

ETHICAL DILEMMAS - HOW WILL YOU ACT?

To stimulate debate around ethical issues, FIG's Working Group 1.2 (Business Practices) prepared three ethical dilemmas on which it solicited comments through a number of routes. A limited number of responses have been received but, in the hope of encouraging further debate in this important area, the responses already received (by the end of 2000) are summarised below. The respondents have (deliberately) not been identified, but response A to dilemma 1 is from the same individual as response A to dilemma 2 (and so on).

The Working Group is now preparing a Guide to Business Practices, aiming particularly to assist surveyors setting up in business on their own (although the guide should be of use to all surveyors in private practice). If you would like to be involved in reviewing the document over the coming months, I would be very interested to hear from you.

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Dilemma 1 - the client and the environment

‘Whilst undertaking a site survey for a private sector client, it becomes apparent to you that the client intends to ignore potentially serious environmental impacts of the development of the site. You reflect on your obligations to your client and to the community. What do you do?’

A - I point out my concerns to the client, and if I do not receive a satisfactory explanation (bearing in mind that I might be wrong, and Greenpeace isn't always right), I withdraw from the contract, warning the client that only my professional services were hired, and confidentiality clauses will only apply to technical information gained on the job, and I reserve the right and duty to make public any information which could have been gathered by any layman not in my privileged position.

B – My initial judgement is to say that my contract is with the client to supply a survey to him, not to make judgement on his ethical values. However, we all have an obligation to ‘planet earth’ so this immediately puts us in an awkward position. I would like to think that I would probably ignore it on the basis that there are many planning stages to go through and it would really be ‘someone else’s responsibility’. Recently I priced-up and surveyed a disused farm with barns. During my meeting with the client, he implied that he was going to make gradual change of use of the buildings in order to make planning easier at a later stage for major change of use. My reaction was a raised eyebrow (which he noticed!) What he was planning was not totally illegal as far as I know, but what did I do about it anyway? Ignored it, as there is the possibility of more work at a later stage.

C - Advise the client of the environmental impact resulting from the development and the consequences arising therefrom. If the client ignores such advice, the contractual relationship with the client would be terminated in favour of obligations to the community. If subsequently the project proceeds, the community obligation should extend to ensuring awareness of the environmental impacts at the appropriate point in the planning process.

D – The situation requires further definition. (1) Technical – what is the foreseeable impact? Sedimentation and erosion, drainage, pollution or destruction of some sort, dislocation of wildlife and inhabitants or threat to life? Mitigation of the impact is usually an engineering rather than a surveying problem. (2) Legal – what are the legal requirements of the country, state or municipality to mitigate the impact, and what is the potential liability, to the surveyor, if the developer fails to adhere to them? Often, everyone connected with a project, whether liable or not, is drawn into a lawsuit. (3) Ethical – what is the limit of the surveyor’s contract? If his work does not entail mitigation of the impact or contribute directly to it, does he have an ethical obligation to not do the work? No. A moral obligation? Depends on the individual.

E - As a concerned citizen, the surveyor might feel inclined to notify the authorities of the adverse environmental impacts of the proposed site development. But the surveyor's professional obligation includes maintaining client confidentiality. The surveyor should warn the client in writing that failure to meet the environmental requirements could have most serious consequences, and should also advise the client to take the necessary corrective action to see that those requirements are satisfied. This written warning would serve as evidence, if it should later be needed, that the surveyor had done all that was reasonably possible to alert the client to the development risk. It would also absolve the surveyor from any charge of professional negligence.

F - I complete the report, emphasise the problem in my report to my client, explain this is my Final Report. I do NOT communicate this to others, although my report clearly tells the client about the client's responsibility to the public.

And what I wrote in a paper in May 2000 on this dilemma:

‘The different schools of thought all seem to point in the same direction: Consequentialism says that consequence is all, and therefore that significant environmental impacts should cause the surveyor to halt work; the social contract element of Contractarianism also suggests that work should be halted until the issue is resolved. Pluralism, with its focus on openness and honesty, reinforces this. Even the aristocratic tradition suggests that, given that most surveyors will be uncomfortable in proceeding, they should not do so.

