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As pillars of probity, ASIC pair should know better

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Whether Christine Holgate, the CEO of Australia Post, acted properly in distributing designer watches to the senior executives who had secured a major contract will be determined by the inquiries that are now under way. But whether she acted wisely is another question.

And given their role as the guardians of corporate integrity, the same question must arise with even greater force about ASIC's chairman, James Shipton, and his former deputy, Daniel Crennan QC, who resigned this week in the wake of revelations about relocation expenses.

The contrast between the cases is obvious. Although the watches were expensive, their cost pales in comparison to the remuneration of the executives who received them and the value of the contract at stake. Had an equivalent sum been awarded as a cash bonus, it might well have passed unnoticed.

Moreover, the gesture was not for Holgate's benefit; rather, the gains went entirely to the gifts' recipients. Assuming the decision was consistent with Australia Post's remuneration policies, it is hard to see how it could have been improper.

Matters are altogether more serious in respect of Shipton and Crennan, who benefited substantially from the impugned payments. While it is true that the amounts have been repaid, it is every bit as true that they ought to have attracted greater and more expeditious scrutiny — not least from the beneficiaries themselves.

To make things worse, under ASIC's management accountability regime, Shipton was (and remains) the "accountable authority" with undivided responsibility for upholding and implementing ASIC's values and code of conduct. Even if the procedural flaws were due to others, his standing and authority are damaged — possibly fatally — in a way Holgate's are not.

But, while those differences are significant, and deserve to affect the outcome, there should, in both cases, have been a greater awareness of the distinctive features of the public sector and of the special duties they impose on those who hold public office.

The key elements of those features are hardly new; on the contrary, they were identified more than 2000 years ago by Cicero, the Roman statesman and philosopher, in works that can rightly be regarded as the first — and still rank among the greatest — studies of public office. Exerting an influence that stretches from Saint Augustine and Machiavelli, through Melancthon, Locke and Montesquieu, to Mill and Gladstone, they remain at the very heart of our system of government.

The Athenians had never clearly distinguished the state as a collection of citizens from those individual citizens chosen to fill public offices and to perform public functions, that is, the government. Cicero not only introduced that distinction; he also introduced the distinction between public offices, which were permanent and impersonal, and the individuals who happened to hold them for a period of time.

Public offices, Cicero argued, were public in a three-fold sense. They were, first of all, owned "by the public", which merely vested them as a temporary trust in their holders. Secondly, they existed "for the public", serving only its interests and purposes, rather than "the private interests of those to whom they had been entrusted".

And third, they were to be performed "in public", where they could be seen and judged, instead of being shrouded in the "privacy" of private places.

As a result, officials should constantly feel that they exercised their functions "in a theatre where all the world was the audience" and in which they "wore the mask" of the state,

defining its appearance. Under that unflinching gaze, their duty was “to uphold the state’s honour and dignity” not just by “refusing to gratify their own passions and desires” but also by avoiding the scandals that inevitably “introduce into the civil service (the) dangerous element (of) dissension and party strife”.

In Cicero’s mind, fulfilling that duty required each official to “examine himself continually” with a view to assessing whether a course of conduct would, when exposed to the harshest investigation, “win the people’s support (by having) the dignity to impress and the usefulness to please”.

It is that test, which resonates through the ages, that the ASIC payments failed to meet. Shipton may well have acted entirely in good faith; but a moment’s thought should have cast serious doubt on whether it was acceptable to bill taxpayers more than \$100,000 for private tax advice. Equally, it is hardly unreasonable to expect Crennan, who would be familiar with how harsh public scrutiny can be — having seen plenty of it during the Hayne royal commission — to be wary of conflating relocation expenses with ongoing income supplementation once relocation had occurred.

The fact that the agency they were to lead demands the highest levels of probity from those it regulates ought merely to have underscored that need for extreme prudence. But Holgate too could have exercised greater caution. Rewarding the executives’ achievement may well have been appropriate. However, the ostentatious luxury associated with \$4000 watches sits uneasily with what Australians expect from an entity that they not only own but which secures substantial benefits from that ownership — not least a monopoly over the letter mail it has fought to defend, taxpayers’ unlimited liability for any losses it incurs (including as a result of its community service obligations) and bespoke arrangements protecting it under the national competition law.

That said, it may be that there was, in each of those cases (and probably many others), some ambiguity about exactly where the limits lie. Because it increases the risk of malfeasance, that ambiguity makes it all the more important that the government adequately fund and empower the Australian National Audit Office.

It also means, however, that Scott Morrison was right to request a review of the relevant regulations. And it would be even better if that review re-examined overall remuneration at the top of the public service, including its dependent agencies. With top pay more than trebling since 2000 — vastly outstripping earnings growth both in the lower ranks and in the economy as a whole — a thorough review is long overdue.

What Cicero would have made of those issues we cannot know. But we do know that he thought the defence of public integrity could never rely on rules alone; rather, it depended, first and foremost, on virtue — or to put it more prosaically, on good judgment, a strong moral compass and most of all, common sense.

And we also know that as the Roman republic crumbled, he came to believe that the waning of common sense — of a shared understanding between citizens about how the world should work — was the surest symptom of an erosion in society's values and an unerring predictor of a collapse in public trust.

Two millennia later, no one has said it better.