for analyzing the types of evidence contained in legal opinions" (Linos & Carlson, 2017, p. 214). Similarly, Webley (2010, p. 926) observes that "the case-based method of establishing the law through analysis of precedent is in fact a form of qualitative research using documents as source material." Following this method, "a scholar collects a set of documents, such as judicial opinions on a particular subject, and systematically reads them, recording consistent features of each and drawing inferences about their use and meaning" (Hall & Wright, 2008, p. 64). Although the authors' judgment determines which cases best illustrate the legal issue at stake, it is typically "the factual and analytical richness of judicial opinions that establish their substantive […] importance" (Hall & Wright, 2008, p. 90). The two selected judicial opinions were written in 2013 and 2015 on events that occurred in the early 2000s. Both the dates of the opinions and the facts are of limited significance. Tribunal proceedings, discovery mechanisms, and appealing procedures are generally lengthy processes, so it is common for a final decision to be reached many years after the facts have occurred (Voigt, 2016). The contemporaneity of the facts are secondary factors in accounting for the impact or the relevance of a decision. The majority of landmark decisions are relatively ancient, as the doctrine of stare decisis in common law jurisdictions implies putting more weight on past decisions to judge present events (Kempin, 1959).

Three reasons guided our selection of the judicial opinions. First, the case illustrates a consulting engagement carried out by public accountants as advisors in a controversial business transaction that was the subject of significant press coverage. For instance, a search on the Factiva database shows more than 80 press articles in 2013 referring to the decision of the trial Tribunal, including national titles (i.e., the Guardian, Financial Times or Telegraph), global news agencies (i.e., Reuters) or the specialized press (i.e., the accounting age). The case is therefore relevant to our research focus on the area of public interest and the role

of public accountants as consultants. Secondly, although the facts of the case are unique, they are not "extreme" or "deviant" (Cooper & Morgan, 2008). The type of financial engineering that was mobilized and the alleged damages that resulted are not unprecedented. Accordingly, the case "enable[s] logical deductions" (Cooper & Morgan, 2008) about a much broader set of consulting engagements in which public accountants are often involved and where the public interest coevolves with private interests. Third, the appeal decision overturning the initial decision of the trial Tribunal provides a rich sequence of counter arguments in which the differences of opinion are finely crafted, generating more content and inferences to derive meanings and interpretations for our analysis. As observed by Linos and Carlson (2017, p. 214): "Court decisions alone offer unusually extensive and in-depth perspectives on law, on the actions of various stakeholders, and on the societal context in which these operate." Thus, following Oppenheimer, LaVan, and Martin (2015, p. 513), our focus is more on the "examination, categorization and interpretation of the reasoning used to determine that decision" than on the decision itself. In other words, our goal is not to determine who was legally right or wrong between trial and appellate Tribunals, but to illustrate the differences in reasoning between the two panels of judges and consequences resulting from the consideration of public value-related criteria.

## Judicial System

In 2016, the FRC became the "competent authority" for the accountancy profession in the United Kingdom under new legislation which came into force following the EU Audit Regulation and Directive (FRC, 2020). The disciplinary power of the FRC and the functioning of specialized Tribunals are both detailed in the adoption of the Accountancy Enforcement Procedure (AEP).[5] The FRC Tribunals are composed of either three or five individuals drawn from a Panel of Tribunal members. The AEP stipulates that Tribunals must include a majority of non-accountants and the Chair of the panel should be a qualified lawyer "of suitable experience." To ensure the independence of Tribunals, panel members cannot be an officer or an employee of the FRC.

Tribunal rules are consistent with the standards of procedures of natural justice. The public has free admission to attend court hearings. Witnesses can be called and asked to present oral evidence and they can also be subject to cross-examination. The person or the firm against whom the complaint has been made is entitled to be present and legally represented in all hearings and given the chance to respond to any allegation and to give evidence. The sanctions ordered by the Tribunals may vary from a simple reprimand to a fine.[6] A respondent can "leave to appeal" against an adverse finding and/or order imposed by the Tribunal on certain conditions. If leave to appeal is granted, an ad hoc appeal Tribunal is then formed. Appeals Tribunals are established in the same manner and subject to the same constraints as the Tribunals. An appeal is a review and not a rehearing, meaning that the introduction and analysis of new evidence is usually not permitted.