The FIG code is clear: surveyors should take environmental concerns into account in their operations and activities; and should bring any matter of concern relating to the physical environment and sustainable development to the attention of their clients or employers. The Danish code makes no explicit mention of environmental issues. The codes shy away from saying what should happen if the client ignores the surveyor’s representations. Given the discussion in section 4 of this paper, that is probably the appropriate place for the codes to stop.

More generally, earlier discussion has suggested that one of the principal characteristics of professionals is that they accept duties to society as well as to clients and employers. This introduces a specific point of conflict into cases such as this.’

Dilemma 2 - cross-cultural issues

‘As a partner in a firm of surveyors, you have successfully won a tender for some work in a country where bribes are considered a normal part of doing business. In your own country, bribes are illegal (or, at the very least, not accepted practice). Will you use bribes to get the project completed successfully?’

A - Yes, I will use bribes. When operating in someone else's country, I obey the laws and customs of that country. It is not for me to pass judgement on the way other people do business. Just as I do not wear shorts or drink alcohol in public in Islamic countries, so I do business the local way.

B – Yes, I would use bribes if that was acceptable and standard practice in that country. In my opinion one has to work to the standards of the country/ area that one is in. You probably would not be competitive if you applied the ethical standards of your own country to someone else’s country – although I would draw the line at mis-treatment of other human beings.

C - Bribes, or any other form of service payments or favours, are rightly and almost universally considered an unacceptable practice in the securing of contracts. However, small unofficial payments for services rendered are a common practice in many societies. Such payments supplement the incomes of poorly paid administrators and may be a culturally accepted part of doing business. A distinction can be made between small payments (or tips) to facilitate the smooth running of a project, and bribery in the award of contracts. Therefore, where the practice is culturally acceptable and entrenched in business life, small payments will be made to ensure the successful completion of a contract, but bribe payments would never be made. Definition of small - 10% of average daily wage of administrator helping to process your documentation quickly; 5% of value of product.

D – This situation also requires clarification. I am tempted to fall back on Kant’s categorical imperative: act in the manner you would want everyone to act. But that is moral ‘law’ that is of dubious value in this case: it applies equally well to culturally diverse situations, each considered by itself. The way out of this dilemma is to find some justification of the payments as a cost of doing business, as long as the laws of one’s own country are not broken. Personally, I would find the practice odious, and simply would not do business under those conditions.

E - If bribes are illegal in the surveying firm's home country, the partner should not use them. If bribes are not illegal, but are not accepted practice, the partner should consider the custom of the host country and exercise appropriate discretion. In low-wage countries, workers who are already paid by their employers to provide certain services, such as the installation of telephones or electrical outlets, may fail to do so unless they receive small bribes in advance from the customer. Such payments, though a source of annoyance, are often regarded locally as a legitimate income supplement, and can be treated as a normal cost of doing business. The partner should resist demands for bribes by, for example, senior public officials of the host country, though there may be no objection to offering modest, non-monetary gifts to persons who have been especially helpful to the partner.

F - No use of bribes. Issue my employees clear instructions regarding potential problems.

And a comment from Africa: What I want to express first is that in developing countries, corruption (bribes) is very negative factor for professional development. In my country (Burkina Faso), Civil Engineers Association called AITB (some surveyors are members of this organisation) is trying to set up a code of ethic in order to give better professional environment to practice. Poverty is not also helpful for ethic development. So to win bribes practice, we must win poverty in the world. If not how can a private surveyor survive if he cannot get project? How to do if he is alone in a country where democracy is not the usual practice? So international organisations such as FIG, according to me, must help professionals to be strong enough to fight bribes over the world in order to make our profession go forward.

And what I wrote in a paper in May 2000 on this dilemma:

'Thinking is more mixed here: Consequentialism suggests 'carry on' whereas Contractarianism and pluralism suggest not proceeding, and the aristocratic tradition leaves it with the individual.

