



# Handling ethical problems in counterterrorism

An inventory of methods to support  
ethical decisionmaking

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EUROPE



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The research described in this document was prepared for the Research and Documentation Centre (Wetenschappelijk Onderzoek- en Documentatiecentrum, WODC) on behalf of the National Coordinator for Counterterrorism and Security at the Netherlands Ministry of Security and Justice (Ministerie van Veiligheid en Justitie).

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# Preface

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This document presents the findings of a study into methods that can help counterterrorism professionals make decisions about ethical problems. The study was commissioned by the Research and Documentation Centre (*Wetenschappelijk Onderzoek- en Documentatiecentrum*, WODC) of the Dutch Ministry of Security and Justice (*Ministerie van Veiligheid en Justitie*), on behalf of the National Coordinator for Counterterrorism and Security (*Nationaal Coördinator Terrorismebestrijding en Veiligheid*, NCTV). The research team at RAND Europe was complemented by applied ethics expert Anke van Gorp from the Research Centre for Social Innovation (*Kenniscentrum Sociale Innovatie*) at Hogeschool Utrecht. The study provides an inventory of methods to support ethical decision-making in counterterrorism, drawing on the experience of other public sectors – healthcare, social work, policing and intelligence – and multiple countries, primarily the Netherlands and the United Kingdom.

The report introduces the field of applied ethics; identifies key characteristics of ethical decision-making in counterterrorism; and describes methods that can help counterterrorism professionals make decisions in these situations. Finally, it explores how methods used in other sectors may be applied to ethical decision-making in counterterrorism. It also describes the level of effectiveness that may be expected from the various methods. The report is based on a structured literature search and interviews with professionals and academics with expertise in applied ethics.

This report will be of interest to counterterrorism professionals who are responsible for strengthening ethical decision-making in their organisation. It may provide some insights for professionals who seek new methods to help them make ethical decisions. The findings may also be relevant for other professionals, if complemented by a review of decision-making characteristics in their sector of specialism.

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# Nederlandse samenvatting

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## De context van dit onderzoek

Professionals die betrokken zijn bij de bestrijding van terrorisme moeten regelmatig beslissingen nemen waarbij een afweging tussen verschillende morele waarden nodig lijkt, zoals privacy, vrijheid, veiligheid en mensenrechten in bredere zin. Zulke ethische afwegingen maken een essentieel onderdeel uit van de dagelijkse beroepspraktijk van terrorismebestrijders. Dit vereist vaardigheid en routine in het nemen van dergelijke beslissingen. Tot op heden bestaat er echter geen overzicht van methoden of instrumenten die contraterrorismeprofessionals zouden kunnen ondersteunen in het omgaan met ethische dilemma's in hun beroepspraktijk.

Het Ministerie van Veiligheid en Justitie heeft daarom opdracht gegeven de methoden tot besluitvorming bij ethische vraagstukken en hun mogelijke toepassing in terrorismebestrijding te inventariseren. Het WODC (Wetenschappelijk Onderzoek- en Documentatiecentrum) van het ministerie heeft de onderzoeksoopdracht verstrekt, op verzoek van de NCTV (Nationaal Coördinator Terrorismebestrijding en Veiligheid). Het doel was niet zo zeer om specifieke methoden aan te bevelen voor verdere ontwikkeling en implementatie in Nederland, maar vooral om tot een overzicht te komen van bestaande methoden voor het omgaan met ethische vraagstukken.

Voor dit overzicht is gekeken naar methoden die in verschillende sectoren worden gebruikt: de militaire sector, inlichtingen en veiligheidsdiensten, politie, terrorismebestrijding, gezondheidszorg en sociaal werk.<sup>1</sup> Daarbij is vooral de situatie in Nederland en het Verenigd Koninkrijk onderzocht, en in mindere mate die in Frankrijk. Om de context te schetsen waarin een bepaalde methode toegepast zou kunnen worden hebben de onderzoekers geprobeerd de meest voorkomende ethische vraagstukken bij terrorismebestrijding te achterhalen. Voor het overzicht van de methoden en voor het beschrijven van de meest voorkomende ethische vragen is gebruik gemaakt van een gestructureerde literatuurstudie en interviews met experts. De beschikbare literatuur over methoden die gebruikt worden om professionals te ondersteunen bij de besluitvorming bij ethische vragen was in de gezondheidszorg veel uitgebreider dan in de andere sectoren. De

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<sup>1</sup> Er bestaat een zekere mate van overlap tussen deze sectoren: bij terrorismebestrijding wordt gewerkt met inlichtingen(diensten) en met de politie. Maar ook defensie, de gezondheidszorg en sociaal werk kunnen soms bij terrorismebestrijding betrokken worden. In dit onderzoek worden deze sectoren als aparte beroepsgroepen behandeld.

expertinterviews hielpen een overzicht van methoden te creëren over alle sectoren en gaven de onderzoekers ook toegang tot informatie die niet gepubliceerd is of zich niet in het publieke domein bevindt.

### **Een overzicht van typen methoden die besluitvorming bij ethische vraagstukken kunnen ondersteunen**

Op basis van literatuurstudie en interviews worden zes typen methoden<sup>2</sup> onderscheiden:

1. **Preventieve methoden**, die de kans op het voorkomen van een bepaald moreel probleem of situatie waarin niet ethisch besloten wordt proberen te verkleinen;
2. **Professionele ontwikkelingsmethoden**, die de individuele competentie ontwikkelen en cultiveren om ethische vragen te herkennen, erop te reflecteren en er vervolgens naar te handelen;
3. **Flankerende methoden**, die professionals met toegankelijke hulpmiddelen, zoals een ezelsbruggetje of checklist, aan de wettelijke, beleids- en normenkaders van hun organisatie helpen herinneren;
4. **Leiderschapsmethoden**, die de ethische praktijk in een organisatie versterken, bijvoorbeeld door voorbeeldgedrag en richting geven door leidinggevendens;
5. **Adviesmethoden**, die advies geven voor de omgang met ethische vraagstukken;
6. **Toezichtmethoden**, die ervoor zorgen dat er onafhankelijk toezicht is op ethische beslissingen.

Elk hierboven genoemd type methode omvat verschillende specifieke instrumenten. Zo omvatten adviesmethoden bijvoorbeeld de volgende, niet uitputtende reeks instrumenten: ondersteuning door ethiekconsultants, juridisch adviseurs, collega-professionals of ethische commissies.

De instrumenten die door professionals worden gebruikt bij de omgang met ethische vraagstukken variëren aanzienlijk per sector en per land. Sommige instrumenten zijn geformaliseerd en geïnstitutionaliseerd in bepaalde situaties, maar worden impliciet gebruikt in andere situaties. *Moreel beraad* is bijvoorbeeld een veelgebruikte methode in Nederland die relatief onbekend is in het Verenigd Koninkrijk. Toch zijn Britse professionals regelmatig betrokken bij een proces dat vergelijkbaar is met moreel beraad. Ook de mate waarin *ethische training* geformaliseerd is, praktijkgericht is en centraal staat in een opleiding varieert sterk. Het doel van dit rapport is een overzicht te geven van typen methoden die gebruikt kunnen worden door professionals betrokken bij terrorismebestrijding, aangevuld met voorbeelden van hoe deze methoden nu al worden toegepast in bepaalde sectoren.

### **Het inpassen van methoden ter ondersteuning van besluitvorming bij ethische vraagstukken bij terrorismebestrijding**

Onze analyse van de context waarin ethische vraagstukken optreden bij terrorismebestrijding wijst op vier kenmerken die relevant zijn voor het toepassen van methoden:

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<sup>2</sup> Wanneer wij in dit rapport de term “methoden” hanteren, refereren we aan een breed scala aan instrumenten, praktische handreikingen, strategieën en technieken, die zijn gericht op het voorkomen en beheersen van bepaalde typen ethische vraagstukken.

1. **Geheimhouding.** Als gevolg van de gevoeligheid van sommige informatie gerelateerd aan terrorismebestrijding kan deze vaak maar met een beperkt aantal personen worden gedeeld. Dit reduceert het aantal mogelijke betrokkenen bij de besluitvorming omtrent ethische problemen;
2. **Neiging naar het elimineren van risico's.** De lage frequentie en grote impact van terroristische aanslagen vertaalt zich soms in een neiging om alle risico's te elimineren, wat kan leiden tot een disproportionele inperking van mensenrechten;
3. **Intensieve samenwerking** doordat contraterrorisme-operaties geregeld grensoverschrijdend zijn en er verschillende sectoren bij betrokken kunnen zijn, bijvoorbeeld politie en sociaal werk;
4. **Tijdsdruk** kan er in sommige situaties toe leiden dat professionals snel en zelfstandig beslissingen moeten nemen op basis van onvolkomen informatie. De beslissingen kunnen ingrijpen op mensenrechten en soms zelfs het verschil maken tussen leven of dood voor een individu of een groep mensen.

Hoewel deze kenmerken afzonderlijk niet specifiek zijn voor terrorismebestrijding, zorgen ze gezamenlijk wel voor uitdagingen voor professionals op dit gebied. De tabel hieronder geeft de implicaties van de bovengenoemde kenmerken van contraterrorisme weer voor het gebruik van de methoden.

**Tabel 1 Het inpassen van methoden ter ondersteuning van ethische besluitvorming bij terrorismebestrijding**

<b>Kenmerk van de - context waarin beslissingen genomen worden</b>	<b>Implicaties voor het inpassen van methoden en instrumenten</b>	<b>Voorbeelden van relevante methoden</b>
Geheimhouding: slechts een beperkt aantal individuen mag betrokken worden bij het besluitvormingsproces, ook bij ethische vraagstukken	Gevolg: nadruk op het versterken van methoden voor intern gebruik	Mentoren, ethisch consultants en juridisch adviseurs
	Nodig: beschikbaarheid van methoden waarbij externen betrokken worden	Samenwerking met een selecte groep academici en laagdrempelige toegang tot toezichtcommissies
Neiging naar het elimineren van risico's: mogelijkheid tot disproportioneel inperken van mensenrechten om de veiligheid te waarborgen	Gevolg: nadruk op methoden die praktijk en flankerende instrumenten vergelijken	Leiderschap
	Nodig: mogelijkheid om de flankerende instrumenten te evalueren en te herzien	Toezichtcommissies
Intensieve samenwerking: samenwerken met organisaties en landen die andere praktijken en beleid kennen	Gevolg: nadruk op consistent beleid	Training, begeleiding en advies
	Nodig: beschikbaarheid van advies voor de omgang met de verschillen in praktijken van partners waarmee wordt samengewerkt	Checklists
Tijdsdruk: eis om zelfstandig en snel beslissingen te nemen op basis van onvolkomen informatie	Gevolg: nadruk op het ontwikkelen en versterken van de competenties om zelfstandig beslissingen te nemen bij ethische vraagstukken	Recruteringsbeleid met een focus op ethiek, mentoren en training
	Nodig: beschikbaarheid van methoden die direct ingezet kunnen worden	Checklists

Helaas is er weinig onderzoek gedaan naar de effectiviteit van de beschreven methoden om ethische besluitvorming te ondersteunen. Het beschikbare empirische onderzoek heeft vooral betrekking op de sectoren organisatie, zorg en sociaal werk, en wijst erop dat leiderschap een essentieel onderdeel vormt van een strategie om ethisch gedrag in een organisatie aan te moedigen. Het gaat daarbij zowel om leiderschap in de zin van het richting geven door leidinggevendenden als om voorbeeldgedrag waarbij leidinggevendenden “*practice what they preach*”. Bovendien concluderen wij op basis van de literatuur en interviews dat de methoden en instrumenten uit dit overzicht waarschijnlijk het meest effectief zijn als ze in een bepaalde combinatie worden ingezet. Deze combinatie zou idealiter leiden tot een coherente organisatorische aanpak van de ondersteuning van besluitvorming bij ethische vraagstukken. Bij het implementeren van de genoemde methoden moet altijd rekening worden gehouden met het bestaande ethische klimaat in een organisatie; te weten de mate waarin organisatorische processen, het management en de medewerkers erop zijn ingesteld ethische vragen serieus te nemen en ermee om te gaan.

Dit rapport geeft een overzicht van methoden die gebruikt kunnen worden om besluitvorming bij ethische vraagstukken te ondersteunen alsmede manieren om deze

methoden aan te passen aan de context van het contraterrorisme. Op basis van dit overzicht kunnen de inpassing, verbetering en implementatie van deze methoden in de specifieke van terrorismebestrijding nader worden bekeken. Dit zou een volgende stap in de verankering en versterking van ethiek in terrorismebestrijding in Nederland zijn.





# Executive summary

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## Context of the study

Counterterrorism professionals routinely face decisions that appear to require trade-offs between moral values such as privacy, liberty and security, and broader human rights considerations. Given that ethics are integral to this field, it is essential that counterterrorism professionals are proficient at making these types of decision. However, there is no existing overview of the methods that may support ethical decision-making specifically aimed at counterterrorism practitioners.

To address this gap, the Research and Documentation Centre (*Wetenschappelijk Onderzoek- en Documentatiecentrum*, WODC) of the Dutch Ministry of Security and Justice (*Ministerie van Veiligheid en Justitie*), on behalf of the National Coordinator for Counterterrorism and Security (*Nationaal Coördinator Terrorismebestrijding en Veiligheid*, NCTV), commissioned RAND Europe to develop an inventory of methods to support ethical decision-making for the counterterrorism field. The objective of this study is not to recommend which methods should be developed, strengthened or implemented in the Netherlands. Rather, the aim is to outline the methods that counterterrorism professionals could draw on to support their ethical decision-making process.

In order to address this objective, we explored the methods available in different sectors – the military, intelligence, police, counterterrorism, healthcare and social work<sup>3</sup> – and across countries, namely the Netherlands, the United Kingdom and, to a lesser extent, France. The research team aimed to identify the most common ethical problems in counterterrorism in order to contextualise the practical application of these methods. The evidence base was built from a structured literature review and an extensive phase of expert interviews. Given that the volume of literature sources was significantly larger for healthcare than other sectors, the insights from expert interviews allowed the team to develop an overview of the sectors within a limited amount of time. They also allowed the research team access to evidence that is not published.

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<sup>3</sup> These sectors overlap to a certain extent; for example, counterterrorism draws on intelligence and police activity, and it may involve the military, health and social work sectors. For the purposes of our research however we treated them as separate.

## **An inventory of methods to support ethical decision-making**

Our review suggests that we may distinguish six main types of methods<sup>4</sup> that can support ethical decision-making:

1. **Mitigation methods** to reduce the likelihood of certain ethical problems arising and/or of certain situations leading to unethical decision-making.
2. **Professional development methods** to cultivate individuals' capacity to identify, reflect on and respond to ethical problems.
3. **Guidance methods** to provide professionals with an easily accessible reminder of the laws, policies and norms of their institution.
4. **Leadership methods** to reinforce ethical practice in the organisation, including leadership by example and direction from superiors.
5. **Advice methods** to provide direction on ethical decision-making.
6. **Oversight methods** to ensure that there is an independent check on the ethicality of decisions in place.

Each category may be applied by using a range of tools. For example, advice methods may include instruments or methods such as *ethics consultants*, *legal advisors*, *peer support* and *ethics committees*.

The tools used by professionals to address ethical problems vary greatly by sector and by country. While some methods are formal and institutionalised in certain settings, they may be more implicit in others. For instance, *moral case deliberation* is a well-established method in the Netherlands that remains relatively unknown in the United Kingdom. Yet, British professionals routinely engage in a process comparable to moral case deliberation. Similarly, the degree to which *ethics training* is formal, practical or at the heart of the curriculum will vary depending on the institution concerned. This report aims to provide an overview of the types of method that could be used by counterterrorism professionals, supported by illustrative examples of how these methods are applied.

### **Tailoring methods to support ethical decision-making to counterterrorism**

Our analysis suggests that the context of ethical decision-making in the field of counterterrorism tends to have four common features:

1. **Secrecy**, which results from the sensitivity of counterterrorism material and may constrain the individuals who are involved in deciding how to respond to a particular problem.
2. **Low-frequency and high-impact nature** of terrorist attacks, which has sometimes translated into preference for the elimination of risk and may lead to disproportionately constraining civil liberties to protect the safety of citizens.
3. **Extensive collaboration**, driven by the fact that counterterrorism operations may be international or involve sectors ranging from the police to social workers.
4. **Time sensitivity** of some counterterrorism problems, under which professionals are required to make decisions on the basis of imperfect information, quickly and often

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<sup>4</sup> In this report we use the term 'methods' in reference to a broad array of tools, practical approaches, strategies and techniques aimed at preventing and addressing certain types of ethical problem.

independently, despite potential implications for core civil liberties, including life and death.

