

Why technical standards are not enough for professionals working in land, property and construction and the importance of international standards on ethics.

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SUMMARY

The paper will explore the opportunities and very real benefits that could be afforded not only to professionals working in land, property and construction but also to clients, the public and society more generally by the setting, promotion and monitoring of international standards on ethics.

1. TRUST AND REPUTATION

Trust lies at the heart of any relationship and certainly at the heart of any business relationship. It flows from concepts such as ‘my word is my bond’ and ‘you reap what you sow’. It is also said that trust is hard won but very easily lost and then very hard to recover.

There continue to be instances where trust has been lost regarding businesses or indeed sectors, for example, the global banking crisis, the press and the unauthorised use of personal information by governments to name but a few.

Trust can also be measured – it isn’t just a philosophical concept. There are a number of research and survey tools used globally that look at the public’s view on trust of countries, organisations, professions and individual professionals. For example:

- the Edelman Trust Barometer – which explores four factors that influence trust in business – industry/sector, country of origin, enterprise type and leadership. – in the 2014 findings – it was found that only one if four general public respondents to the survey trust business leaders to correct issues and even fewer – one in five – to tell the truth and make ethical and moral decisions.
- The Ipsos MORI Trust Poll. This poll based in the United Kingdom (UK) asks people for the views on whether they trust a range of people in different professions or backgrounds, for example, doctors, teachers, police, civil servants, business leaders, politicians and bankers etc. Doctors rate as the highest in terms of being trusted to tell the truth with 89% of respondents rating them as trustworthy, the police register with 65%, the ordinary man/woman in the street at 64%, estate agents are at 24%, bankers and journalists at 21% and politicians generally at 18%.

Inevitably, things from time to time do go wrong and all businesses may face crisis. The key is how the business then reacts and what it does next. There are examples of companies who try and hide what has happened. The classic example is the case of Enron, and the way the Executives tried to hide losses and continue to position the company in a much better financial light than it actually was. Equally, there are examples of where companies have tried to put right what has gone wrong.

In the Institute of Business Ethics 'Occasional Paper 5 – The Recovery of Trust: Case studies of organisational failures and trust repairs' - highlights a number of case studies to show how trust can be re-built. The case of Mattel's multiple product recall in 2007 highlighted how quickly a problem in the supply chain can become such an issue that it threatens the reputation of a company. The issue was over some products contained high levels of lead-tainted paint, which posed a serious health risk to children. The manner in which Mattel reacted was critical. The day Mattel was alerted to the problem it ceased production of the toys affected, promised full cooperation with the national regulatory authorities and initiated a thorough investigation. Once Mattel had enough data they launched a massive global recall. Mattel used its code of ethics as the blueprint for dealing with the problem. They also issued communications to their staff reasserting the company's commitment to integrity and external openness also prevented accusations of a 'cover up' or negative and speculative press coverage. Mattel then began inspecting every potentially affected toy themselves. In doing so, the company claimed to have prevented two thirds of the toys reaching consumers, as well as showcasing a significant investment in its benevolence and integrity. Mattel issued a full apology to its customers. By the end of 2007, Mattel had recalled more than 20 million toys from 43 international markets. Costs were estimated at \$40m, and the stock price fell 30% in five months by December 2007. However, the recall crisis seems not to have damaged their corporate reputation. Sales for 2007 finished 6% up, and a poll of American consumers found that 75% approved of Mattel's response to the failure.

Another interesting case is that of Siemens, when in 2006 regulatory investigations revealed that hundreds of employees had been siphoning off millions of Euros into false non-existent consultant's contracts, false bills and shell firms, in order to pay bribes to win contracts. The scandal shamed Siemens, not just with stakeholders and investors but also the German public and it brought humiliation to thousands of its employees. Yet Siemens' belated full response to the scandal has been widely praised by many independent anti-corruption and ethics experts. Initially Siemens played down the extent of the problem and senior Executives made public pledges to restore the firm's battered reputation just a month later. Many viewed this approach as incompetent.

However, Siemens then took a number of steps. As well as a number of international investigations going on, Siemens announced their own investigation – which was undertaken by New York law firm Debevoise & Plimpton. The firm took a rigorous approach and it was not until the following year that the most serious revelations came to light. The CEO and Chairman left the company and the newly appointed CEO announced a month long amnesty for employees to come forward. Forty whistleblowers came forward. The Board also appointed Michael Hersham, co-founder of Transparency International to serve as an adviser.

Under his guidance, Siemens rolled out a set of strict rules and processes on anti-corruption and compliance across the business. They hired 500 full time compliance officers and their new investigations unit was led by a former Interpol official. Training was also put in place on anti-corruption for employees.

Overall, the scandal cost Siemens 2.5 bn Euros, as well as the costs of an exhaustive analysis of its financial transactions, bail payments for indicted executives and fees of around 63 m Euros to outside advisers. The firm was also barred from dealing with certain clients. The cost to employees of two long years of shame under intense and hostile public scrutiny, especially in Germany, is harder to calculate.