## Case Description

In 2000, when BMW realized that it had made a strategic mistake in acquiring MG Rover, the last remaining British car manufacturer, the German company attempted to find a buyer. After one failed attempt, BMW settled on a business venture named Phoenix Venture Holdings, which was set by four former MG Rover directors, who bought the British manufacturer for the symbolic sum of £10. BMW also agreed to a £427 million 49-year interest-free loan to enable the buyers to take over the company. MG Rover ended up collapsing in 2005 with the loss of 6000 jobs after racking up debts of £1.4bn.

Despite the downfall, the four Phoenix owners withdrew from MG Rover, before it failed, significant amounts from the £427 million loan initially secured. In this respect, two corporate finance projects engineered by Deloitte proved highly instrumental to support the debateable transactions. First, "Project Platinum related to the purchase of BMW's loan book or amounts due to MG Rover under existing finance contracts from customers who had bought vehicles. BMW originally planned to sell the loan book directly to MG Rover – which had £41 m in an account as collateral. The Phoenix Four instead bought the loan book and sought to keep the profits for themselves. The second, Project Aircraft, was designed to generate returns on tax losses incurred by MG Rover, which could be offset against profits made elsewhere in the company. [Instead], the Phoenix Four used the tax losses from MG Rover for their own company in which MG Rover had no interest" (Warnoll, 2015). Phoenix owners considerably benefitted from the transaction (around £10 M) and Deloitte was paid a consulting fee of around £2 M. Following several years of investigation, the *Accountancy and Actuarial Discipline Board* eventually pressed 13

[5] Tribunals dealing with allegations of professional misconduct predate the creation of the FRC. The tribunals that ruled in 2013 and 2015 on Deloitte's implication in the MG Rover transaction were governed by rules similar to those currently stated in the AEP.

[6] FRC fines to accounting firms jumped from 44% in 2019 with a record high of £24.3 M.

formal charges against Deloitte and Mr. Einollahi[7] for their professional implication in the two projects. Two of them are particularly relevant to our focus[8]:

> Charge 1: Between 1 January 2001 and 31 December 2001, [Deloitte and Mr. Einollahi] failed adequately to consider the public interest before accepting or continuing their engagement in relation to the Project Platinum (in particular as corporate finance advisers to the Phoenix Four). [emphasis added]
>
> Charge 8: Between 1 January 2001 and 31 December 2001, [Deloitte and Mr. Einollahi] failed adequately to consider the public interest before accepting or continuing their engagement in relation to the Project Aircraft (in particular in representing and providing services to the Phoenix Four, PVH and Phoenix Venture Leasing Limited. [emphasis added]

## Judicial Opinions Analyses

### Report of the trial Tribunal

*Decision* The Tribunal finds the Respondents (i.e., Deloitte and Mr. Einollahi) guilty of both charges as they "placed their own interests ahead of that of the public." Deloitte receives £14 million record-breaking fine for ethical breach. Mr. Einollahi is fined £250,000 and banned from practicing for 3 years.

#### Analysis

At the outset, the Tribunal rejects the suggestion from the Respondents that public interest obligations may depend on the work "that is being done." The ICAEW Guide to Professional Ethics "applies to all members of the ICAEW and to all work." Consulting work and auditing are therefore subject to the same ethical obligations[9]:

> [By contrast to audit work] It has been urged on us that in corporate finance work and tax work the only duty that a member owes to his client provided that he acts with integrity and that the public interest is not a matter that needs to concern him. We do not accept this.

Having established the existence of public interest obligations, the Tribunal goes on to demonstrate the character of MG Rover as a "public interest company." Acknowledging that "there was huge interest in this car manufacturer," the demonstration looks in particular at the significant economic consequences from the transaction for the public resulting of MG Rover being one of the major local employers:

> There was great support for the Group from the public after it had been sold by BMW. There was a march for MG Rover through Birmingham. This was in support of the business. There was talk by the Phoenix Four and others about the savings of a major car manufacturer in the West Midlands and the saving of a large number of local jobs. There was a great deal of political will to bring about a successful transaction and thus save a large number of jobs.

The Tribunal notes that Deloitte had also clearly identified the high degree of publicness attached to MG Rover. A press release from the firm stated at the beginning of the engagement that the completion of the transaction would be a "fantastic outcome for the Midlands and the motor industry," being the "news that many businesses in the Midlands have been waiting and hoping for."[10] In a letter sent to the government, requesting financial support from local tax authorities, Mr. Einollahi detailed strong economic benefits for the public[11]:

> Rover currently employs in the region of 1,400 people directly and it is estimated that between 24,000 and 35,000 jobs in the West Midlands indirectly depend on the successful transformation of Rover. We find that the purpose of writing the aforesaid was to emphasise that this was a public interest company. In cross-examination it was put to Mr Einollahi that the reasons the letter was written in those terms was to appeal to the Revenue on public interest grounds. He agreed that that was the case.
>
> […]
>
> From the above it appears to us that the Respondents were clearly aware of the public interest.