Although these features are not unique to counterterrorism, collectively they create particular challenges for practitioners in the field. The table below summarises implications for tailoring methods to support ethical decision-making to counterterrorism.

**Table 1 Tailoring methods to support ethical decision-making to counterterrorism**

Characteristics of decision-making context in counterterrorism	Implications for tailoring methods	Examples of relevant methods
Secrecy: limited availability of individuals who may be involved in the ethical decision-making process	– Consequence: emphasis on strengthening methods for internal use	– Mentoring, ethics consultants and legal advisors
	– Need for: availability of methods involving externals	– Partnerships with select academics and privileged access to oversight committees
Preference for the elimination of risk: possibility of disproportionately constraining civil liberties to protect the safety of citizens	– Consequence: emphasis on methods to cross-check practice with guidance	– Leadership
	– Need for: availability of methods to review guidance	– Oversight committees
Extensive collaboration: joint working with organisations and countries that have different practices and policies	– Consequence: emphasis on consistent policies	– Training, guidance and advice
	– Need for: availability of guidance for resolving differences in collaborators' practices	– Checklists
Time sensitivity: requirement to make decisions independently, quickly and on the basis of imperfect information	– Consequence: emphasis on building individuals' competence to make ethical decisions independently	– Ethics-focused recruitment, mentoring and training
	– Need for: availability of instant access methods	– Checklists

While there has not been much empirical research on the effectiveness of particular methods, the research that has been done – primarily in business, health and social work literature – suggests that leadership is an essential component of any strategy to encourage ethical behaviour in an organisation. This includes both leadership through direction from superiors to those under their supervision; and leadership by example, whereby senior staff ‘practice what they preach’. Moreover, we conclude from both literature and interviews that the methods specified in this inventory are more likely to be effective if used in certain combinations, ideally producing a coherent organisational approach to supporting ethical decision-making. In this sense, any effort to implement methods to support ethical decision-making should take into account the existing ethical climate of an organisation – the degree to which extant organisational processes and members of staff take seriously, understand and can respond to ethical problems.

This report provides an overview of the methods that can support ethical decision-making in counterterrorism, and the ways in which they may be tailored to the field. In order for

this inventory to contribute to consolidating ethical decision-making in counterterrorism in the Netherlands, follow-on work may wish to examine those methods that should be developed, strengthened or implemented in this specific context.

# Abbreviations

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AIVD	General Intelligence and Security Service ( <i>Algemene Inlichtingen- en Veiligheidsdienst</i> )
CTIVD	Oversight Committee on the Intelligence and Security Service ( <i>de Commissie van Toezicht betreffende de Inlichtingen- en Veiligheidsdiensten</i> )
ECHR	European Convention on Human Rights
HCPC	Health & Care Professions Council
HMIC	Her Majesty's Inspectorate of Constabulary
IGZ	<i>Inspectie voor de Gezondheidszorg</i> (Healthcare Inspectorate in the Netherlands)
IRT	<i>Interregionaal Recherche Team</i> (Interregional Criminal Investigation Team)
ISC	Intelligence and Security Committee
MI6	UK Secret Intelligence Service
MOD	UK Ministry of Defence
MP	Member of Parliament
NCTV	National Coordinator for Counterterrorism and Security ( <i>Nationaal Coördinator Terrorismebestrijding en Veiligheid</i> )
RIPA	Regulation of Investigatory Powers Act
SP	<i>Socialistische Partij</i>
UK	United Kingdom
US	United States
VME	Advanced course in military ethics ( <i>Verdiepingscursus Militaire Ethiek</i> )
VU	<i>Vrije Universiteit</i> (Amsterdam)
WODC	Research and Documentation Centre ( <i>Wetenschappelijk Onderzoek- en Documentatiecentrum</i> )



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- Drs Michael Kowalski MA, from the National Coordinator for Counterterrorism and Security (*Nationaal Coördinator Terrorismebestrijding en Veiligheid*, NCTV)
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We are grateful to the numerous experts who took part in our interviews, without which this study would not have been possible. Their names and affiliations are listed in Appendix A. Their contributions are anonymised in the report and referenced with a numerical code.

We thank our peer reviewers who are part of RAND's quality assurance process, Dr Lindsay Clutterbuck and Dr Matt Bassford, for their helpful comments on the report. We also thank our colleagues Kristy Kruithof, Dr Susanne Søndergaard and Nicolas Erwes and our former colleague Luke Gribbon for their contributions and suggestions. We are grateful to Fabian Schipper for his research assistance in the earlier stages of the study.





Counterterrorism professionals routinely face ethical problems, yet there is no existing inventory of the methods that can support these professionals in ethical decision-making. In recognition of this gap, the Research and Documentation Centre (*Wetenschappelijk Onderzoek- en Documentatiecentrum*, WODC) of the Dutch Ministry of Security and Justice (*Ministerie van Veiligheid en Justitie*), on behalf of the National Coordinator for Counterterrorism and Security (*Nationaal Coördinator Terrorismebestrijding en Veiligheid*, NCTV), commissioned RAND Europe to develop such an inventory. This chapter outlines the rationale for the study, details the research approach, and describes the content and structure of this report.

## 1.1 **Ethical decision-making is being developed in counterterrorism**

Ethical decision-making is a key part of working in counterterrorism; professionals in this field often face decisions that appear to require trade-offs between moral values such as privacy, liberty and security, and broader human rights considerations. In this report these decisions are considered to regard ethical problems<sup>5</sup> as they require the decision-maker to consider the impact of the decision on the interests and well-being of all who may be affected by it in a given situation. Although these ethical problems typically appear to require trade-offs between moral values, it is often possible to reconcile these values when options are carefully considered and appropriate methods are leveraged.

There is growing interest in Europe in ethical decision-making in counterterrorism. The Netherlands Intelligence Studies Association (*Stichting Inlichtingenstudies Nederland*, NISA) has made some headway in exploring applied ethics in the context of counterterrorism. Kowalski and Meeder published a book (Kowalski and Meeder, 2011) exploring ethical issues in counterterrorism. The European-Commission-funded project DETECTER has also studied ethical and human rights issues in the counterterrorism field.<sup>6</sup> However, work to date has not focused on developing an overview of methods that can support ethical decision-making in counterterrorism.

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<sup>5</sup> Some philosophers indicate that morality describes a code of conduct of a society or another type of group (Gert, 2002). Ethics is then constructed as the critical reflection on morality. In this report this distinction between ethics and morality will not be made: 'ethical' and 'moral' will be used interchangeably.

<sup>6</sup> The project website is available at: [www.detecter.eu](http://www.detecter.eu) [accessed 3 June 2013].

## 1.2 **This report provides an inventory of methods to support ethical decision-making in counterterrorism**

The WODC commissioned RAND Europe on behalf of the NCTV to develop an inventory of methods<sup>7</sup> to support ethical decision-making in counterterrorism. The WODC asked RAND Europe to outline methods that counterterrorism professionals could draw on, but not to recommend which should be developed or strengthened in the Netherlands. Given the limited evidence relating to methods to support ethical decision-making in counterterrorism, RAND Europe examined the methods available to professionals in fields contributing to counterterrorism, including the military, police and intelligence sectors. The research team also looked at sectors with a wider evidence base relating to ethical decision-making – namely healthcare and social work.<sup>8</sup>

Furthermore, RAND Europe focused its study on methods used in various countries. In addition to its research in the Netherlands, RAND Europe carried out extensive interviews in the United Kingdom (UK), a country with a relatively similar approach to counterterrorism to that of the Netherlands. It also gathered high-level insights from France – a country with a very different culture and legal regime from those in the Netherlands and the UK. These factors reportedly contribute to differences in counterterrorism practice. For example, Foley (2013) found that national security considerations in France tend to supersede those relating to civil liberties, whereas the balance between the two considerations is more vigorously debated in the UK.

## 1.3 **The study mainly draws on experts' knowledge of ethical decision-making**

RAND Europe centred its research on expert interviews. The research team interviewed 30 individuals in total. Many interviewees provided insights relating to more than one sector and country, and offered academic as well as practitioner, manager and policymaker perspectives. The interviewee sample was opportunistic (i.e. we did not assess the extent to which each interviewee represented the views of their colleagues) and illustrative (i.e. the sample size was relatively small, given the scope of the study).

The interview questions followed five main lines of enquiry:

- key ethical problems faced by professionals in the field;
- methods for responding to these problems and perceived gaps;
- relationship between the law and ethical problems and methods;
- differences in managing ethics at the policymaker versus practitioner level; and
- transferability of experience to other sectors and countries.

A full list of questions used during these interviews is included in Appendix D.

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<sup>7</sup> In this report we use the term 'methods' in reference to a broad array of tools, practical approaches, strategies and techniques aimed at preventing and addressing certain types of ethical problem.

<sup>8</sup> While these sectors are treated as distinct for research purposes, they may overlap. For example, while healthcare is a well-defined sector that interacts with social work among others, intelligence and counterterrorism are core facets of the police and military sectors.

The research team also carried out a structured literature search using Google Scholar and Google. We consulted academic and grey (i.e. policy) literature, drawing on the RAND Library's access to academic and trade journals. We consulted relevant bibliographic databases and journals, and applied a snowballing approach to search for the key literature.<sup>9</sup> The literature search involved consideration of evidence relating to ethical problems faced in each sector, methods available to professionals and their effectiveness. However, we found a disparity in the amount of publicly available evidence in the security sectors – namely policing, military and intelligence – as compared with the healthcare and social care sectors. Furthermore, the limited scope of this study did not allow us to review the abundant literature on the healthcare sector comprehensively. Expert interviews compensated for these challenges by providing an overview of each of the five sectors in the UK, the Netherlands and France, while also offering insights into evidence that is not published.

#### 1.4 **Purpose of this report**

This document presents the findings of a study into methods that can help counterterrorism professionals make decisions about ethical problems. It provides an inventory of methods for ethical decision-making in counterterrorism, drawing on the experience of other public sectors – healthcare, social work, policing and intelligence – and multiple countries, primarily the Netherlands and UK. It does not provide recommendations on approaches to be fostered in the Dutch context.

The report introduces the field of applied ethics, identifies key characteristics of ethical decision-making in counterterrorism, and describes methods that may help counterterrorism professionals make decisions in these situations. Finally, it explores how methods used in other sectors may be applied to ethical decision-making in counterterrorism. It also describes the level of effectiveness that may be expected from the various methods, and highlights the importance of using a coherent approach to promoting ethical decision-making from both top-down and bottom-up perspectives within an organisation.

#### 1.5 **Overview of the structure and content of this report**

The report contains four chapters in addition to this introduction:

- Chapter 2 provides an introduction to applied ethics and discusses what constitutes an ethical problem;
- Chapter 3 offers an overview of the main ethical problems faced by counterterrorism professionals;
- Chapter 4 provides an inventory of methods to support ethical decision-making, drawing on practice across sectors and countries; and

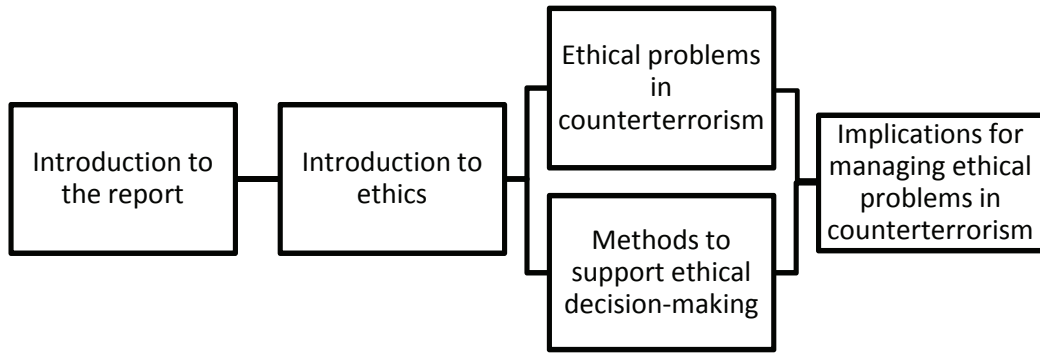
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<sup>9</sup> 'Snowballing' in the context of literature review refers to reviewing the content and bibliographies of literature sources identified through initial search terms, to find further relevant sources for review.

- Chapter 5 concludes with an analysis of the ways in which methods could be tailored to counterterrorism, and the conditions necessary for methods to be effective.

The structure and content of the report is illustrated in Figure 1.

**Figure 1 Structure and content of the report**



This chapter provides an introduction to the field of applied ethics. Given that many readers will not be familiar with this field, the chapter outlines the key tenets of applied ethics and defines what constitutes an ethical problem. The chapter provides context for the rest of the report.

## 2.1 **Introduction to ethics**

The field of ethics may be defined as the systematic reflection of existential questions relating to the ‘good life’, moral obligations and ‘just’ society (Gert, 2002). The field is concerned with metaphysical, epistemological, semantic and psychological questions such as whether ethics is relative to a culture or expressions of personal taste (Sayre-McCord, 2012).

One of the sub-disciplines of ethics is normative ethics, the specific discipline with which this report is concerned.<sup>10</sup> Normative ethics involves prescribing what is right and wrong, good and bad, or just and unjust in specific cases; and it concerns the full range of ethical questions that people and society face (Gert, 2002).

There are three main theoretical frameworks in normative ethics – consequentialism, deontology and virtue ethics – that propose different ways of reasoning about what is ‘right’ or ‘wrong’ (see Box 1).<sup>11</sup> The consequentialist position argues that what is ‘right’ or ‘wrong’ should be determined by the impact of an act. This is in direct contrast to the deontological position, which argues that what is ‘right’ or ‘wrong’ should be determined by the act itself, regardless of its impact; and to virtue ethics, which argues that what is ‘good’ is determined by what an experienced and wise person would do in such an instance. Box 1 details each of these positions further. The position that an individual adopts to manage an ethical problem will often depend on the specificities of a situation.

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<sup>10</sup> We will not address meta-ethical questions or questions that relate to moral epistemology or psychology. These sub-fields of ethics address more fundamental questions regarding what constitutes a moral viewpoint, and are less relevant to the pragmatic objectives of this study.

<sup>11</sup> Other authors argue that further theoretical frameworks should be added to this list. For example, Sandel also includes libertarianism (Sandel, 2012), and others would add feminist ethics frameworks to the list. The three theoretical frameworks are widely recognised in the literature as being the key theories in ethics.

The so-called Trolley or Footbridge dilemma<sup>12</sup> is typically used to illustrate this. It was originally formulated by Philippa Foot and revisited by Judith Jarvis Thomson. Foot's version of the dilemma asks whether the driver of a runaway train – who can only steer the train from one track to the next but is unable to stop it – should steer the train away from its track, where there are five workmen, towards another track where there is one workman. The consequentialist position would argue that the morally correct decision would involve switching tracks (Foot, 1967). In Thomson's version of the dilemma, a runaway trolley is hurtling towards five workmen. As an observer, you could stop the trolley from killing the workmen by pushing in front of the trolley a bystander who is sufficiently large to stop the trolley, thereby sacrificing him for the benefit of the five workmen. The deontological position would argue that the morally correct decision would involve letting the trolley kill the five workmen (Thomson, 1976). Although both dilemmas question whether one life should be saved for the benefit of multiple others, depending on the specific situation – for example, turning a switch versus pushing an individual – one ethical position may seem more justifiable than another.

#### Box 1 Ethics theoretical frameworks

##### Consequentialism

Consequentialism purports that whether an act is 'right' or 'wrong' is determined by its consequences. To determine the value of an act's consequences, consequentialists argue that one should first define what is ultimately 'good' and 'valuable' (McNaughton, 2005). According to the leading consequentialist, Jeremy Bentham, only pleasure and/or happiness is intrinsically 'good' and only pain and/or suffering is intrinsically 'bad' (Bentham, 1907). According to Bentham, an act is 'right' if it enhances the total amount of pleasure and/or happiness or reduces the total amount of pain and/or suffering. Bentham therefore argues that to make an ethical decision, one should explore all potential consequences and proceed with the action that produces the most pleasure and/or happiness. Importantly, consequentialism requires one to consider all potential consequences, not only those relevant to them (McNaughton, 2005).