The FIG code says: avoid any appearance of professional impropriety; maintain the highest standards of honesty and integrity towards those with whom you come into contact, either directly or indirectly; and avoid associating with any persons or enterprises of doubtful character. The Danish code is again silent on the matter, but this is perhaps not unexpected in a national code in a western democracy.

In a wider sense, there is also confusion: McDonald (1994) found that only 32% of the Chinese population of Hong Kong realised that the tipping of public body employees for prompt service was illegal; and Dierkes and Zimmerman (1994) reported that the Italian government expects citizens to under-declare their income for tax purposes by 30-70% (the size of the bustarella (bribe) given to tax officials is an important element in determining tax bills). The Unfair Corrupt Practices Act 1977 in the USA prohibits the payment of bribes to foreign government officials. The RICS Working Party recommended that the higher standard applying in a surveyor's home country or the country of operations should be applied. Shell (Segundo 1997) has a very strict no-bribes policy, seeing long term gain in development associated with this (and accepting any short-term losses).'

Dilemma 3 - commercial matters

‘You have successfully tendered for a survey. Other work means that you cannot complete by the required date, so you subcontract the work to another surveyor who only charges you a small fraction of the fee you have agreed with the client. What do you charge the client?’

A - I reduce my fee by the proportion of the total contract that the subcontractor carried out, and pass on the subcontractor's charge plus an administration fee of 15% in the normal way. Where's the problem?

B – I would charge the client the original fee as that is what the client had agreed to pay. This happens all the time in the survey world as we encounter ‘feast or famine’ workloads. Any profit you make on using the sub-contractor will pay for your time in setting the job up, sorting out any imperfections in the subcontractor’s work to get it to your own standard, and for taking responsibility (i.e. payment of PII) for any mistakes that may be found at a later date. Ethically I see no problem in this – the client is paying to get a survey done, on time and to your/ his normal standards. It shouldn’t matter to him how the job gets done.

C - The original tender with the client has been mutually agreed as fair value for money for the services or products provided. Therefore the subcontractor has made a gross error which must be brought to his attention by requesting resubmission of subcontract fees. If substantially unchanged, the disparity between your original fee and the subcontractor’s cost must be communicated to the client and an adjustment negotiated.

D – Normally, the prime contractor is entitled to the agreed upon fee, because he assumes full liability for the work. Also, he will not want an unscrupulous pricing practice to become known. Some codes of ethics restrict excessive pricing, but they tend to be vague and not enforced, unless the client makes a formal complaint. If the surveyor has a conscience, he may explain to the client that the work was not as complicated as expected, and charge a fee more reflective of his actual involvement and responsibility. Who will bet on that happening?

E - It is assumed that the contract permits the work to be subcontracted. Since contracts are normally awarded partly on the basis of competitive price, the successful tenderer has probably quoted an appropriate fee. The principal contractor should exercise caution in accepting the subcontractor's quotation of a very much lower fee, for a low price may influence the quality of the work. The principal contractor would be well advised to ask the subcontractor to review the estimate to ensure that the work can be performed to the required standard, for it will benefit neither party if that standard is not met. If the subcontractor performs the work satisfactorily at the agreed fee by the required date, then the principal contractor is under no obligation to charge the client less than the fixed contract price, even though the contractor makes an increased profit. It should be kept in mind that the principal contractor remains professionally responsible to the client for the satisfactory completion of the work, even though it is actually performed by another surveyor as subcontractor.

F - I charge the client my tendered amount. Note: I would do the same if the subcontracted surveyor I selected charged MORE than the tendered amount.

And what I wrote in a paper in May 2000 on this dilemma:

‘Schools of thought again give mixed advice: duty and fairness point to disclosure whereas Consequentialism says ‘no one is being harmed, so where’s the problem?’

The codes have rather more to say on pricing: ‘seek remuneration commensurate with the technical complexity, level of responsibility and liability for the services rendered’ (FIG); ‘the payment must be fixed in such a way that it is reasonable to the client in consideration of the extent of the task’ (Denmark).

The codes are therefore perhaps clearest on this dilemma: report the issue to the client and reach agreement with him.’