Cognizant of their obligation and of the interplay between public and private interests at stake, the Tribunal rules that the defendants should have disengaged from the projects. Depriving MG Rover from significant economic resources "to which it was entitled" violated public interest service[12]:

[7] Mr. Einollahi was a Public Accountant and the lead partner at Deloitte in charge of the two projects.

[8] *The Executive counsel to the financial reporting council v. Deloitte & Touche, Mr Maghsoud Einollahi*, Report of the trial Tribunal [Trial] at paras 6 and 7.

[9] Ibid, at para 37.

[10] Ibid, at para 46.

[11] Ibid, at para 48 and 49.

[12] Ibid, at paras 193 and 194.

> It was particularly important in the case of both Project Platinum and Project Aircraft that the public interest be considered because of the concern of inter alia the Government, employees, other employers, particularly in the West Midlands, creditors and the general public about the continuation of large scale car manufacturing in the Midlands
>
> […]
>
> The importance of considering the public interest is further emphasized because both Projects resulted in very large sums of money that might have been utilized for the benefit of the MG Rover Group in the running of this business instead, being used for the benefit of individuals, including the Phoenix Four.

In sum, consistent with a public value perspective, the Tribunal rejects limiting its assessment of the public interest to a mere determination of professional conduct based on professional attributes, that is, to a question of "acting, [objectively], honestly and with integrity to the client."[13] Instead, the assessment is articulated in a way consistent with a public value approach. On the one hand, the right of the public in the Midlands to continue to enjoy economic and social prosperity through the presence of MG Rover is identified as the primary collective justification that should have guided the purpose of the consultation work. In this respect, the disingenuous conduct of the engagement and the design of the two projects reflect a significant deviation from this public value. On the other hand, while evaluating the benefits of the engagement from the viewpoint of the public, the Tribunal finds a significant disvalue (i.e., the selling of the loan book and the amount of the transferred tax losses) for multiple impacted stakeholders. Quite evidently, the "general public" did not appreciate the outcome leading to the weakening of MG Rovers' financial position. Thus, far from the initial promise of a "fantastic" outcome for the Midlands, the Tribunal's opinion evidences a process of public value(s) destruction combining a loss of justification and a lack of satisfaction.

## Report of the Appeal Tribunal

### Decision

The appeal is allowed against the findings of the Respondents having failed adequately to consider the public interest. Only five charges against Deloitte relating to Project Platinum are upheld. The fine is cut to £3 m. The fine imposed on Mr. Einollahi from £250,000 to £175,000 and the three-year ban from the profession is reversed.

### Analysis

To determine "how the public interest is to be taken into account by an accountant," the appeal Tribunal focuses on the following statement from the ICAEW Guide to Professional Ethics:

> The term public interest relates to matters of public concern, not public curiosity. Public concern extends to the concerns of clients, government, financial institutions, employers, employees, investors, the business and financial community and others who rely upon the objectivity and integrity of the accounting profession to support the propriety and orderly functioning of commerce […] The public confidence is rooted in the objectivity auditors bring to their work.[14]

The appellate judges observe that "this paragraph seems to equate the requirement of objectivity and integrity with the public interest responsibility." Thus, while recognizing that MG Rover was "in the eye of the public," they strongly reject the proposition that the specific status of MG Rover as a public interest entity commanded a higher level of obligation towards the public[15]:

> Of course, maintenance of MG Rover as a successful manufacturer could be said to have been of public concern, and the livelihoods of many people depended on it. This undoubtedly added to the importance of the Appellant's work, and doubtless the risk of any deficiencies in their work incurring public opprobrium. But, we ask rhetorically, how specifically should such considerations have affected the work of the Appellants?

Responding to its own question, the Tribunal argues that "whatever the work on which they are engaged or which they are asked to undertake," firms and public accountants should remain subject to the same obligation. Working on the "affairs of a family company" or the transactions of a national car manufacturer does not make any difference on the extend and nature of the obligation. As long as corporate finance consulting services are provided with "integrity, honesty, objectivity, and competence," the public interest obligation is met.[16] Consistent with its focus on the

[13] Ibid, at para 22.