##### Deontology

Deontology holds that certain acts are intrinsically 'right' and others are intrinsically 'wrong', and that individuals have a duty to behave accordingly. This is in direct contrast to consequentialist claims that the consequences of the act determine whether the act itself is intrinsically 'right' or 'wrong'. Kant (1785) is a key exponent of deontology and argues that all human beings impose upon themselves a moral rule called the Categorical Imperative, by virtue of their rationality. Kant published formulations that capture the deontological way of thinking; the following two are most often used:

*Act only on that maxim (principle) through which you can at the same time will that it become a universal law*

*Treat humanity ... never simply as a means, but always at the same time as an end*

<sup>12</sup> We mainly refer to 'problems' in this report, as opposed to 'dilemmas'. Dilemmas imply that there is only one possibility and a total of two options to choose from. In reality, the ethical problems confronting professionals often involve a larger number of options.

Kant (1785) claims that the Categorical Imperative shows that certain acts such as lying, cheating and suicide are always 'wrong'. He also derives duties from the Categorical Imperative, such as the duty to cultivate one's talent and the duty to be benevolent.

#### **Virtue ethics**

Virtue ethics posits a more individualistic approach to ethics than consequentialism and deontology. It claims that each individual holds virtues that allow them to lead a 'good' life (Sandel, 2012). These virtues consist of desirable character traits that are expressed in individual actions and that are durable, omnipresent and influential – but only applied where necessary. The virtues have traditionally been classified into intellectual virtues such as practical wisdom; and moral virtues such as courage, justice, honesty and integrity (MacIntyre, 1984). This ethical framework dates back to Aristotle and Plato as well as other ancient Greek philosophers (see Ross, 1925).

## 2.2 Applying ethics to professional settings

Applied ethics can be considered a sub-discipline of normative ethics as it is also concerned with questions of what is right and wrong, good and bad, or just and unjust. However it focuses on ethical issues in a specific social domain. In fact, it involves the fields of bioethics, environmental ethics, healthcare ethics, ethics and war, and ethics and technology (Almond, 2005). Professional ethics is a form of applied ethics that is concerned with specialists – such as doctors, nurses and lawyers – as opposed to their field (*ibid*).

Applied ethics involves deliberating over specific situations. According to Beauchamp, 'principles must be made specific for the context; otherwise moral guidelines will be empty and ineffectual' (Beauchamp, 2003:12). For example, unlike healthcare professionals – who have a duty to care for individuals – national security professionals are arguably more likely to compromise the security of one individual in order to safeguard that of multiple others.<sup>13</sup> In this sense, professional ethical considerations are largely oriented towards the well-being of others, although the interpretation and scope of well-being within these considerations may differ between professional domains.

The practice of deliberating over specific situations often leads to a conflict of moral values. For example, healthcare professionals are often confronted with situations where individuals in their care choose not to follow their recommendations, sometimes putting their life at risk. The professionals then need to determine whether the value of autonomy or well-being prevails. Depending on the specific situation – for example, the patient's mental health, their history, or the availability of a qualified guardian – the professionals may favour the autonomy of the patient over their well-being or vice-versa.<sup>14</sup> The

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<sup>13</sup> Research interviews 22, 24 and 26.

<sup>14</sup> Research interview 24.

prioritisation of moral values is therefore at the heart of the discipline of applied ethics (*ibid*).

Some applied ethicists such as Cass Sunstein and Thomas Pogge have started to study the wider societal conditions that underpin ethical problems. These include the design of institutions, the legal frameworks and the incentive structures that shape society (Manders-Huits and Van den Hoven, 2009; Sunstein and Thaler, 2008; Pogge, 2008). Box 2 explores the relationship between law and ethical problems in more detail, given that law is considered one of the main methods that can support ethical decision-making (discussed further in Chapter 4).

### **Box 2 The relationship between law and ethics**

In democratic countries, legislation represents the ethical position of a majority of society at a particular point in time.<sup>15</sup> As such, it is closely related to ethics; but the two remain distinct. Not all legislation will be ethical for all situations. For example, although it is illegal for a scientist to post their findings on a website if the copyrights have been transferred to a publisher, many would consider this to be morally 'right'. Conversely, adultery is legal in most democratic western societies, yet many think that it is morally 'wrong' to have an affair while being in a monogamous relationship.

Ethics provides a means through which to determine which legislation to apply in a given situation. There is always scope to reflect on the extent to which different laws apply; in fact, judges are empowered to interpret the law to allow trade-offs that are appropriate for specific circumstances.<sup>16</sup>

For example, following the Boston Marathon bombings in April 2013, officials debated whether Dzhokhar Tsarnaev should be read his Miranda rights (Johnson, 2013). This decision rested on whether he was considered a public safety threat (*ibid*). This exemption is linked to the fact that in the past, suspects have volunteered information before being read the Miranda rights, and stopped discussing these once they had been read (Johnson, 2013). After three days, the Justice Department decided that Mr Tsarnaev was no longer a public safety threat and he thus should be read his Miranda rights.

Law may be considered a tool for ethical decision-making (see Chapter 4). While it creates some questions – such as which law to apply in a given situation – it provides guidance on what is considered 'right' by society at a given point in time.

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<sup>15</sup> Research interview 30; we recognise that this statement is debatable as it assumes that legislative decisions in democratic countries always reflect the majority view, and that all legislation is connected to ethical positions; however further elaboration on these points is outside the scope of this report.

<sup>16</sup> *ibid*.



### 2.3 What is an ethical problem?

Ethical problems are practical problems with regard to which ethical values appear to conflict; they are problems that solicit questions concerning what is right and wrong, good and bad, or just and unjust. Problems may not necessarily be ethical in nature, but they may become ethical when they occur in a particular situation. The question of whether to wear a white or blue blouse is not an ethical question *per se*, but rather an aesthetic question. If, however, the white blouse is made in a factory under poor working conditions and its manufacture involves toxic substances, then deciding whether to wear it may become an ethical problem; the decision then concerns the moral values of justice and sustainability.

The perspective from which an individual considers a situation is likely to determine what constitutes an ethical problem. For example, professionals who implement policy may not face the same problems as those who draft the policy. The interviews that we conducted highlighted the view that policymakers and managers are responsible for maximising the impact of their resources, whereas frontline staff are responsible for maximising the outcome for each individual.<sup>17</sup> Taking the healthcare sector as an example, policymakers and managers may be required to refuse the reimbursement of one cancer patient's drugs if they are considered too expensive or ineffective, in order to be able to reimburse the drugs of multiple other patients. In contrast, the frontline staff will tend to request the reimbursement of the best available drug for their patient (Cheema et al, 2012).

Research suggests that professionals typically identify an ethical problem when they sense that 'something is not quite right' or when they cannot identify an appropriate solution to a problem (Van der Scheer, 2010). However this feeling of unease is not necessarily symptomatic of an ethical problem; it may occur for other reasons. For example, when a doctor is confronted with a young person suffering from a fatal disease, this creates feelings of unease but is not indicative of an ethical problem (*ibid*).<sup>18</sup> It is often necessary to reflect on the feeling and gather information about the situation in which it occurs. This allows the problem to be contextualised, confirming whether or not it presents an ethical problem. Van de Poel and Royakkers (2007) have characterised an ethical problem as follows: (1) the problem cannot be thoroughly described before it arises; (2) the problem unfolds concurrently with the decision-making process; (3) the problem does not lead to a single best solution; and (4) the possible alternatives for action are widespread.

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<sup>17</sup> Research interview 24.

<sup>18</sup> Research interview 12.



In this chapter we provide an overview of counterterrorism and of the main ethical problems faced by professionals in the field, as identified in the literature and interviews. We distinguish four broad characteristics of ethical problems in counterterrorism and illustrate them with examples. This context is expected to clarify the ways in which methods to support ethical decision-making may be tailored to the counterterrorism field.

3.1 **Counterterrorism is defined by the threat it opposes and its international scope**

Counterterrorism may be considered a response to ‘the use or threat of violence by non-state actors for religious, political, ideological or racial reasons, with the intention of putting in fear an audience far wider than its initial victims’.<sup>19</sup> It is usually led by national authorities and incorporates elements of diplomacy, legislation, policing, intelligence, technology, economics and the military. Because of the transnational nature of the current terrorism threat, one of the most important factors in successful counterterrorism is effective international cooperation. Of particular importance are the sharing of intelligence and joint training and operations. However while there are many relevant multinational forums – such as Europol and Interpol – many practitioners prefer to operate at a bilateral level between states, often on the basis of personal trust with ‘tried and tested’ known contacts and colleagues from other countries.<sup>20</sup>

3.2 **Many ethical problems in counterterrorism are common to other fields, but they combine a particular set of challenges**

Many ethical problems faced by counterterrorism professionals are also encountered in other fields. For example, determining the legitimacy or appropriateness of an intervention on the basis of imperfect or incomplete information occurs regularly in fields involving time-sensitive actions. Similarly, the decision to share sensitive material in support of transparency is one that concerns all professionals who uncover information that is not in

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<sup>19</sup> Research interview 2.

<sup>20</sup> *ibid.*

line with the law or the established norms of an institution (Bowles et al, 2006; Banks and Nøhr, 2012; Gallagher and Hodge, 2012).<sup>21</sup>

Ethical decision-making in counterterrorism nonetheless takes place in a context that exhibits certain characteristics, elaborated below. These combine to create a challenge that is particular to the field. The characteristics include secrecy, the low-frequency but high-impact nature of attacks, extensive national and international collaboration, and time-sensitive decision-making in some situations.

First, the field of counterterrorism is marked by secrecy – between institutions and the public but also within ‘need to know’ circles of experts. This makes it challenging for professionals to identify individuals with whom they can discuss ethical problems.<sup>22</sup> Furthermore, it is difficult for countries and organisations to share best practice in ethical decision-making, given the constraints on information sharing.<sup>23</sup>

Second, terrorist attacks may be characterised by their relatively low frequency and their potential to have a high or very high impact.<sup>24</sup> This feature makes it challenging to take proportional action to mitigate the risk of an attack; the threat, however infrequent, cannot be overlooked. Interviewees suggest that this sometimes leads to an institutional preference for elimination of risk,<sup>25</sup> which threatens to compromise citizens’ rights disproportionately in order to maximise the safety of society.<sup>26</sup>

Third, countering the terrorism threat requires extensive collaboration between services, including the police, intelligence services, education and health services (Home Office, 2011). This is due to the fact that the terrorism threat is associated with a range of risk factors. Collaboration may be national, with organisations that are more or less similarly minded, or international, where there is a greater likelihood of differences in norms or moral values.

Finally, counterterrorism professionals sometimes face problems that are time sensitive. They may be required to decide quickly, independently, and on the basis of imperfect information, what action is appropriate in a given situation, even where the impact of decisions may be a matter of life or death, or at the least of core civil liberties.

These particularities highlight challenges to making ethical decisions in counterterrorism. They are summarised in Table 2 and will be illustrated by the examples of ethical problems in counterterrorism provided in the next section.

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<sup>21</sup> Research interviews 22 and 23.

<sup>22</sup> Research interviews 1, 13, and 21.

<sup>23</sup> Research interview 6.

<sup>24</sup> Research interview 21.

<sup>25</sup> A preference for the elimination of risk may be contrasted with other approaches to dealing with risk; for example, taking no action against an identified risk or attempting to mitigate the risk without eliminating it completely.

<sup>26</sup> Research interviews 1, 13 and 21.

**Table 2 Characteristics of decision-making context in counterterrorism**

Characteristic of decision-making context in counterterrorism	Description
<i>Secrecy</i>	Information related to counterterrorism may often be shared only with a limited number of individuals, given the sensitive or classified nature of much of this information. This reduces the number of perspectives informing what constitutes ethical decision-making in counterterrorism.
<i>Preference for the elimination of risk</i>	The low-frequency but high-impact nature of terrorist attacks could lead to a preference for the elimination of risk to the detriment of civil liberties.
<i>Extensive collaboration</i>	Decision-making in counterterrorism requires national and international collaboration, which may lead to tensions regarding what is considered to be ethical.
<i>Time-sensitivity</i>	Some situations in counterterrorism require urgent and independent action on the basis of imperfect information, despite potential implications for core civil liberties.

### 3.3 We distinguish four types of ethical problem faced by counterterrorism professionals

Based on our findings, we suggest that the ethical problems encountered by counterterrorism professionals may be divided into four types, each of which encompasses a number of ethical questions (see Table 3).<sup>27</sup>

<sup>27</sup> The ethics literature does not recommend one specific way of categorising problems, and there is significant diversity in the way in which this is done. For this reason, the research team adopted an emergent, bottom-up approach to categorising ethical problems.

**Table 3 Key ethical problems faced by counterterrorism professionals**

Source of ethical problem	Description
<i>Ensuring the legitimacy of interventions</i>	<ul style="list-style-type: none"> <li>• What is the appropriate interpretation of legislation for a given situation?</li> <li>• What is the threshold at which exceptional powers may be authorised?</li> <li>• What is the threshold for intervening in an individual's private life?</li> <li>• What is the quality and amount of information required to make a decision with high stakes?</li> <li>• What are the appropriate means of intervention for a given situation?</li> </ul>
<i>Striving for operational cost-effectiveness</i>	<ul style="list-style-type: none"> <li>• How much of resources should be spent ensuring that a decision is the most ethical for a given situation, given constraints on resources generally?</li> </ul>
<i>Balancing duty of transparency and sensitivity of material</i>	<ul style="list-style-type: none"> <li>• In what situations (if any) might the sensitivity or secrecy of information compromise information sharing?</li> <li>• In what situations (if any) might the sensitivity or secrecy of information compromise information sharing with national or international collaborators?</li> <li>• In what situations (if any) might it be justifiable for government to carry out extra-judicial action to avoid sharing sensitive material?</li> </ul>
<i>Maintaining integrity in the face of different moral values</i>	<ul style="list-style-type: none"> <li>• How far (if at all) should individuals compromise their professional ethics in order to collaborate effectively with national or international partners?</li> <li>• How far (if at all) should individuals compromise their personal ethics to work effectively as part of their organisation?</li> </ul>

### 3.3.1 Ethical problems linked to the legitimacy of intervention

There are five main types of ethical problem that arise from assessing the legitimacy and means of an intervention: determining (1) the appropriate interpretation of legislation; (2) the means of intervention; (3) the threshold at which to authorise exceptional powers; (4) the threshold at which to intervene in an individual's private life; and (5) the quality and amount of evidence required to make a decision with high stakes. Each problem type is described in this section.

#### *What is the appropriate interpretation of legislation in a given situation?*

It is difficult for individuals to decide on the morally 'correct' approach when faced with conflicting guidance for interpreting relevant legislation. For example, the European Court of Human Rights has ruled that the 'stop and search' powers under sections 44 to 47 of the UK Terrorism Act 2000 are not compatible with the right to a private life under Article 8 of the European Convention on Human Rights (ECHR) (Home Office, 2010). The European Court of Human Rights has not commented on anti-terrorism measures in the Netherlands.<sup>28</sup> However the Council of Europe's Commissioner for Human Rights

<sup>28</sup> These measures include: the *Wet terroristische misdrijven*, *Wet training voor terrorisme*, *Wet opsporing en vervolging terroristische misdrijven*, *Wet afgeschermd getuigen*, the *voorstel-Wet bestuurlijke maatregelen nationale veiligheid* and the *maatregel persoonsgericht verstoren* (Van Kempen and Van de Voort, 2010).

expressed critical views about these measures; he has argued that the Detection and Prosecution of Terrorist Crimes Act (*Wet ter verruiming van de mogelijkheden tot opsporing en vervolging van terroristische misdrijven*) is at odds with the right to defend oneself under Article 6 of the ECHR (Van Kempen and Van de Voort, 2010). When legislation or official opinions diverge in this way, it can be difficult to determine what constitutes legitimate intervention.

*What are the appropriate means of intervention in a given situation?*

The most common source of ethical conflict reported in our interviews is the means through which to intervene. Depending on the situation and the legal context for counterterrorism action, manipulation of suspects, finger printing, frisking or covert investigations may be considered more or less proportional and necessary (Lyon, 2003; Harfield and Harfield, 2005; House of Commons Home Affairs Committee, 2013; Hoogenboom, 2011). These issues have prompted a debate in the Netherlands over whether criminal civilians should be allowed to work undercover for the police (*criminele burgerinfiltranten*). Following the 1990s *Interregionaal Recherche Team* (Interregional Criminal Investigation Team, IRT)<sup>29</sup> scandal, in which criminal civilians working undercover for the police were permitted to smuggle drugs into the country, it was prohibited to use these agents (Volkskrant, 2011). Recently, however, the Minister of Safety and Justice, Ivo Opstelten, and a labour politician, Jeroen Recourt, have asked for this decision to be overturned because the work of these criminal civilians may support the fight against crime (Volkskrant, 2011; Volkskrant, 2013). In a letter to the House of Representatives (*Tweede Kamer*), Ivo Opstelten recommended that this should be carried out only under exceptional circumstances, with permission from the prosecution service and in consultation with the Dutch Minister of Security and Justice (Rijksoverheid, 2013a).

*What is the threshold at which exceptional powers can be authorised?*

Counterterrorism professionals have access to so-called exceptional powers in many countries. One of the most well-known exceptional powers is extended detention without bail for terror suspects. This measure became increasingly widespread in the early twenty-first century, following multiple terrorist attacks in western cities. In the Netherlands, the evidence threshold to detain a suspected terrorist was lowered in February 2007 by a law providing professionals with more resources for terrorist investigations and prosecutions (*Wet ter verruiming van de mogelijkheden tot opsporing en vervolging van terroristische misdrijven*) (Van Gestel et al, 2012). Under this exceptional legislation, the objective of safeguarding national security may compromise basic liberties or human rights. For example, the previous 28-day limit for pre-charge detention in the UK (Schedule 8, Terrorism Act 2000) far exceeded equivalent limits in other comparable democracies (Farthing and Sankey, 2010);<sup>30</sup> it has now been reduced to 14 days (Berman and Horne, 2012).

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<sup>29</sup> IRT: of the Noord-Holland and Utrecht areas.

<sup>30</sup> In the United States and Germany, suspects can be held without charge for two days. In Italy, the maximum is four; in Russia and Spain, suspects can be detained for five days; and in France, the limit is six (Farthing and Sankey, 2010).

*What is the threshold for intervening in an individual's private life?*

The decision to intervene in an individual's private life essentially consists of prioritising security concerns over individual civil liberties. This decision can be contentious, particularly when it involves individuals who are not suspects but who may hold information that relates to suspects. In fact, while professionals have a responsibility to safeguard the public, they also have a duty to protect individuals' privacy and liberty (Marenin, 2004).<sup>31</sup> For example, the Dutch Supreme Court decided not to dissolve a Hells Angels Motorcycle Club branch in June 2009 despite finding that the group had engaged in criminal activity. It concluded that a ban would infringe on the right to gather – a freedom that is a key component of the democratic state (Hoge Raad, 2009).<sup>32</sup>

*What is the quality and amount of information required to make a decision with high stakes?*

An ethical problem related to the decision to intervene is the quality and amount of evidence that is necessary to justify decisions. Counterterrorism professionals usually operate on limited information of mixed quality, given the criminal and underground nature of the activities that they are required to counter.<sup>33</sup> Although they may be able to improve their information with time and resources, the risk level may require them to act before this can be done (Rubel and Lucas, 2005). One interviewee cited the example of a military guard at a checkpoint. The guard had two seconds to decide whether to open fire on a car hurtling in his direction. Although the car had not slowed down as requested, the guard had no evidence that the driver was a suspect, or knowledge of any other passenger. The guard therefore had to make a judgement on whether the risk level justified potentially taking an innocent person's life.<sup>34</sup>

**3.3.2 Ethical problems linked to the cost-effectiveness of operations**

Resources in public sector organisations are always finite. Resource issues may require trade-offs between an organisation's ability to act and its capacity to consider and address potential ethical problems, and this is a dynamic that exists in multiple sectors. Moreover, the allocation of resources must be justified in a context of multiple and potentially competing organisational and public priorities. While interviewees all expressed dedication to operating with high ethical standards, some raised the fact that financial pressures risk limiting their scope for ethical reflection.

Finite resources are a persistent issue in the field, and one that may be impacted by upcoming or on-going budget reductions. For example, governments currently face a terrorism threat that is similar to that experienced in the period before the recession,<sup>35</sup> but

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<sup>31</sup> Research interview 3.

<sup>32</sup> Translated by the research team from Dutch: *'Naar het oordeel van het hof [is] niet gebleken van een werkzaamheid waarvan de ongestoorde voortzetting en navolging in een democratische rechtsstaat niet kan worden geduld op straffe van ontwrichting, en daarom is voor de ingrijpende maatregel van verbodenverklaring en ontbinding van de rechtspersonen van de Harlinger Hells Angels geen plaats'* (Hoge Raad, 2009).

<sup>33</sup> Research interview 8.

<sup>34</sup> Research interview 17.

<sup>35</sup> Senior counterterrorism official, speaking at the Counter-Terror Expo on 24 April 2013 in London.



they have more limited resources to respond to it. The Dutch Minister of the Interior and Kingdom Relations, Ronald Plasterk, recently announced that the Dutch General Intelligence and Security Service (*Algemene Inlichtingen- en Veiligheidsdienst*, AIVD) will experience a 37 per cent reduction in its budget, which will fall from €200m to €126m between 2013 and 2018 (BZK, 2013; Rijksoverheid, 2013b). The reductions are expected to affect ICT and other internal services, but also operational deployments relating to right wing, left wing, and animal rights extremism. Minister Plasterk has stated that the cuts could have an effect on security,<sup>36</sup> but that the consequences and risks of the cuts are acceptable (Trouw, 2013). The situation is similar in the UK, where counterterrorism professionals are experiencing a 10 per cent budget reduction in real terms in the period from 2010 to 2015 (Groves and Boden, 2010).

### 3.3.3 Ethical problems linked to the duty of transparency and sensitivity of material

Counterterrorism professionals are routinely required to balance transparency of information with a duty to protect sensitive material. As governments are accountable to citizens, transparent decision- and policy-making is important (Leigh, 2007). Striking the ‘right’ balance is a challenge.<sup>37</sup> The tension between governments’ duties of transparency and the sensitive nature of counterterrorism material may lead to two main types of ethical problem: determining (1) whether the sensitivity or secrecy of information can justify concealing information from the public and collaborators and (2) whether there are circumstances under which government could compensate for limited information sharing by taking extra-judicial action.

*In what situations (if any) might sensitivity or secrecy of information compromise information sharing with the public and collaborators?*

Material tends to be classified when it is sensitive and there is a risk of harm should it ‘fall into the wrong hands’. The decision to share sensitive material therefore depends on the specifics of the audience, and governments rarely control this. As a result, it may be difficult to determine when the duty to be transparent may need to be compromised for security purposes (Peto and Tyrie, 2013). For example, the UK opted to deny its involvement in the United States (US) programme of extraordinary rendition in the wake of the 9/11 attacks (Kirkup, 2009; Norton-Taylor, 2012). To cite one case, UK officials were aware that two men being held by British forces in Iraq were handed over to the Americans in 2004 and then transported out of the country; however members of parliament (MPs) and the public were not informed at the time (Kirkup, 2009; Norton-Taylor, 2012). In this instance, UK concerns about national security and preservation of the UK–US relationship were considered to override the duty to be transparent to the public. A similar question arises when counterterrorism professionals are considering or asked to share sensitive information with national or international collaborators. Sharing

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<sup>36</sup> ‘It has an effect on security, this cannot be avoided, but you have to make decisions.’ Translated by the research team from Dutch: ‘*Het raakt aan de veiligheid, daar ontkom je niet aan, maar je moet keuzes maken.*’ (Trouw, 2013).

<sup>37</sup> Research interviews 6, 8 and 12.

sensitive information is important to improve the intelligence picture. However it is not without risk to the confidentiality and security of sources.<sup>38</sup>

*In what situations (if any) might it be justifiable for government to carry out extra-judicial action to avoid sharing sensitive material?*

Institutions therefore face an additional ethical question if they decide not to share information with collaborators: that of whether to engage in extra-judicial action to compensate for the limitations to information sharing. The Netherlands is reportedly one of the few European countries that chose not to become involved in the US-led rendition programme (Singh, A., 2013), although they may still encounter information gained in rendition activities through the sharing of intelligence with countries involved in renditions.

### 3.3.4 Ethical problems linked to integrity

Counterterrorism professionals also face ethical problems that are linked to questions of integrity. Musschenga (2012) identifies three formal dimensions of integrity: correspondence, consistency and coherence. Correspondence refers to the coherence of thinking and acting; consistency refers to the absence of contradictions in reasoning, judgements and commitments; while coherence also requires judgements and acts to support one other. According to Musschenga, there are three different concepts of integrity: one that considers correspondence, consistency and coherence within all domains of a person's life (i.e. personal integrity); one regarding these dimensions relating specifically to an aspect of a person's life (e.g. professional integrity); and one that is concerned with how these values match with those of wider society (i.e. moral integrity) (Musschenga, 2012).

**Personal ethics:** *How far (if at all) should individuals compromise their personal ethics to work effectively as part or on behalf of an organisation?*

All professionals have a personal as well as a professional identity. Their personal ethics may lead them to disagree with ethics promoted by the institution in which they work. One interviewee commented that he and some of his colleagues had faced this challenge when being asked to comply with Control Orders.<sup>39</sup> This is a UK legal measure to constrain the liberties of individuals who are not awaiting trial for any terrorism-related crime but whom the authorities believe may have terrorist connections or sympathies. These orders include, for example, imposing curfews or communication restrictions (Whitehead, 2012). According to the interviewee, these measures are an unethical way of managing individuals whom the government consider to be a threat but who have not been charged or convicted.<sup>40</sup>

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<sup>38</sup> Research interviews 1 and 11.

<sup>39</sup> Control Orders have since been replaced by Terrorism Prevention and Investigation Measures (TPIMs), which are similar but less oppressive (Whitehead, 2012).

<sup>40</sup> Research interview 1.

**Professional ethics:** *How far (if at all) should individuals compromise their professional ethics to collaborate effectively with national or international partners?*

Within any given institution, integrity-related problems may occur when one professional observes a colleague behaving in a way that they consider to be unethical. This may occur when a colleague is seen to be acting in violation of a code of ethics or statutory guidance. An individual may consider themselves obligated to report the colleague's conduct to their superiors, or if they have the choice, to respond to the conduct in different, more informal ways.<sup>41</sup>

This is likely to depend on whether the professional is bound by the same ethical standards or by different ones, or if they are an international collaborator. For example, concealment measures are justifiable in certain situations in the security sector but they are not acceptable in the social work context. Yet the counterterrorism threat requires all parties to collaborate, given that individuals intercepted by the authorities on terrorism grounds sometimes also qualify for social work attention.<sup>42</sup> This may place pressure on social workers who need to decide whether information obtained through deceitful measures can form the basis for social work decisions.<sup>43</sup> Similarly, European countries that do not wish to be associated with the US rendition programme may have to decide whether to collaborate on counterterrorism cases with countries that are suspected or have admitted to engaging in extra-judicial renditions. In doing so, these countries may be using this information to support a joint operation, as noted above in section 3.3.3.<sup>44</sup>

### 3.4 Summary

This chapter has explained that counterterrorism professionals face ethical problems that are broadly similar to those encountered in other sectors. However, the secretive nature of the field, a preference for the elimination of risk, extensive collaboration and the time sensitivity of some counterterrorist situations combine to create a challenge to ethical decision-making that is particular to the field. Following an overview of methods to support ethical decision-making in the next chapter, Chapter 5 will explore how consideration of these characteristics can help tailor methods to the counterterrorism field.

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<sup>41</sup> Research interview 12.

<sup>42</sup> Research interviews 25 and 26.

<sup>43</sup> *ibid.*

<sup>44</sup> Research interview 13.



## CHAPTER 4 **Methods to support ethical decision-making**

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This chapter provides an overview of the methods that can help counterterrorism professionals make ethical decisions and includes some illustrative examples. It provides neither an exhaustive nor a representative list of the methods available across all sectors and countries, or of the ways in which they can be applied. The methods described in this chapter are drawn from across the sectors and countries studied in this report.

### 4.1 **There are six types of method that can support ethical decision-making**

Based on our interviews and review of the relevant literature in the counterterrorism, police, military, intelligence, healthcare and social work sectors, we identified six types of method that can support ethical decision-making:

1. **Mitigation methods** to reduce the likelihood of certain ethical problems arising and/or of certain situations leading to unethical decision-making.
2. **Professional development methods** to cultivate individuals' capacity to identify, reflect on and respond to ethical problems.
3. **Guidance methods** to provide professionals with an easily accessible reminder of the laws, policies and norms of their institution.
4. **Leadership methods** to reinforce ethical practice in the organisation, including leadership by example and direction from superiors.
5. **Advice methods** to provide direction in ethical decision-making.
6. **Oversight methods** to ensure that there is an independent check of the ethicality of decisions in place.

These method types are not mutually exclusive. For example, professional development and guidance also mitigate the risk of certain situations leading to unethical decision-making, while ethically aware direction from superiors is likely to involve professional development and guidance.

The amount of detail that interviewees provided about each method varied widely. In most cases, this was due to the fact that these tools are not always institutionalised or officially recognised in an organisation and may sometimes be implemented in another guise. For example, interviewees from the UK intelligence sector initially suggested that they did not often engage in moral case deliberation (see section 4.3.2). Yet, when probing further, it

was clear that this process took place extensively, albeit implicitly and informally. In these cases, the interviewees often found it more difficult to provide detail about the method.

## 4.2 **Mitigation methods**

Our research suggests that there are three main methods that may help reduce the likelihood of certain ethical problems arising and/or of certain situations leading to unethical decision-making: ethics-focused recruitment, ethics-friendly technology and anti-corruption measures. We note that these methods cannot eliminate the risk of ethical problems arising, but can lessen the probability of some kinds of problems arising, under specific circumstances.

### 4.2.1 **Ethics-focused recruitment**

It is not unusual in the sectors that we looked at for recruiters to assess applicants' moral reasoning as part of their recruitment process. This ethics-driven selection procedure seeks to identify staff capable of making ethical decisions in order to minimise the risk of future problems. By vetting applicants, managers can ensure that they select employees they consider to be principled and able to reflect on and address ethical problems.<sup>45</sup>

This type of recruitment is particularly important in sectors where professionals make independent decisions and face ethical problems on a regular basis. In some sectors – particularly intelligence – recruitment is governed by the 'select hard and manage easy' principle.<sup>46</sup> In other words, applicants tend to be rigorously screened before being entrusted to make autonomous decisions.<sup>47</sup> Screening may also occur as an integral part of the promotion process.

### 4.2.2 **Technological measures**

Technology may be used to help prevent professionals from acting unthinkingly and unethically – thereby avoiding the disclosure of sensitive information. Information leaks are particularly problematic in the more sensitive sectors and may damage professional credibility. To prevent this from happening, technology can minimise the ease with which information is disclosed or transferred to a less secure system. For example, the UK Ministry of Defence (MOD) has established a procedure whereby all emails sent to external contacts have to include the words 'RELEASE AUTHORISED' in the subject line. Without the inclusion of these words, an electronic barrier will prevent the release of these messages. The key ethical benefit of this system is that MOD employees are forced to make active decisions and are prevented from acting unthinkingly. This kind of technological process forces professionals to stop, think and review their approach before acting.

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<sup>45</sup> *ibid.*

<sup>46</sup> *ibid.*

<sup>47</sup> *ibid.*

### 4.2.3 Anti-corruption measures

In the Netherlands there are 20 independent social funds created to reduce economically driven corruption in the police sector.<sup>48</sup> One such fund, the social fund of *Midden-Nederland*, provides financial support for approximately 15 to 20 individuals each year. This support carries the condition that the money is repaid 36 months after it is given to the officer in need. In order to apply for financial assistance, *Midden-Nederland* officers must fill out a form and send it to the ‘secretary-help’, who then forwards it to the social fund board. Two board members are assigned to discuss the claim with the applicant before putting together a report that assesses eligibility for support. The board then evaluates the report and – if the applicant is successful – a financial officer will administer the financial support.

In the UK more forces are now gathering economic data in order to identify areas, groups and individuals who may be vulnerable to corruption (so that they can receive targeted support). For example, Police Mutual (PM) has provided UK forces with an analysis of the level of financial stress experienced by police officers and staff. This analysis examines market research survey data on individual priorities (personal, career and financial); views on social and economic issues; retirement planning and realities; and lifestyle, health and well-being in order to gauge vulnerability (Police Mutual, 2012). Her Majesty’s Inspectorate of Constabulary (HMIC) considers this economic analysis important to flag potential corruption among police officers before it develops, but it has not yet become widespread in the UK (HMIC, 2012b). Financial probity is a central part of the external vetting process that all individuals with regular access to classified material (including police officers, particularly those involved in counterterrorism) must undergo and pass. It is reviewed every five years.