[14] *The Executive counsel to the financial reporting council v. Deloitte & Touche, Mr Maghsoud Einollahi*, Report of the Appeal Tribunal [Appeal], at para 71.

[15] Ibid, at para 79.

[16] Ibid, at para 78.

performance output of the engagement and the absence of consideration for the outcome for the impacted public, the Tribunal does not "identify anything wrong with something that took profits or assets out of MG Rover."[17] The transfer of tax losses is interpreted as being no different ethically from "salaries, bonuses and dividends" which "all take profits or assets out of a company, but it is not regarded as misconduct for an accountant to be party to their lawful payment." To reinforce its view, the Tribunal submits the hypothetical scenario of a "predatory" foreign company seeking to acquire a plant, which could result in the destruction of domestic jobs, and seeking professionals (i.e., accountants and lawyers) to help structure the transaction[18]:

> The predator approaches UK lawyers and accountants for advice and other work for the purpose of the takeover. The UK lawyers undoubtedly are free to accept the instructions provided the proposed takeover and the work involved are lawful, that their proposed instructions involve no dishonesty or want of integrity, and they are competent to carry out the engagement. The Guide to Ethics requires the accountant to take account of the public interest before accepting the engagement, but the question is how and to what extent? How is the public interest to be ascertained? Is it the maintenance of a free market? Should the accountant assess whether the threatened factories have a real expectancy of continuation under their current ownership? Should they assess the possibilities of a friendlier takeover? Should they consult the government of the day? We regard the suggestion, if it be made, that the accountants are not free to accept the engagement without considering the vague question whether the takeover is in the public interest as absurd.

Thus, the reasoning of the appeal decision stands in stark contradiction to a public value approach by rejecting any sense of collective purposes as criteria for determining the fulfilment of public interest obligations. The above scenario echoes the same argument made by Deloitte's counsel that social or political implications should be excluded from the scope of defined professional responsibilities. The public interest is a concern only when non-audit work is being relied upon "to support the propriety and orderly functioning of commerce."[19] Firms and public accountants should not have to provide justifications for their decisions and actions "by assuming the role of the market, or regulators, or government and deciding which bidder in a corporate transaction has the public interest on their side."[20] As to the possibility of a summative evaluation of the engagement, it is contested and mocked as unrealistic.

Overall, the differences in reasoning and consequences between the two decisions are striking. From a legal perspective, the trial Tribunal's broad interpretation of the public interest obligation is mainly teleological, reading the provisions of the Guide to Professional as a function of its general purpose. In contrast, the appeal Tribunal takes a much more literal approach to statutory interpretation, focusing more on the plain meaning of the statements and being reluctant to go beyond the terms expressed. The former interpretative approach typically allows for more creativity and flexibility in the legal reasoning, while the latter's rationality is fundamentally more constrained and conservative (Frank, 1947). As mentioned, our objective here is not to engage in a comparative discussion of the legal merits of the decisions.[21] In both decisions, the legal logic can be substantiated. Moreover, formal legal truth is not necessarily always consistent with ethical truth (Summers, 1999). Our point is rather to highlight how a public value approach to public interest in the context of a non-audit engagement may result in a much more stringent form of accountability to the public than the more traditional approach centered on the possession of core professional attributes of objectivity, competence, and integrity. The reasoning of the trial Tribunal also illustrates the enforceability of a public value(s) framework as a standard of action with potentially effective liability implications. Despite some conceptual fuzziness, it is possible to translate public value obligations into a substantive test. By contrast, the reasoning of the appeal Tribunal supports our argument regarding the potential professional and moral impunity that results for firms and public accountants when applying an ethical framework that provides no (or little) evaluative guidance regarding the outcome of non-audit engagements on the impacted public, leaving then the means justifying and legitimating the ends.

[17] Ibid, at para 81.

[18] Ibid, at para 82.

[19] Trial, at para 55.

[20] Trial, at para 55.

[21] The contrast between the two decisions reflects different moral frameworks. The first decision is consistent with a utilitarian approach in which the morality of an action depends on its consequences for the overall well-being (i.e., the consequences for the public), whereas the second decision reflects a deontological approach in which an action is considered morally acceptable because of some characteristic of the action itself (i.e., the application of professional attributes) (Xu and Ma 2016).