## 4.3 Professional development methods

There are three main methods currently used to train professionals in ethical decision-making: mentoring, moral case deliberation and institutional training.

### 4.3.1 Mentoring

Mentorship provides a source of clear ethical guidance to professionals in sectors where they face complex dilemmas. Through mentorship the professional is guided by a more experienced or knowledgeable person and advised on how to respond to morally ambiguous situations in their day-to-day work. In the intelligence sector – among others – mentorship may be part of a formal scheme whereby employees are taught when and how to raise ethical issues arising in their day-to-day work.<sup>49</sup> It may also be an informal aspect of supervision and a part of leadership.

### 4.3.2 Moral case deliberation

Moral case deliberation relies on a case study approach and is particularly common in the Netherlands. In this method, professionals discuss a moral case and the moral dilemmas

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<sup>48</sup> Research interview 12.

<sup>49</sup> Research interviews 1 and 13.

related to it. This can be a useful exercise for a team facing a specific moral problem, as well as a method of assisting professionals in thinking through common ethical issues in their field.

This method may be used by all members of an organisation; however our research suggests that the benefits of involving leadership in the moral case deliberation will depend on the specific case. Hierarchy may help facilitate effective moral case deliberation. In fact, it may demonstrate that facing ethical problems is part of the job and does not necessarily reflect a lack of experience, and it may provide additional support for the approach agreed on to manage these problems<sup>50</sup>. However, depending on the relationship of the hierarchy with its staff and the nature of the problem, it may be preferable to separate senior and junior professionals to create a more open discussion forum<sup>51</sup>.

There are multiple formal and informal approaches to moral case deliberation, with different approaches being utilised in different public sector settings. Formal methods have defined structures and involve specific phases or steps for deliberation. With informal approaches, deliberation occurs under more relaxed terms but with similar goals. Methods available are described in more detail in Appendix C.

Molewijk et al (2011) suggest that moral case deliberation can be used to achieve one or more of the following goals:

1. to reflect on the case and identify moral problems related to it;
2. to reflect on what it means to be professional and to enhance professionals' moral competencies; and
3. to reflect on institutional or organisational issues and to improve the quality of work at that level.

Accordingly, it can be used to identify a particular solution to a problem or to raise awareness of what constitutes an ethical problem.<sup>52</sup>

### **Box 3. Moral case deliberation in the Netherlands**

Moral case deliberation is most commonly used in the healthcare sector, particularly in the Netherlands.<sup>53</sup> Within the Dutch healthcare community, a moral case deliberation session usually takes between 45 minutes and 2 hours and is facilitated by a professional. The facilitator is usually an ethicist or is trained in

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<sup>50</sup> Research interview 3.

<sup>51</sup> Research interview 10.

<sup>52</sup> Research interviews 11 and 16.

<sup>53</sup> Research interview 12.



clinical ethics and conversation methods.<sup>54</sup> They do not give substantial advice and do not morally justify or legitimise a specific decision, but facilitate a discussion among participants. Other sectors adopt variants of this approach, tailored to their needs and the possibilities.<sup>55</sup>

Moral case deliberation is a tool that facilitates critical thinking.<sup>56</sup> The simplicity of the moral case deliberation method helps structure often confusing and complex moral cases. The structure of moral case deliberation is also helpful for regulating the complex dynamics of groups that include one or two particularly vocal individuals. In addition, as moral case deliberation often involves decision-makers and their stakeholders, it may facilitate shared ownership of the final decision and consequently of its implementation (Molewijk et al, 2008:123).

### 4.3.3 Institutional training

Institutional training may take various forms. This section describes formal and informal training, and theoretical and practical training. Furthermore, it discusses training with a primary focus on ethics, in addition to training where ethics is only one in a range of modules. Training will tend to reflect a combination of these characteristics with varying emphases on each feature.

#### *Formal and informal training*

The formality of training varies by sector and by country. For example, ethics training in the healthcare sector is often formal. Medical ethics and law form a compulsory part of undergraduate training. In the UK this type of training has been made mandatory by the General Medical Council; over the five to six years that precede qualification, doctors will receive roughly 100 hours of medical ethics teaching.<sup>57</sup> By contrast, ethics training in the military seems to be more varied across countries. Ethics is formally addressed at all levels of Dutch military training, from basic references to ethics in bachelor-level training and classes in normative ethical theory at the Netherlands Defence Academy. In the UK, in contrast, it is relatively informal; recruits to the Royal Military Academy at Sandhurst are expected to absorb ethics training through osmosis – ethics is ‘caught, not taught’.<sup>58</sup>

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<sup>54</sup> Conversation methods are thus a key component of a moral case deliberation. They delineate several steps or phases through which the central moral question can be investigated, thereby structuring the reasoning and deliberation process (Molewijk et al, 2011). Moral case deliberation draws on a range of conversation methods, and a number of these are described in Appendix C. Moral case deliberation may however also involve role-play or non-verbal communication (e.g. acting, pantomime, use of pictures) to suit different learning styles (Struijs and Van de Vathorst, 2009).

<sup>55</sup> Research interview 14.

<sup>56</sup> In the Netherlands there is a special educational programme for people leading moral case deliberation, including a train-the-facilitator programme. Institutions and companies offer special training courses for people leading moral case deliberation and these courses are tailored to the needs of such institutions/companies (Molewijk, Kleinlugtenbelt and Widdershoven, 2011).

<sup>57</sup> Research interview 22.

<sup>58</sup> Research interview 17.

Regardless of whether training may be described as formal or informal, it will tend to include a mix of formal and informal sessions. For example, although healthcare ethics training is primarily formal, learning through osmosis is an important part of professional development.<sup>59</sup> A balanced mix ensures that professionals' understanding of ethics is informed by what they hear in the classroom, what they are told by more experienced professionals, and what they learn in practice.<sup>60</sup>

#### *Theoretical and practical training*

Experts tend to hold divergent views about whether training ought to be theoretical, focusing on broader ethical concepts and principles, or practical, applying more directly to situations facing professionals in training.

The purpose of theoretical training is to provide professionals with the necessary knowledge and skills to think critically and to address ethical problems effectively, whatever they may be in practice.<sup>61</sup> For example, military ethics education in the US revolves around philosophy classes where professors lecture on utilitarianism and rights-based philosophy (Carrick, in Robinson et al, 2008). This mode of teaching is intended to provide soldiers with a moral understanding which can later shape their responses to real-life scenarios requiring ethical judgement.<sup>62</sup>

Practical training is similar in its aims, but it seeks to achieve these by developing the professional's capacity for ethical decision-making through experiential learning. UK military training places more emphasis on practice than it does on theory, compared with the US (*ibid.*). 'Case studies' are at the heart of practical training. They consist of hypothetical ethical dilemmas where students must weigh up the lesser of two ethically contentious courses of action. Appendix B: contains an example of a case study used by professionals in the military sector.

Ethics education often consists of a blend of theory and practice. For example, the Dutch military developed in 2007 an advanced course in military ethics (*Verdiepingscursus Militaire Ethiek*, VME). Designed as a 'train the trainer' course, VME combines ethical theory with practice through three components: virtue ethics, Socratic ethics and the process of 'learning by doing' (*levend leren*). Commissioned by the Defence Minister (*Minister van Defensie*) and the Secretary-General of the Defence Ministry (*Secretaris-Generaal van het Ministerie van Defensie*), the course is organised between three and four times a year (Bosch and Wortel, 2009). The course coordinators Bosch and Van Baarle have been invited to launch a similar 'train the trainer' course in the UK military in 2014.<sup>63</sup>

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<sup>59</sup> Research interview 22.

<sup>60</sup> *ibid.*

<sup>61</sup> Research interview 17.

<sup>62</sup> *ibid.*

<sup>63</sup> Research interview 19.

### *Ethics as the primary or secondary focus of training*

While in some cases training is entirely based on ethics, in others it is only one component within a broader institutional training structure. For example, the Dutch police and military offer courses with an exclusive focus on ethics, such as moral case deliberation training.<sup>64</sup> By contrast Dutch hospitals organise courses relating to care for their patient population, such as the elderly, in which ethical issues are considered alongside other aspects (Struijs and Van de Vathorst, 2009). Our research did not suggest whether one was preferable to another.

## 4.4 **Guidance methods**

There is a wide range of methods to guide the individual through the ethical decision-making process. In this section we provide a list of some of the guidance methods that are most common in the institutions we researched. Given the breadth of methods, we have categorised them according to the target audience of the guidance: the individual, institutional or national/international level.

### 4.4.1 **Guidance methods for individuals**

At the individual level, professionals use guidance methods to help them make decisions in the workplace. The main methods available at the individual level involve mnemonics, which help professionals check that their decisions match the principles of their institution. For example, the health sector promotes a ‘four principles approach’ (4PA). This values-based method to promote ethical professional practice states the following principles:

1. Professionals must respect patient autonomy, provide them with information and recognise their decisions.
2. The ‘principle of non-maleficence’ instructs professionals to avoid harmful practice.
3. The ‘principle of beneficence’ directs professionals to promote sound practice.
4. The ‘principle of justice’ directs professionals to treat people fairly by allocating benefits and burdens justly, and by not discriminating on unethical grounds (Gallagher and Hodge, 2012).

The UK police have for some time used the ‘PLAN’ (Proportionality, Legality, Accountability and Necessity) mnemonic.<sup>65</sup> This mnemonic is used by police officers as a checklist to assess the suitability of using certain techniques – such as intrusive surveillance – which must be balanced with individual rights. Before adopting any given technique, officers must consider four questions:

1. Is the technique *proportionate* to the threat/offence?
2. Is it *legal* and, if so, have the correct authorities been obtained?

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<sup>64</sup> Research interview 12.

<sup>65</sup> Research interview 2.

3. Is the officer acting in an *accountable* way? This might involve recording decision-making or keeping a detailed log so that they can clearly justify decision-making at a later stage.
4. Is the impact of the officer's operational method *necessary*, given the nature of the threat/offence?<sup>66</sup>

#### 4.4.2 Guidance methods for institutions

Guidance methods available at the institutional level are more varied, and mostly involve codes of conduct, handbooks, checklists and casuistry.

##### *Codes of conduct*

The code of conduct is one of the methods mentioned most frequently in our research. Codes consist of the written institutional policy relating to conduct. As such, they regulate the professional's behaviour. Because they provide a clear picture of a profession's standards they are often used by disciplinary panels to determine what constitutes 'poor' and 'unethical' practice (*ibid*).

The nature of codes is highly varied: our research pointed to examples of codes that regulate professional relations, personal and professional conduct, professional procedures and other areas of conduct. For example, in social work codes tend to regulate the relationship between the social worker and the service user and establish boundaries for appropriate assistance, drawing on international standards (Keinemans and Kanne, 2010; Banks and Nøhr, 2012). The Dutch Corporate Governance Code Monitoring Committee (*Monitoring Commissie Corporate Governance Code*) provides guidance (as well as enforcement and oversight) on various aspects of institutional processes through the Corporate Governance Code,<sup>67</sup> including rules surrounding risk management, remuneration, management board conduct, and corporate social responsibility (Monitoring Commissie, 2008). Moreover, in 2011 the Dutch Minister for Security and Justice and police unions agreed on a code of conduct aimed at maintaining the neutrality of officers. To preserve their impartiality and authority, this code prohibited them from wearing visible manifestations of a religious or political nature, tattoos or piercings and exceptional hair styles or colours (Rijksoverheid, 2011).

A number of codes of conduct have a legal basis. In the UK statutory codes of conduct were intended to help make legislation more accessible to professionals (Gallagher and Hodge, 2012). For example, several UK codes are modelled on the codes derived from the Police and Criminal Evidence Act 1984 (PACE) and provide the core framework of police powers and safeguards around stop and search, arrest, detention, investigation, identification and interviewing detainees, as well as undercover policing (Home Office, 2010–2012).

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<sup>66</sup> *ibid*.

<sup>67</sup> This is often referred to as the *Code Tabaksblat*, named after the head of the committee that authored the original code in 2003. The code has since been updated, in 2008.

### Handbooks

Handbooks serve a similar function to codes of conduct, but they are often more detailed. For example, manuals such as *Covert Investigation* (Harfield and Harfield, 2005) provide a set of methods for undercover police officers responsible for planning, executing and overseeing covert investigations. Handbooks may include case law criteria features, example scenarios and good practice tips. For example, the Dutch police developed the *Toolkit Code Blauw* which is aimed at helping police forces implement the 2007 *Beroepscode Blauw* (Kerngroep Integriteit, 2010). This toolkit consists of a manual for organising and guiding moral dialogues as well as a dvd and a game that address moral dilemmas.

### Checklists

Handbooks often contain checklists – an important means by which individuals and organisations can measure their standards against fixed criteria. For example, UK police authorities may conduct force-wide integrity ‘health checks’ by referring to the checklist contained in HMIC’s 2011 report *Without Fear or Favour* or through use of the national Serious Organised Crime Agency (SOCA) assessment (HMIC, 2012a).

One interviewee noted that professionals should take care not to apply checklists unthinkingly. These guidance methods are designed to help professionals with the critical thinking process – not to provide definitive solutions to ethical problems.<sup>68</sup>

### Casuistry

Casuistry is a practical tool that involves recording cases in which ethical problems have materialised, and the ways in which they were managed. Casuistry thereby facilitates the development of a body of knowledge. In the Netherlands casuistry forms the basis of the *CasusConsult* knowledge system. It was established so that professionals could share and learn from the collective experience of social workers throughout the country, and to train them in handling particular cases. Through the *CasusConsult* system, the user may access a library of cases that are similar to the issues they face, and learn from the experience of others. Box 4 provides more information about *CasusConsult*.

#### Box 4. Casuistry in practice: the *CasusConsult* system

The *CasusConsult* system was created to share the collective experiences of social workers throughout the country in order to teach them how to address particular cases. The system allows social workers to explore possible responses to a given problem by reviewing the recorded experience and advice of their colleagues and of academics. They can also consult literature and websites that colleagues have recorded as relevant and helpful. The *CasusConsult* system also helps bring together discussion groups focusing on specific problems, drawing on a network of both practitioners and academics.

Case studies are at the centre of the *CasusConsult* system. They are structured as follows: (1) title, short summary and search terms; (2) dossier (ethical problem, possible approaches to the problem, and reflections from practitioners and

<sup>68</sup> Research interview 3.

academics); (3) references to relevant literature and websites; and (4) hyperlinks to other relevant information to enable fast navigation (Joenje and Van der Laan, 2001).

#### 4.4.3 **Guidance methods that apply nationally and internationally**

Law is an important guidance method that applies nationally and internationally. Some sectors make greater use of law as a means to define ethical behaviour than others; among these some rely more on international law, some more on national law. For example, international legislation is a particularly important component of ethics guidance for military personnel, while police and intelligence officers are bound by national legislation to a greater extent.<sup>69</sup> In the military context, legislated ethical standards are primarily defined within the framework of the Geneva Conventions.<sup>70</sup> The 1949 Conventions apply internationally and define the basic wartime rights of prisoners, establishing protections for the wounded and for civilians in war zones. By contrast, intelligence agencies are primarily – although not exclusively – governed by national law. Intelligence agencies tend to view themselves, and be viewed, as national entities subject to national priorities and standards.<sup>71</sup> For example, in the UK intelligence sector the Secret Intelligence Service (MI6) is bound not only by international law but also by the Intelligence Services Act (1994) and the Regulation of Investigatory Powers Act (RIPA) (2000).<sup>72</sup> RIPA is the first UK law to introduce clear legal rules regarding the role and conduct of undercover police officers and to allocate powers of authorisation and oversight (HMIC, 2012b).

Although legislation is one of the main methods available to promote ethical standards and enforce ethical behaviour, it has a number of limitations. Not all legislation will be ethical for all situations, nor will law govern all situations raising ethical problems. For example, experts have argued that the Geneva Conventions are outmoded and inapplicable as they were not designed to provide rules for war in the non-conventional asymmetric settings which are typical nowadays (Rose, 2011). For this reason, experts have argued that without an independent monitoring mechanism, the value of the Geneva Conventions is undermined as countries participating in a conflict can exploit grey areas (Carpenter, 2011).

#### 4.5 **Leadership**

Leadership fulfils a wide range of functions and is a key tool for ethical decision-making in organisations. It promotes and enables widespread ethical decision-making, and is empowered to respond to ethical judgements considered to be sub-standard. Leadership is the main tool that is used in social work to promote ethical decision-making (Mayer et al, 2009; Carrick, in Robinson et al, 2008).

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<sup>69</sup> Research interview 16.

<sup>70</sup> Research interview 2.

<sup>71</sup> Research interview 9.

<sup>72</sup> Research interview 1.

In this section we review two aspects of leadership: leadership in the form of active direction from superiors within an organisation, and leadership by example. We then examine conscientious objection, which relies on sound leadership to be effective.

#### 4.5.1 Ethical leadership

Leaders in an organisation can actively direct or influence the decision-making of those under their supervision. First, leaders can offer advice and guidance regarding ethical decision-making. Leaders are expected to have substantial experience in managing day-to-day issues as well as a comprehensive understanding of the broader context for any particular task. Second, leaders can also direct the decision-making of other professionals under their authority (Mayer et al, 2009). Indeed, studies have found that leadership is one of the main factors that enable codes of conduct to have a positive effect on ethical behaviour (Stevens, 2008; Erwin, 2011; Singh, J., 2011). Third, leadership fulfils an oversight function: leaders are responsible for supervising staff in order to ensure that their practice is consistent with organisational standards.<sup>73</sup>

Leaders also serve as ‘role models’ who influence staff (Mayer et al, 2009; Carrick, in Robinson et al, 2008). Our research has shown that leadership by example is particularly important for ethical practice. Research has found that a leader who is widely considered to be caring, fair, attentive and approachable will inspire ethical behaviour in their organisation (Schminke et al, 2002). Experts who examined leadership in the military found that unless the commander truly believed in the values that they communicate, even the best ethics instruction has little impact on soldiers (Carrick, in Robinson et al, 2008).

As we highlight in the following chapter, leadership is a central component in creating a coherent overall approach to fostering ethical behaviour in an organisation. Keith et al (2003) have found that the effects of leadership are often more profound than those of other ethical tools, such as codes of conduct. By extension, where ethical leadership lacks competency, it can lead to sub-standard practice across the organisation through misplaced advice, orders or omissions (Keith et al, 2003). Indeed, ‘sub-standard’ leadership is one of the main factors raised by whistle-blowers (see section 4.7.5).

#### 4.5.2 Conscientious objection

Conscientious objection – also referred to as sidestepping – is a process whereby professionals remove themselves from a task in which their personal moral values conflict with those of the institution. This is not a method to support ethical decision-making but rather an option to be used when ethical dilemmas cannot otherwise be resolved. Sidestepping relies on a leadership that supports employees in finding alternative tasking when they express disagreement or discomfort with a given institutional ethical stance (Wicclair, 2011). Conscientious objection is an opportunity for leaders to demonstrate that they encourage critical thinking in practice (*ibid*).<sup>74</sup>

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<sup>73</sup> Research interview 23.

<sup>74</sup> Research interviews 18 and 26.



Sidestepping is a formal process that is respected in some sectors in relation to key contentious issues, such as abortion in the healthcare sector.<sup>75</sup> However, it may not be permitted or respected in relation to all issues.<sup>76</sup> For example, until now, Dutch civil servants have been legally permitted to object to same-sex marriages (Kamerstuk, 2012). Recently, however, the Dutch liberal democratic political party (*D66*) has proposed to legislate against employing so-called ‘objection civil servants’ (*weigerambtenaren*) (Kamerstuk, 2012). The proposal was adopted on 11 June 2013 by the House of Representatives (*Tweede Kamer*) and was being debated in the Senate as of publication of this report (Eerste Kamer der Staten Generaal, 2013).

Conscientious objection is closely related to and often depends upon the legal and leadership methods discussed above. Leadership and legal guidance may clarify situations for which this avenue is available and ensure that its uses are understood. It is also important to note that the sidestepping process may create further ethical questions, given that a request not to comply with a tasking could conflict with one’s professional obligations (Wicclair, 2011).

#### 4.6 **Advisory methods**

Advisory functions also play a role in helping professionals address ethical problems. Professionals may seek advice when they consider that they do not have the experience or authority necessary to make independent decisions. Advisors may be external or internal, quasi-independent or fully independent, and formally qualified or just experienced and/or interested in ethical decision-making. Furthermore, not all advisors who deliver ethics advice are experts in ethics. The rest of this section will describe different types of advisory function: ethics committees, ethics consultants, staff counsellors, legal advisors and peer support.

##### 4.6.1 **Ethics committees**

Many organisations have access to advisory ethics committees that are intended to guide the ethical decision-making process. They may be executive, with the authority to approve decisions and develop guidance; or consultative, available to advise when professionals identify an opportunity – such as case committees, *casuïstiek commissies*, in the Dutch healthcare system (Struijs and Van de Vathorst, 2009). Ethics committees tend to fulfil three main roles:

1. provide advice on ethical issues;
2. educate professionals about how to recognise and address certain ethical problems (e.g. by providing general guidelines); and

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<sup>75</sup> *ibid.*

<sup>76</sup> Research interviews 13 and 18.



3. react to cases or enquiries submitted by individual professionals by providing advice, issuing guidelines or prescribing actions in response to those cases or enquiries.<sup>77</sup>

These committees are most common in the healthcare sector, and in particular in hospitals (Munk, 2005).

The committees tend to include members of varied expertise, and involve both practitioners and theorists.<sup>78</sup> For example, the Dutch hospital committees most often involve ethicists, philosophers, doctors and other healthcare professionals; in children's social work in the UK they typically involve professionals responsible for the cases as well as an independent chair.

One example of an ethics committee that combines both an authoritative and consultative role is the ethics committee at the Albert Schweitzer Hospital in Dordrecht. The committee undertakes a number of activities: (1) it develops guidelines (e.g. on euthanasia or non-resuscitation protocols); (2) it develops posters with slogans aiming to provoke a discussion on ethical problems; and (3) it organises thematic meetings where moral questions are discussed (see 'moral café' in Appendix C:). Under its guidelines, the commission has made it obligatory for doctors to report and discuss potential cases of euthanasia. Although the commission cannot overrule a decision of the doctors, it is reported to improve the doctors' decision-making process by requiring them to argue their case for euthanasia (Munk, 2005).

#### 4.6.2 Ethics consultants

Some institutions have access to ethics consultants, whose primary purpose is to advise on responses to ethics problems. These consultants have expertise in ethics and they often have relevant practical experience (Dauwerse et al, 2012). Ethics consultants tend to be closely linked with a particular institution, whether as members of ethics committees or as independents, occasionally participating or presenting a case in ethics committee meetings (*ibid*).

The ethics consultant plays a central role in the Dutch healthcare sector. Currently, it is estimated that around 10 per cent of Dutch healthcare institutions have ethics consultants. In the US ethics consultants are institutionalised through a formal mandate, although they remain independent in their work (*ibid*).

#### 4.6.3 Staff counsellor

Several interviewees referred to staff counsellor roles within their organisations. These counsellors are not necessarily recruited for the purpose of assisting with ethical decision-making, but they tend to provide independent advice, most often at the individual level. For example, one interviewee explained that this role is most often called on by intelligence professionals when management fails to address individual concerns.<sup>79</sup> As such, the staff

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<sup>77</sup> Research interview 10.

<sup>78</sup> *ibid*.

<sup>79</sup> Research interview 13.

counsellor role may be considered a precursor to whistleblowing, which may materialise if the issues remain unaddressed (see section 4.7.5).

#### 4.6.4 **Legal advisors**

Another role that is not specific to ethics but has been reported to help ethical decision-making is that of legal advisor. These advisors are common, in particular in the military, and may be called on to inform decisions about appropriate action in a given situation.<sup>80</sup> For example, the UK armed forces offer legal training in order to teach troops the rules of engagement, a set of rules that are tailored to the requirements of each military operation and which outline when it is appropriate to use lethal force.<sup>81</sup> Legal advisors are reported to be helpful in situations where it is unclear what law applies and how it can be operationalised to a particular case.<sup>82</sup>

#### 4.6.5 **Peer support**

Many interviewees also mentioned that informally seeking colleagues' advice is one of the main methods used for ethical decision-making. Seeking colleagues' advice may take place around meetings, over lunch or during travel. Interviewees explained that these informal discussions create a space for open debate in a supportive atmosphere.<sup>83</sup> One interviewee highlighted that it may provide professionals with the opportunity to admit failure or wrongdoing without fear of immediate formal consequences.<sup>84</sup>

However, the informal nature of exchanges with peers means that the advice provided cannot be monitored for consistency with official guidance. Its success therefore rests on a staff base that is competent and aware of institutional guidance in ethical decision-making. Otherwise, it risks undermining institutional efforts to promote a particular approach. As such, peer support should be considered complementary to other, more formal, methods to support ethical decision-making.

### 4.7 **Oversight mechanisms**

Most sectors are subject to oversight mechanisms that aim to review past decisions and provide an independent assessment of their ethicality. This mechanism contributes to the transparency, accountability and legitimacy of public services, and it provides an opportunity to review past practice to improve future decision-making. This section describes the most common oversight mechanisms that we came across during our research: professional bodies, political oversight committees, ombudsmen, institutional supervision and whistleblowing.

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<sup>80</sup> Research interviews 16 and 17.

<sup>81</sup> Research interview 2.

<sup>82</sup> Research interviews 15 and 17.

<sup>83</sup> Research interviews 18 and 23.

<sup>84</sup> Research interview 22.

#### 4.7.1 Professional bodies

Professional bodies may have an advisory function by providing guidance (see section 4.6.1), but they may also regulate the profession by holding a registry of individuals authorised to practice. The professional bodies authorise new members once they achieve certain qualifications, and have the authority to withdraw their licence to practice should the professional be considered to have engaged in malpractice (Adams, R., et al, 2009). As such, they help ensure that professionals are ethically competent, and that ethical competence is considered a necessary professional standard as opposed to an additional desirable consideration.

Disciplinary professional bodies are common in the healthcare profession and, more recently, in social work (*ibid*).<sup>85</sup> For example, the Healthcare Inspectorate in the Netherlands (*Inspectie voor de Gezondheidszorg*, IGZ) is responsible for the effective enforcement of the quality of health services, prevention measures and medical products.<sup>86</sup> Among other functions, the inspectorate responds to reports of incidents or situations that suggest shortcomings in the quality of care. Following these reports the IGZ may take various enforcement actions towards healthcare providers, ranging through recommendations, imposed supervision, fines and initiating criminal proceedings. Similarly, the Health and Care Professions Council (HCPC) in the UK has set up a 'fitness to practice panel'. If the Council receives a complaint about an individual practitioner, the panel will consider the individual circumstances of the case (e.g. profession and scope of practice). Possible consequences include cautioning a registrant, placing conditions on their registration, suspending them from practice or, in the most serious cases, removing them from the register (Health and Care Professions Council, 2008).

#### 4.7.2 Political oversight committees

Another type of oversight mechanism is that of political committees. The committees review practice on behalf of the government and the public, and investigate whether it meets the standards set by the government. Although their work mostly involves financial management and assessing responsiveness to the public, the committees often include an ethics sub-committee that is responsible for considering ethics issues specifically.

These committees are independent from the organisations that they examine, and are mainly composed of politically active persons; some experts are often also involved. In the UK, the Intelligence and Security Committee (ISC) is responsible for oversight of the intelligence and security agencies alongside other bodies.<sup>87</sup> Established by the Intelligence Services Act 1994, the ISC was designed to examine the policy, administration and expenditure of the Security Service, Secret Intelligence Service (SIS) and the Government Communications Headquarters (GCHQ). The ISC has faced a number of challenges,

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<sup>85</sup> Research interviews 24, 25 and 26.

<sup>86</sup> 'The Health Care Inspectorate in short', *Inspectie voor de Gezondheidszorg, Ministerie van Volksgezondheid, Welzijn, en Sport*, available from: <http://www.igz.nl/english/> [accessed 18 July 2013].

<sup>87</sup> Including: the Investigatory Powers Tribunal, the Intelligence Services commissioner, the Interception of Communications commissioner, the independent reviewer of terrorist legislation, and the National Audit Office.

related among others to the level of engagement with the agency and the level of public accountability.

In the Netherlands the governmental Committee for Intelligence and Security Agencies (*Tweede Kamercommissie voor de Inlichtingen- en Veiligheidsdiensten*), nicknamed ‘the Sneaky Committee’ (*Commissie Stiekem*), is responsible for the political oversight of the secret aspects of government policy relating to the Dutch General Intelligence and Security Service and the Military Intelligence and Security Service.<sup>88</sup> All party leaders in the House of Representatives (*Tweede Kamer*) are entitled to take a place in this committee. However as the committee discusses classified information in a closed setting, the Dutch political party *Socialistische Partij* (SP) initially refused to take part in the committee. The party argued that this committee undermined democracy by not allowing public disclosure of the documents discussed (NOS, 2009). Yet the SP eventually joined the committee in 2009 after an agreement was reached that, where possible, most of the documents would be made available for public disclosure (NOS, 2009).

Besides this governmental committee, the Oversight Committee on the Intelligence and Security Service (*de Commissie van Toezicht betreffende de Inlichtingen- en Veiligheidsdiensten*, CTIVD) operates as an independent oversight committee that monitors the correct execution of two laws relating to the intelligence and security services.<sup>89</sup> The CTIVD has several powers; for example, access to all intelligence and security services’ documents and the right to hear witnesses.<sup>90</sup> The findings are sent to the relevant minister and are made publicly available. In case a report contains state secrets, the details are then forwarded to the Committee for Intelligence and Security Agencies.

#### 4.7.3 Ombudsmen

The ombudsman function is responsible for dealing with complaints relating to ethical problems in the workplace.<sup>91</sup> It involves external investigation of grievances and mediation between parties in order to arrive at a fair settlement. The Dutch ombudsman addresses citizens’ complaints concerning government conduct nationally.<sup>92</sup> To bring issues to the attention of the ombudsman, citizens may write a letter or submit a digital complaint via the website.<sup>93</sup> Upon receipt of the citizen’s complaint, the ombudsman will send a written confirmation and – where necessary – conduct an investigation concluding with a report. This report is designed to assess the legitimacy of the complaint and identify ways by

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<sup>88</sup> *Algemene Inlichtingen- en Veiligheidsdienst* (AIVD) and *Militaire Inlichtingen- en Veiligheidsdienst* (MIVD) respectively. Information about the *Commissie voor de Inlichtingen- en Veiligheidsdiensten* is available at: <http://www.tweedekamer.nl/kamerleden/commissies/IV/index.jsp> [accessed 15 August 2013].

<sup>89</sup> These Acts are: *Wet op de Inlichtingen- en Veiligheidsdiensten uit 2002* and *Wet veiligheidsonderzoeken*. Information available at: [http://www.ctivd.nl/?Over\\_de\\_CTIVD](http://www.ctivd.nl/?Over_de_CTIVD) [accessed 16 August 2013].

<sup>90</sup> [http://www.ctivd.nl/?Over\\_de\\_CTIVD](http://www.ctivd.nl/?Over_de_CTIVD) [accessed 16 August 2013].

<sup>91</sup> Research interview 24.

<sup>92</sup> Research interview 21; Alex Brenninkmeijer has been the *Nationale ombudsman* of the Netherlands since June 2005.

<sup>93</sup> The digital complaint form is available at: <https://www.nationaleombudsman.nl/complaint-form> [accessed 20 June 2013].

which the administrative authority can improve its practice.<sup>94</sup> A similar role exists in France in the position of ‘Defender of rights’ (*Defenseur des droits*). This person is supported by a team of deputies that are each responsible for a particular field, such as public services, children, discrimination and security.<sup>95</sup> The deputy in charge of security typically addresses complaints relating to the challenges of making formal complaints and the justification for stop and search activities.<sup>96</sup>

#### 4.7.4 Institutional supervision

Institutional supervision is another type of oversight mechanism, one that does not benefit from the same independence as professional bodies or political oversight committees. It nonetheless provides an opportunity to review practice and develop an understanding of the factors contributing to ‘sub-standard’ practice in order to address them.

For example, each Dutch regional police force includes a department for safety, integrity and complaints (*Afdeling Veiligheid, Integriteit en Klachten*). The departments’ main responsibilities include conducting internal investigations into (potential) police misconduct, developing and monitoring frameworks and standards regarding internal investigations, vetting procedures and mitigation measures (Rijksoverheid, 2012). Similarly, in the UK health sector a process has been set up to enable patients to report incidents and ‘near misses’, including those of a moral nature. A line manager or a supervisor of the professional against whom the complaint is filed reviews the information. This person is responsible for ensuring that the complaint is addressed and relevant lessons are learned, while maintaining the confidentiality of patients’ details (Gallagher and Hodge, 2012).