## Discussion and Conclusion

In this paper, we present the notion of public value as a conceptual lens to encourage more systematic and empirically informed studies in the area of public interest with respect to the conduct of non-audit engagements. More specifically, we argue that non-audit engagements should be evaluated not only in terms of professional attributes, but more critically and challengingly as public value propositions. As our analysis of the legal decisions in the case of Deloitte's role in the collapse of MG Rover illustrates, the application of a public value(s) framework can make a significant difference in holding firms and public accountants accountable for the outcome of non-audit work. We do not advocate a "hard" version of the public value perspective which would equally apply to all non-audit engagements. It is clear that the potential of value creation or destruction can vary significantly from one type of non-audit work to another. However, it may not be appropriate to establish clear dividing lines between work subject to value-creation obligations and work exempt from such obligations. Such divisions would raise too much complexity and provide undesirable opportunities for gamesmanship (Spalding & Oddo, 2011).

Instead, approaching the public value perspective as a general principle embedded in a variety of decision criteria would ensure a greater degree of penetration into practice. For example, prior to client acceptance decisions, professional accountants and firms may assess the risk factor of public value destruction by asking themselves whether they would feel comfortable publicly sharing the specific nature of the engagement and if profit is the sole motivator. They can also assess whether their professional expertise is mobilized on the basis of an appropriate long-term business relationship and within the boundaries of applicable professional attributes. Finally, the criteria of collective benefits, from a social and economic point of view, for the impacted public created by the engagement is relevant in order to conclude that the decision to move forward is justified. Like any form of control, decision criteria can be bypassed, ignored, or dismissed (Tremblay, 2012). However, they can contribute to establish more demanding forms of accountability.

The potential of public value perspective must be assessed with modesty. Even its academic champions have no difficulty recognizing some of the inherent difficulties associated with its core concepts and the challenge to derive practical and implementable policy making implications (De Bruijn & Dicke, 2006). However, normative or methodological modesty should not come at the price of intellectual stagnation and inaction (Mahoney et al., 2009). As observed by Bozeman and Moulton (2011, p. 368): "the fact that public value or public interest are ideals is not a sufficient justification for ignoring them or assuming they cannot be systematically studied." In this regard, the report of the trial Tribunal demonstrates the potential relevance of public value perspective as a powerful disciplinary device.

The appeal decision indicates that not everyone agrees with the thesis of a broader conceptualization of the public interest and the burden placed on public accountants to subject the content of non-audit work to the changing and contested nature of social and political norms. After all, public accountants are not elected politicians. However, the idea of a demarcation between professional expertise and politics is also a persistent illusion. The political nature of firms' and public accountants' activities has been widely documented empirically and conceptually in the audit and accounting literature (Gendron, Cooper, & Townley, 2007; Malsch, 2013). Also, one should not underestimate the problematic impression, reflected in the abundant research and professional literature on auditors' failures, that the public interest obligation pertains more to the field of auditing than to the provision of non-audit services. In this regard, one of the concluding rhetorical questions raised by the appeal Tribunal is particularly disturbing: "Can it really be the case that accountants approached by the client have to consider the public interest (and to determine what it requires) in deciding whether to accept the engagement?" Our argument unambiguously suggests that not only can this be the case, but it should be. Expecting public accountants to use their professional judgment to evaluate the benefit (risk) of creating (destroying) public value before making a decision to accept a non-audit engagement should not be considered a shocking revelation or a "novel concept," as ironically noted in a *New York Times* editorial reacting to the decision from the trial Tribunal (Norris, 2013).

One should also strongly resist the temptation of a false sense of pragmatism or realism to discount the public value perspective. As shown in our analysis, the source and scope of professional obligations remains a matter of interpretation. From this point of view, the notions of "integrity," "objectivity," or "competence" are not necessarily easier to interpret or define than the concept of "public value." They are simply more culturally and cognitively entrenched in the profession's way of thinking about misconducts and disciplinary actions. Furthermore, Tribunals across many jurisdictions have a long history of turning general principles and obligations, such as for instance the fiduciary "duty of care,"[22] into practical tests, substantive criteria, and normative assessments through the constitution of a rich

[22] In common law jurisdictions, a duty of care is the "legal obligation imposed on individuals and corporations to take reasonable care to avoid causing damage […] There is a duty to take care in most situations in which one can reasonably foresee that one's actions may cause physical damage to the person or property of others" (*Oxford Dictionary of Law*, 2015).