#### 4.7.5 Whistleblowing

Whistleblowing is not an official function of an organisation, but the prerogative of an individual. It provides a means through which an individual may draw the attention of external bodies, such as the media, to what they consider to be unethical practice. Whistleblowing may in turn lead to measures that aim to mitigate the likelihood that such practice would reoccur.

Whistleblowing is often a last resort, used only when leadership fails to address individuals’ concerns.<sup>97</sup> Researchers from Greenwich University analysing the helpline data of the Public Concern at Work charity found that three out of four whistleblowers had first raised concerns with their managers, but felt their claims had been ignored (Syal, 2013). The researchers also found that whistleblowers were typically skilled professionals who had entered the organisation within the previous two years, and that one third belonged to the health and social work sectors (Syal, 2013). Whistleblowing is implied in most codes of ethics that promote the ethical responsibility to flag inappropriate behaviour through a formal complaints process (Bowles, 2006).

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<sup>94</sup> <http://www.nationaleombudsman.nl/file-complaint-national-ombudsman> [accessed 20 June 2013].

<sup>95</sup> Research interview 29.

<sup>96</sup> *ibid.*

<sup>97</sup> Research interviews 9 and 23.

The evidence from the Public Concern at Work data shows that whistleblowing is not without risk: 15 per cent of whistleblowers were eventually fired while many others were bullied, ostracised or victimised. This finding is consistent with the wider evidence base. Our research suggests that professionals may be reluctant to report for a range of reasons: fear of victimisation or retribution, because the bad practice seems impossible to prove, belief that they would not be listened to, lack of support, not wishing to hurt a colleague, not wanting to ‘tell tales’, being advised by peers against reporting, and fear of financial loss (Reamer, 2006; Banks and Nøhr, 2012; Gallagher and Hodge, 2012).<sup>98</sup>

Certainly, the recent high-profile cases of Edward Snowden and Bradley Manning highlight the potential perils of whistleblowing from both the whistleblowers’ and the organisational perspectives. Snowden, a National Security Agency contractor, and Manning, a US Army analyst, in separate instances disclosed secret information via internet and mass-media channels regarding what they believed to be immoral acts by the US government. While there is some debate regarding whether or not Snowden and Manning are whistleblowers in a strict sense (Laughland, 2013; Peralta, 2013),<sup>99</sup> it is clear that they believe their actions were motivated by ethical considerations. In 2013, Snowden had taken in temporary asylum in Russia, and Manning was convicted of espionage charges in the US, further reinforcing the risks involved with this method.

The Netherlands has measures in place to mitigate the risks of whistleblowing: the whistleblower advice centre (*Adviespunt Klokkenluiders*) offers advice to whistleblowers, and the Parliament recently passed a proposal to establish a so-called house for whistleblowers, to protect them from the severe negative consequences that they might endure (Kamerstuk, 2013). Dutch media organisations also provide whistleblower support; on 9 September 2013 a number of major Dutch media outlets supported the launch of Publeaks ([www.publeaks.nl](http://www.publeaks.nl)), which provides a secure website for people to leak documents to the media. Publeaks ‘is designed to protect whistleblowers’.<sup>100</sup> It operates on the GlobaLeaks software developed by the Hermes Center for Transparency and Digital Human Rights ([logioshermes.org](http://logioshermes.org)), which supports whistleblower-oriented technologies internationally.

## 4.8 Summary

This chapter has provided an overview of the main methods that can help counterterrorism professionals make ethical decisions. The methods were derived from research across sectors and countries; the examples are not intended to be exhaustive or representative, but

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<sup>98</sup> Research interviews 22 and 23.

<sup>99</sup> The Australian Attorney-General Mark Dreyfus has argued that neither Snowden nor Manning is a whistleblower: ‘Where an activity has been authorised under law and overseen by appropriate government bodies and where no wrongdoing has been identified, the disclosure of information is not “whistleblowing”’ (Laughland, 2013). While judges in Manning’s trial rejected the notion that he was a whistleblower, Snowden’s legal team maintains that his disclosures fit the definition of whistleblowing because of their targeted impact on public policy (Peralta, 2013).

<sup>100</sup> For further information see their press release at: <https://www.publeaks.nl/press.html> [accessed 23 September 2013].

to illustrate the methods that may be available to professionals and show how they can be implemented. Table 4 summarises the methods described in this chapter.

**Table 4 Methods to support ethical decision-making**

Method	Examples
Mitigation	<ul style="list-style-type: none"> <li>• Ethics-focused recruitment</li> <li>• Technological measures</li> <li>• Anti-corruption measures</li> </ul>
Professional development	<ul style="list-style-type: none"> <li>• Mentoring</li> <li>• Moral case deliberation</li> <li>• Institutional training</li> </ul>
Guidance	<ul style="list-style-type: none"> <li>• Mnemonics</li> <li>• Codes of conduct</li> <li>• Handbooks</li> <li>• Checklists</li> <li>• Casuistry</li> <li>• Law</li> </ul>
Leadership	<ul style="list-style-type: none"> <li>• Ethical leadership</li> <li>• Conscientious objection</li> </ul>
Advice	<ul style="list-style-type: none"> <li>• Advisory ethics committees</li> <li>• Ethics consultants</li> <li>• Staff counsellors</li> <li>• Legal advisors</li> <li>• Peer support</li> </ul>
Oversight	<ul style="list-style-type: none"> <li>• Professional bodies</li> <li>• Political oversight committees</li> <li>• Ombudsmen</li> <li>• Internal supervision</li> <li>• Whistleblowing</li> </ul>





## CHAPTER 5 **Implications for managing ethical problems in counterterrorism**

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This chapter explores how methods to support ethical decision-making may be tailored to the characteristics of ethical decision-making in counterterrorism, thereby drawing together Chapters 3 and 4. It also summarises the evidence for the effectiveness of different methods, before discussing the context in which these methods should be implemented in order to have maximum effect on ethical decision-making. We deliberately refrain from making explicit recommendations regarding the methods that should be developed, strengthened or implemented in the Dutch counterterrorism context.<sup>101</sup>

### 5.1 **Tailoring methods to support ethical decision-making to the counterterrorism field**

Chapter 3 identified that the context of decision-making in counterterrorism may be characterised by secrecy, a preference for the elimination of risk, extensive collaboration and the time sensitivity of some problems (see Table 2). These characteristics give information about how methods to support ethical decision-making may be tailored to the field.

First, the secrecy of many counterterrorism decisions suggests that the main methods used by counterterrorism professionals will be those that rely on a limited number of colleagues. For example, mentoring, ethics consultants and legal advisors, where available, are likely to be the methods most frequently used to support ethical decision-making. Also, the sensitivity of counterterrorism material argues for carefully tailoring some methods involving externals to the sensitivity of the counterterrorism field. This may help maintain some external input into institutional practice. Partnerships with select academics and privileged access to oversight committees are some of the measures that are already in place to ensure that counterterrorism professionals can benefit from an external perspective.

Second, the aversion to avoidable risk suggests there is a possibility that counterterrorism professionals would restrain civil liberties disproportionately to the risk of a terrorist attack.

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<sup>101</sup> The scope of the study was limited to the creation of an inventory of tools, and did not involve a specific assessment of counterterrorism activities in the Netherlands. Recommendations would therefore be premature at this stage.

Methods that can review and confirm the proportionality of a response to a risk are therefore particularly important in this field. The methods that can support this endeavour include leadership, which can confirm decisions or ensure that they are in line with institutional guidance; and oversight bodies, which can assess the appropriateness of the guidance itself.

Third, the extensive collaboration involved in counterterrorism work, both across agencies and countries, indicates that professionals will benefit from training, guidance and advice that is consistent with those of other agencies and countries. Where consistency is not possible, professionals will benefit from information about their differences from collaborators and from instructions regarding ways to resolve tensions that may arise as a result of differences.

Fourth, the time sensitivity of some counterterrorism situations suggests that it is essential to offer some instantly accessible methods, such as checklists. These methods will benefit from being complemented by others that target the development of individuals’ capacity to make ethical decisions quickly and independently. Ethics-focused recruitment, mentoring and training would all support this endeavour.

Table 5 below summarises the key lessons for tailoring methods to support ethical decision-making in counterterrorism.

**Table 5 Tailoring methods to support ethical decision-making to counterterrorism**

Characteristics of decision-making context in counterterrorism	Implications for tailoring methods	Examples of relevant methods
Secrecy: limited availability of individuals who can be involved in the ethical decision-making process	– Emphasis on strengthening methods for internal use	– Mentoring, ethics consultants and legal advisors
	– Availability of methods involving externals	– Partnerships with select academics and privileged access to oversight committees
Preference for the elimination of risk: possibility of disproportionately constraining civil liberties to protect the safety of citizens	– Emphasis on methods to cross-check practice with guidance	– Leadership
	– Availability of methods to review guidance	– Oversight committees
Extensive collaboration: joint working with organisations and countries that have different practices and policies	– Emphasis on consistent policies	– Training, guidance and advice
	– Availability of guidance for resolving differences in collaborators’ practices	– Checklists
Time sensitivity: requirement to make decisions independently, quickly and on the basis of imperfect information	– Emphasis on building individuals’ competence to make ethical decisions independently	– Ethics-focused recruitment, mentoring and training
	– Availability of instant access methods	– Checklists

## 5.2 The effectiveness of the different methods to support ethical decision-making varies

There has not been much research done on the effectiveness of the methods to support ethical decision-making discussed in this report (see Box 5, below). The evidence available nonetheless provides some insight into how effective counterterrorism professionals may expect each method to be in helping them make ethical decisions. In particular, the literature on business ethics evaluates the effectiveness of ethical leadership, corporate codes of conduct, ethics training, and initiatives to create ethical climates in the workplace.<sup>102</sup> As the rest of this section explains, leadership, formal training and ethics committees have all been found to be effective in supporting ethical decision-making. The evidence of effectiveness of codes of conduct is inconclusive, but success appears to depend in part on the presence of other methods to support them. As for the remaining methods to support ethical decision-making, the lack of prior research does not allow us to comment on their effectiveness.<sup>103</sup>

Leadership is identified by multiple studies as being at the centre of ethical decision-making. Keith et al (2003) even estimated the effect of leadership on ethical decision-making to exceed that of other methods. Some of the reasons for this – such as the role of leadership in promoting an organisational culture – were documented earlier in this report (see section 4.5). Leadership that is not ethical may have the opposite, detrimental effect (Eisenbeiß and Giessner, 2012; Manning, 2003, cited in Banks and Nøhr, 2012; Mayer et al, 2009; Marchionni and Ritchi, 2008; Fulmer, 2004; Schmink et al, 2002).

Formal training has also been found to have a consistently positive effect on ethical decision-making, through raising awareness of ethical issues and how they can be managed. Evidence suggests that training may be most effective when carried out in small groups as opposed to in lectures or large seminars (Goldie et al, 2008). One study, which examined different levels of ethics training and education amongst social workers and nurses – be it through various university degrees or professional qualifications – found that it had a significant influence on the confidence, use of ethics resources, and moral action of these professionals (Grady et al, 2008). This finding appears to be consistent across sectors. For example, one study stated that ‘the formal teaching of medical ethics ... does make a significant difference in the development of moral reasoning’ (Self et al, 1992), while another concluded that ‘leader-led battlefield ethics training positively influenced soldiers’ understanding of how to interact with and treat non-combatants, and reduced reports of ethical misconduct’ (Warner et al, 2011).

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<sup>102</sup> For further discussion of these themes, see Weber, 1990; Cleek and Leonard, 1998; Cohen, 1993; Erwin, 2011; Farrell et al, 2002; Ford et al, 1982; Fulmer, 2004; Somers, 2001; and Stevens, 2008.

<sup>103</sup> We reiterate here, as noted at the outset of the report, that we have not completed an exhaustive review of the literature, and in particular were unable to address fully the wealth of evidence from the healthcare and social work sectors. We relied on expert interviews for an effective overview of these, within the scope of the project. A thorough examination of evaluation literature available in these fields may be a matter for follow-on work.

Ethics committees are expected to have a positive effect on ethical decision-making, in particular through clarifying issues, providing legal advice, helping to shape consistent policies, and providing opportunities for professionals to air disagreements (see, e.g. McGhee et al, 2002). This evidence is mainly drawn from the healthcare sector, where our research suggests it is most used, particularly in the US.

The effectiveness of codes of ethics is debated within the literature. On the one hand, codes of conduct have been found to influence the definition of role responsibility and people's inclination to report peers perceived to engage in unethical behaviour (Adams, J., et al, 2001; Trevino and Bart, 1992). On the other hand, various studies suggest that codes of conduct have little influence over the ethical behaviour of personnel (McCabe et al, 1996; Cleek and Leonard, 1998).<sup>104</sup> Some of these studies found some influence from codes of conduct, but only in the presence of other methods to support ethical decision-making (Singh, J., 2011; Schwartz, 2001). The success of a code appears to be contingent on the degree to which leaders embrace it and to which malpractice may be sanctioned, and also on a robust underpinning communication and training schedule (Stevens, 2008; Erwin, 2011; Singh, J., 2011).

**Box 5. Overview of the evidence base on the effectiveness of methods to support ethical decision-making**

There is only a small amount of research literature on the effectiveness of methods to support ethical decision-making. We undertook a structured literature search in English in Google Scholar,<sup>105</sup> applying combinations of the following search terms:<sup>106</sup> 'ethics', 'evaluation', 'assessment', 'effectiveness' and 'measurement'; the various methods to support ethical decision-making (see Chapter 4); and the various professional sectors that this study is concerned with (see Chapter 1). Out of 75 searches, we did not identify any relevant results in 47 cases, despite consulting 10 pages of results for each search. In other words, only 37 per cent of our searches were productive.

The majority of the results related to healthcare and business literature. Most of the evidence on the effectiveness of methods to support ethical decision-making referred to training or codes of conduct, although in some of the better-documented sectors – such as healthcare and social work – we found evidence on the effectiveness of other methods in supporting ethical decision-making.

That the success of one method may be contingent on the presence of other methods for ethical decision-making highlights a broader point – each of these methods exists within an organisational context that is likely to include multiple approaches to promoting ethical

<sup>104</sup> Research interview 10.

<sup>105</sup> Given the limited number of relevant hits relating to the police and the military, we also applied these search terms to Google, thereby opening our search results to grey literature as well as to academic literature.

<sup>106</sup> We identified these search terms by brainstorming synonyms of the terms related to the phenomena of interest in our study, and piloting them to identify the terms leading to relevant results.

behaviour. The degree to which an organisation's support of ethical decision-making is construed by its members as robust, coherent and reinforced by senior leadership will impact on the potential effectiveness of specific methods in concrete situations. We further explore this point in section 5.3.

### 5.3 **The success of methods to support ethical decision-making ultimately depends on the climate of the organisation in which they are available**

Our review suggests that one of the main determinants of ethical decision-making is the climate of the organisation; in other words, the aggregate individual perceptions of ethical norms in an organisation (Rothwell and Baldwin, 2006). Although there is no single type of ethical climate,<sup>107</sup> researchers have identified a number of characteristics that are associated with ethical conduct (Victor and Cullen, 1988). Leadership is considered to be a critical determinant of the climate as it cultivates the freedom to comment, or instead sponsors, a so-called spiral of silence. As should be clear from section 5.2, ethical leadership – through active direction and oversight by senior individuals as well as by the example they set through their actions – is essential in creating a coherent approach to fostering an ethical climate.

Furthermore, allowing individuals to examine their knowledge, beliefs, value judgements, feelings or assumptions critically in order to make sense of the world is a key characteristic of an ethical climate (Williams, 2001). Other features of a positive ethical climate include open channels of communication, collaborative working, adequate resources, managerial support and on-going education. Aligning incentives with ethical values – including recruitment, rewards and promotions – may help show that the institution practices as it preaches (Schneider et al, 1994; Woerkom and Croon, 2008; Cheung-Judge and Holbeche, 2011; Gallagher and Hodge, 2012).

If professionals are unaware of ethical problems, not competent at identifying them or responding to them, or do not value ethics, the methods may not be used or applied appropriately. This theme ran through all of the interviews that we carried out and much of the research that we reviewed. In this sense, applying these methods does not provide a guarantee of ethical decision-making, and inappropriate use of these methods may in fact be detrimental to achieving ethical outcomes. Strengthening ethical decision-making will therefore rely on an understanding of what constitutes an ethical climate, and how it can be developed and maintained within a specific organisational context, in addition to making methods to support ethical decision-making available to professionals.

### 5.4 **Summary**

Methods to support ethical decision-making may be tailored to the characteristics of decision-making in counterterrorism. More specifically, methods that combine internal

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<sup>107</sup> Victor and Cullen (1988) differentiated between various types of climate: caring, law and code, rules, instrumental and independence. These climates influence what is considered an ethical problem and the processes in place to resolve it.

and external perspectives are essential to ensuring the ethicality of institutional guidance and individual decision-making. Such a mix is particularly challenging to achieve, given the sensitivity of much counterterrorism information. Methods of reviewing decision-making are also key to minimising the disproportional responses to risk that may arise from the low-frequency and high-impact nature of terrorist attacks and the resultant preference for the elimination of risk. The extensive collaboration of counterterrorism professionals stresses the importance of consistent guidance and of the availability of direction with regard to resolving tensions between guidance documents. Finally, the time-sensitive nature of some counterterrorism situations highlights the value of instantly accessible methods in complementing recruitment and training programmes that are aimed at developing professionals who are independently capable of ethical decision-making.

However, the effectiveness of and method to support ethical decision-making is likely to be largely dependent on the ethical climate of the organisation in which it is implemented. Without an organisational culture and leadership that supports the identification of ethical problems, as well as the availability and implementation of ethical decision-making tools, the methods described in this report are unlikely to be effective in strengthening ethical decision-making.

These results provide an overview of the methods that may support counterterrorism professionals in ethical decision-making as well as the ways in which they may be tailored to the field. In order for this inventory to contribute to strengthening ethical decision-making in Dutch counterterrorism, those involved in follow-on work may wish to examine those methods that should be developed, strengthened or implemented in this specific context.

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## **APPENDICES**

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## Appendix A: List of interviewees

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Name	Affiliation
Richard Ashcroft	Professor of Bioethics, Queen Mary, University of London Department of Law. UK
David Anderson QC	Independent Reviewer of Terrorism Legislation; Visiting Professor of Law, King's College London; Recorder of the Crown Court. UK
Rt Hon. Hazel Blears MP	Member of the Intelligence and Security Committee; former Secretary of State for communities and local government; former Minister at the Department of Health; Former Minister at the Home Office; MP for Salford and Eccles. UK
Dr. Gabriela Bodea	ICT and privacy researcher, Netherlands Organisation for Applied Scientific Research ( <i>Nederlandse Organisatie voor Toegepast Natuurwetenschappelijk Onderzoek, TNO</i> ). Netherlands
Don Carrick	Military Ethics Education Researcher, King's College London; Tutor in Biomedical Ethics, University of Leeds. UK
Chris Clark	Honorary Professorial Fellow in Social Work Ethics, University of Edinburgh. UK
Gertjan Commu	Head of IBT <i>integrale beroepsvaardigheden</i> training, Utrecht Police Force. Netherlands
Heather Draper	Professor of Biomedical Ethics, University of Birmingham, UK
Sieb Geerds	<i>Commissaris regio Utrecht</i> , Police Bureau for Regional Security Strategy. Netherlands
Dr Anthony Glees	Professor of Security and Intelligence Studies, University of Buckingham; advisor to the intelligence services. UK
Dr Bob Hogenboom	Professor of Policing and Security Studies, VU University Amsterdam, Amsterdam; member of the Netherlands Intelligence Study Association; advisor to the Dutch Police Academy. Netherlands
Nigel Inkster CMG	Director of Transnational Threats and Political Risk, International Institute for Strategic Studies; former Director of Operations at MI6. UK
David Jones	Social worker, British Association of Social Workers; Member of the BASW Policy, Ethics and Human Rights Committee. UK
Mariël Kanne	Ethics professor, consultant and social work researcher, <i>Hogeschool Utrecht</i> ; Centre for Nursing Studies; University for Humanist Studies. Netherlands
Dr Jos Kole	Senior Research Fellow and Member of the Disciplinary Committee <i>Commissie van Beroep (Nederlandse Vereniging Maatschappelijk Werk, NVMW)</i> , University of Utrecht Ethics Institute. Netherlands
Drs Michael Kowalski	Strategic Analyst, National Coordinator for Counterterrorism and Security ( <i>Nationaal Coördinator Terrorismebestrijding en Veiligheid</i> ,

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MA	NCTV). Netherlands
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Françoise Mothes	Deputy to the National Ombudsman for Security Ethics ( <i>Adjointe du Défenseur des droits chargée de la déontologie dans le domaine de la sécurité</i> ). France
Dr Mark Phythian	Professor, University of Leicester Department of Politics and International Relations. UK
Dr Derek Suchard	Integrity advisor, <i>Centrale Organisatie Integriteit Defensie</i> . Netherlands
Dr. Désirée Verweij	Professor of Military Ethics, <i>Nederlandse Defensie Academie</i> . Netherlands
Richard Warnes	Defence and Security Analyst, RAND Europe; former Detective Officer, Scotland Yard Specialist Operations Department; former full-time army reservist. UK
Dr Michael Wise	Member of the British Medical Association Medical Ethics Committee. UK
Anonymous <sup>108</sup>	Lecturer, <i>Defensie Inlichtingen en Veiligheid Instituut</i> . Netherlands
Anonymous	Policy officer, British Association of Social Workers. UK
Anonymous	2 senior advisors, <i>Inlichtingen en Veiligheidsdienst</i> , AIVD. Netherlands
Anonymous	Senior policy analyst and intelligence officer, anonymous research organisation and intelligence agency. UK

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<sup>108</sup> Owing to the sensitive nature of their professional role, some of our experts wished to remain anonymous in the report.

## Appendix B: Critical thinking methods

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The methods outlined in Chapter 4 illustrate that critical thinking is at the heart of ethical decision-making. This appendix explores some of the critical thinking approaches on which methods to support ethical decision-making rely.

### **The case study approach**

Case studies are commonly used to facilitate critical thinking, particularly in the military and health education contexts. Case studies pose ethical problems, and provide a starting point from which to engage in critical thinking with colleagues or mentors. Through this, case studies provide an opportunity for participants to become more competent at managing ethical problems individually in the future and to start developing a professional ethical approach to common problems.

Below, we describe one case study that is used in the UK military education context:<sup>109</sup>

A small UK military unit in Afghanistan, instructed to kill high-ranking insurgents, stumbled across a shepherd boy guarding his flocks while on patrol. They were faced with an ethical dilemma:

- A) Should they let the boy go, knowing that he might run to alert his village, which may include Taliban; or
- B) should they kill the potentially innocent boy?

This example is drawn from a real-life situation. The unit involved in the situation decided that it was morally right to let the shepherd boy go. Upon release, the boy alerted his village and, resultantly, Taliban fighters killed all but one member of the military unit and the Special Forces sent to the site to rescue the unit. The only survivor commented that he had always regretted not deciding to kill the Afghan shepherd boy instead.<sup>110</sup>

### **The 'tracking harms' method**

The 'tracking harms' method is a five-step approach in use in the social work sector that makes extensive use of case studies. It involves the following:

1. Constructing arguments to understand the reasons behind clients' actions.

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<sup>109</sup> Research interview 17.

<sup>110</sup> *ibid.*

2. Determining clients' goals and weighing them against the goals that ought to be achieved.
3. Identifying the harms of various courses of action.
4. Stepping back to judge the solution that would best minimise harms.
5. Implementing this solution (Robison and Reeser, 2002).

### **The ethical cycle approach**

The ethical cycle aims to address the ill-structured nature of moral problems by helping professionals to consider decisions systematically and thoroughly, so that they can justify their decisions in moral terms (Van de Poel and Royakkers, 2007). The ethical cycle approach was primarily developed for teaching purposes. As a result of its structure and thoroughness, it is also considered useful for ethical decision-making in professional practice (Van de Poel and Royakkers, 2007).

The ethical cycle consists of a number of phases:

1. Stating the moral problem: the ethical cycle approach begins with a formulation of the moral problem.
2. Problem analysis: during this phase the relevant elements of the moral problem are described – this involves understanding the stakeholders and their interests, the moral values relevant to this situations, and the relevant facts.
3. Options analysis: the phase consists of a brainstorm of possible actions to respond to the problem.
4. Ethical judgement: the moral value of each option is then assessed.
5. Reflection: the goal of reflection is to come to a well-argued choice among the various options for action, which will conclude the ethical cycle (Van de Poel and Royakkers, 2007).

### **Ethical Consciousness model**

The Ethical Consciousness model is a critical thinking method used by the Dutch military. The model sets out five questions that are intended to help the professional understand better the problems they face, and to formulate arguments in order to reach a conclusion and decide on the best way to proceed (Van Baarda and Verweij, 2004). The questions are intended to be used in situations where there is little time, and they are meant to be easy to learn and of use at all levels of the hierarchy (Van Baarda and Verweij, 2004). The questions include the following:

1. What are the facts and what are the conflicting parties?
2. What are the possible measures/solutions and what are their consequences?
3. Is my solution to the dilemma legal?
4. Have I considered the interests of all the parties?
5. Is the means of action I choose acceptable?

# Appendix C: Moral case deliberation methods

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Chapter 4 described moral case deliberation as one of the methods that can help professionals make ethical decisions. This appendix describes a variety of moral case deliberation approaches.

## **Formal methods**

### *Attitude-oriented methods*

Socratic dialogue involves exchanging opinions, with the aim of formulating an answer to a specific question. Socratic dialogue contains a number of stages:

1. Initial phase: five to eight professionals gather to discuss an ethical problem that they are all concerned with. The problem is formulated into a question either ahead of the meeting by a third person or at the gathering by the session participants themselves. The meeting is moderated by a chairman who remains neutral with respect to the question itself.
2. Discussion phase: participants are presented with the question and a real-life example to illustrate the problem. They then define the scope of the problem and explore possible ways to manage it.
3. Argumentation phase: participants argue about what they consider to be the best way of managing the problem until they arrive at a consensus (Bolten, 1998; Van Wijk and Molewijk, 2009).

### *Problem-oriented methods*

The Nijmegen method for moral case deliberation (Steinkamp, 2012) and the Utrecht steps for moral case deliberation (De Bree and Veening, 2012) are two more problem-oriented methods for moral case deliberation. These methods address a case prospectively or retrospectively. There is less emphasis on self-reflection in comparison with Socratic dialogue.

There are also the hermeneutical method and clinical pragmatism. These methods are different from the three described above, but the differences require a more in-depth description of meta-ethical positions than we can give here. For a comparison between the four methods see Steinkamp and Gordijn (2003).

### *Dilemma method*

The dilemma method involves a person presenting their case study in a 'Should I do A or B?' format. They explain what they consider to be the most significant moral 'wrong' for

both potential solutions. The presenter then opens the floor to the audience for questions, so that each participant feels equipped to think through the dilemma themselves. Finally, the participants may each describe how they would respond to the dilemma, discussing the values that underpin their thinking (Molewijk and Ahlzen, 2011:9).

#### *Moral deliberation in the social work sector*

Mariël Kanne and Ellen Grootoink from Hogeschool Utrecht have developed a moral case deliberation method tailored to social workers. The new method combines rational options analysis with a reflection on emotions relating to the various options. The method involves the following steps:

1. Presentation of a concrete case.
2. Description of the emotions that the case raises for them.
3. Clarification of the ethical problem and its scope.
4. Identification of rules and principles that apply to the case.
5. Discussion of the theory and the values-driven solutions to the case.
6. Exploration of alternative solutions by adopting a different perspective (e.g. from the perspective of other professionals, families, taxpayers).
7. Appeal to professionals' experience in managing similar cases.

Through taking these steps, the professionals confronted with the problem are in a position to make decisions on the basis of a wide variety of evidence.<sup>111</sup>

#### *Intervision*

Intervision (translated from the Dutch *intervisie*) refers to an organised discussion between colleagues about ethical problems. This deliberation method is not as structured as traditional moral case deliberation; it is characterised by an egalitarian approach rather than a hierarchical approach and it is aimed at exchanging problems and views.

#### *Moral café*

Moral café is a method used in the health sector. It consists of a short meeting that brings together all members of staff. To facilitate this, the café meeting is announced widely within the organisation and scheduled at a convenient time for most staff. A typical programme for a moral café involves between one and a handful of staff discussing an ethical problem from their different perspectives, a group-based discussion, and a plenary session to exchange views. Bilateral coffee discussions tend to follow these meetings (Munk, 2005).

#### **Informal methods**

The following methods are informal and take place in a range of locations.

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<sup>111</sup> Research interview 12.



*'Bread ethics' or 'tea ethics' meetings*

Meetings called 'bread ethics' and 'tea ethics' are held mostly at hospitals or in elderly-care institutions. The aim is to discuss moral dilemmas in an informal environment – for example, while having a snack or a cup of tea (Struijs and Van de Vathorst, 2009).

*Experimental theatre (translated from the Dutch toetstheater)*

This method raises ethical questions through a theatre production. It engages an audience through a private setting such as a social event or conference break, and prompts them to think about ethical questions in their own profession.

*Game-based methods*

Game-based methods involve more informal discussions in the form of a game. Day-care centres in the Netherlands use game-based methods; for example, using a custom-made set of playing cards that raise various ethical questions, whether case-related or general (such as the value considered to be most important in a profession). The objective is to stimulate discussion about the problems faced by professionals and possible responses to these.<sup>112</sup>

*Diner pensant*

The idea behind this method is to bring people together over dinner to talk about moral problems and ways to manage them. This method is mostly used within management boards in the Netherlands.<sup>113</sup>

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<sup>112</sup> *ibid.*

<sup>113</sup> *ibid.*



## **Appendix D: List of interview questions**

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This appendix provides an overview of the (types of) question asked during the interviews that are part of this study. Our interviews were semi-structured, which means that we used the list of questions as a guide to touch upon the key topics relevant for this study, rather than following a rigid protocol. Before we asked any substantive questions, we wanted to know more about the background of the interviewee to help us understand their perspective: policy vs practice, experience of both, sector, and experience of cross-sectorial work (whether through collaborations or just networking/interest). This is part 1.

Most questions relate to ethical problems which professionals in the field face, and what is available to help avoid and/or resolve these problems. This is part 2.

Because we were carrying out a cross-sectorial and cross-cultural analysis, we also asked questions to help us assess comparability across sectors. This is part 3.

### **Part 1. Introduction of the interviewee**

A. Please tell us about your current position: how long have you had this position? What are your responsibilities? Do you come across ethical problems much in your work? Do you collaborate with other countries/sectors, and if so which ones?

B. What positions did you hold previously that would be relevant for this study? Same sub-questions as above, framed in the past.

### **Part 2 of the interview**

A. What is available to help professionals in your field and in your country work through these ethical problems? Probe for detail. What is the official name? What professionals use it? What country is it used in? Why is it used? What are its advantages and limitations? Is it considered a useful tool? Do any disagree, and if so why?

i. Are these the same for policy-makers and practitioners? If not, what are the differences?

ii. Are these the same across countries in your field? If not, what are the differences and what drives them?

iii. *Compare and contrast with our own categories of tools and see whether we should ask whether they agree with any additional problem they may not have mentioned.*

B. Do you think these tools are sufficient? If not, what gaps do you experience in your day-to-day work, and what other tools could help you respond?

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C. In your experience, what are the main problems that professionals in your sector face? Probe for detail. In what situations do they arise? If linked to law/cultural norms, what specific law is it related to? Alternatively, what specific cultural norm is it related to?

- i. Are these the same for policy-makers and practitioners? If not, what are the differences?
- ii. Are these the same across countries in your field? If not, what are the differences and what drives them?
- iii. *Compare and contrast with our own categories of problem and see whether we should ask whether they agree with any additional problem they may not have mentioned.*

D. Are you aware of tools that exist in other countries or other sectors that you think would benefit your field? Probe for detail. What is the official name? What professionals use it? What country is it used in? Why is it used? What are its advantages and limitations?

### **Part 3 of the interview**

A. In your view, what are the key criteria that determine whether a tool can work in a given situation? *Objective: to check whether the transferability assessment criteria that we have are sufficient/accurate.*

B. In your view, are there any characteristics of your sector which are incomparable to any other (at least that we are looking at)? If so, do you think there are tools that we have discussed which would not be transferable to other sectors?