jurisprudence (Lydenberg, 2014). One should not be afraid therefore of promoting conceptual innovation as fundamental "conditions of possibility" for reforms even when they remain open to unprecise, complex, or potentially conflicting interpretations (Marcon & Panozzo, 1998). Fortunately, not everything needs to be conceptually and operationally perfect to advance and implement new ideas, particularly in ethical matters. As noted by Spiller (2000, p. 156), "perfection is not a realistic expectation" in the process of improving and assessing ethical business practices. In this respect, the Code of Ethics of the American Institute of Certified Planners (AICP, 2016) provides an interesting example of a social and political service to the public interest being explicitly defined and recognized in terms of outcome and purpose. Of course, urban planning is quite different than non-audit work, but the impacted public (i.e., "the people as a whole") is potentially the same. According to this Code, planners "shall give people the opportunity to have a meaningful impact on the development of plans and programs that may affect them," and "shall seek social justice by working to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of the disadvantaged." In a recent argument for change following the publication of the Brydon report on the future of the audit profession in the UK, the ICAEW suggested as the "first principle that auditors should be able to articulate, uphold and communicate the profession's social and economic purpose," while acknowledging that "a vibrant and socially relevant profession can inspire and attract responsive and talented people who want to do work that has meaning and broader societal value" (ICAEW, 2020). No doubt the exact meaning of social justice, the determination of the needs of the disadvantaged or the identification of broader societal value can be widely debated. However, if one accepts the primacy of these principles in shaping professional responsibilities, then one must live with a certain tolerance for the fuzziness that comes with any idea of purpose and value. More generally, the aspirational function of codes of conduct should be acknowledged. Aspirations, such as contributing to social justice or societal value, may not always be perfectly clear and actionable, but their underlying idealism is essential to provide accountability other than in terms of technical output, and maintain the purpose and legitimacy of a profession.

Despite some inherent limitations, a public value perspective offers a productive way to take the consequences of aspirations seriously in the performance of non-audit work. One of the main practical implications of our approach concerns the content of codes of conduct. Most professional textbooks do not offer a very generous definition of the public interest beyond traditional professional attributes, making it more difficult to infer the existence of broader public value obligations. We therefore recommend that codes of conduct explicitly recognize such an obligation, especially in terms of outcomes, to provide a more substantial disciplinary and legal basis for the oversight of non-audit work. In the same reformist spirit, when considering the difference of nature between audit goods and non-audit goods, we question whether these two types of goods can be governed by the same code of conduct. The criteria of objectivity and integrity may be broad enough to capture a large set of problematic behaviors or attitudes that can undermine the quality of the audit output. But, they are much less effective in the context of non-audit engagements. Our argument also indirectly raises the issue of teamwork involving both accountants and non-accountants, and the risk of dilution of public interest obligations. In such context, should the professional obligation of public accountants extend by default to other members of the engagement team? On the contrary, should we differentiate the responsibilities of consultants according to their professional membership? Last, but not least, our approach suggests a requirement regarding planning a non-audit engagement, including establishing a public value proposition detailing the planned nature of the engagement, and extent of the assessment of the intended public value creation and the potential risks of public value destruction.

To conclude our analysis, we would like to offer three different avenues for future research. First, we need more field work to document and understand the ethical implications of non-audit work performed by public accountants. In particular, the involvement of large accounting firms as providers of advisory services to governments and public sector organizations, where the risks of public value creation and destruction are inherently high and visible (Baudot, Roberts, & Wallace, 2017), deserves greater consideration. Behavioral research can manipulate elements such as the degree of uncertainty in transaction costs and the degree of institutional pressures, to isolate which factors and combination of factors may most influence public accountants' adherence to public value criteria. Second, as illustrated in our case, overarching theories of justice and legal reasoning have important practical consequences on the determination of professional responsibilities towards the public. How judges interpret the law, and/or how public accountants defend themselves against the law are questions that require much more attention if we are serious about making substantive changes. The judiciarization of politics—the use of courts and legal means to promote moral and ethical agendas—is undoubtedly one of the most important phenomena in contemporary society (Hirschl, 2008), and has been largely overlooked by accounting scholars. Finally, our article suggests a larger research agenda, which goes beyond the case of public accountants, concerned with the moralization of consulting firms, who behave like a quasi-profession (Muzio, Kirkpatrick, & Kipping, 2011) without being subjected to any oversight. If the public interest implications

of consulting cannot be resolved via appeals to professional codes of conduct, researchers will need to focus their attention of the design and implementation of a political solution.

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## Declarations

**Conflict of interest** We have no conflicts of interest to disclose.

**Ethical Approval** This work does not involve the participation of human subjects and/or animals.

**Informed Consent** No informed consent was required for the writing of this article.

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