2. WHY STANDARDS ARE IMPORTANT

Professional bodies, trade associations and businesses attach a lot of importance and weight to setting standards that their members or employees are required to meet. This makes absolute sense, if we take a profession, there will be many thousands of individual professionals often working in many different countries; common sets of standards are essential to ensure consistency in how the profession acts and the safeguards that are implicit and explicit for the protection of clients and the public.

For professionals it is important to outline exactly what we mean by standards. It is really a package of standards that we are talking about, this includes:

- entry standards;
- technical standards;
- regulatory standards; and
- ethical standards.

The first set clearly have to be met in order to gain entry to the profession, the second two are about 'what you have to do' in order to comply with being a professional, however, the final set requires a different question to be asked. The question is not 'what must I do' but 'what is the right thing to do'. When considering this package as a whole, it is very powerful and acts to safeguard against professionals complying with the letter of the standards and moves the actions and behaviours into complying with the spirit of the standard.

Or to put it another way, professionals need to be able to meet each of the standards at the same time, the standards are not there to be 'cherry picked' at particular times or situations. Professionals can't follow some of the standards and not others. Indeed the strength of the package of standards is just that; they must be met as a whole. There is no point being the most technically brilliant professional within your profession if you act in an unethical way, similarly, there is no point being the most ethical professional within your profession if you are not technically competent. Either way they are a risk to your client, the public and the profession as a whole.

The other important component in all of this is regulation or quality assurance of the standards. Clearly it is not enough just to have standards in place, what are the checks and

balances that sit behind those standards, how do you show that professionals live up to those standards, that clients and the public are protected when things go wrong and standards are not met.

3. ETHICAL STANDARDS

One of the key things about ethical standards is that they set the right tone as it were, with regard to the right way to behave, irrespective of external circumstances or factors such as commercial pressure, boom or good times, times of austerity or collective culpability – ‘it is ok everyone else is doing it’. As well as having regulation behind ethical standards to help encourage professionals to act ethically; it is also essential that there is supporting information in place to help professionals maintain the ethical standards and are supported in an appropriate way if they need to raise concerns, speak up or even whistle blow. Many professional bodies have provided conceptual frameworks for this purpose, for example, the conceptual framework at the Royal Institution of Chartered Surveyors (RICS) can be found at: www.rics.org/ethics . This conceptual framework includes definitions around the ethical standards, examples of the kinds of behaviours or actions that would help to demonstrate meeting the standards, questions that individual members could ask themselves, specific guidance around issues like conflicts of interest and speaking up, a decision tree, case studies and there is a confidential helpline that members can use.

Ethical standards at RICS are regarded as so central to what RICS members are about and stand for that RICS’ International Governing Council made it a requirement on all practicing members to keep up to date on the ethical standards on an on-going basis, essentially on a rolling three year cycle. RICS has provided all members with access to a free e-learning course around ethics and the ethical standards which has been translated into nine languages, as an option to meet this requirement. Again providing this information and using these approaches can help to embed the ethical standards with members.

4. INTERNATIONAL ETHICAL STANDARDS

So ethical standards play a key part in the whole standards and behavior debate and encouraging many professional bodies and trade associations have ethical standards and to a greater or lesser extent supporting information for their members.

This is interesting when it comes to consider the idea that RICS and other organisations are jointly looking at in terms of building international standards across land, property and construction, in particular, the work on valuation and property measurement. International standards on valuation have existed for some time and a number of organisations have signed up to those standards through the International Valuation Standards Council. The property measurement coalition of organisations came together last year at an initial meeting held at the World Bank in Washington. At that meeting the coalition signed a declaration to agree to develop international property measurement standards and to sign up to those standards on behalf of their organisations and their members.

This approach is incredibly powerful – a coalition of organisations, representing many tens of

thousands of members globally – all agreeing a shared set of standards. This not only helps to raise standards and enhance client and public protection but also provides consistency in approach that is good for business. A consistent method of valuing property globally coupled with a consistent method of measuring properties globally can only be a good thing.

Work is now underway to begin to bring together a coalition to look at building international standards on ethics. This is an important piece of the jigsaw and again obtaining the agreement of a range of organisations to sign up to and embed ethical standards is very powerful. So valuations are undertaken in an appropriate way and properties are measured in an appropriate way and with international standards on ethics all professionals will do the work in an ethical way.

In many ways, ethical standards lend themselves well to being developed as high level or principles based standards for the purposes of international standards. Indeed, this has already been put in place for the world of accountancy. Through the International Federation of Accountants (IFAC) and the International Ethics Standards Board for Accountants (IESBA), high level international ethical standards have been set for accountants globally. These standards have gone through a whole consultation exercise globally with interested stakeholders from business, governments and of course accountancy professional bodies and trade associations. The accountancy professional bodies and regulators follow the standards and require their members to do so as well. So the precedent has already been set in one profession globally.

There is a great opportunity here to do the same across land, property and construction. However, there is potentially an even greater prize that can be achieved. Ethical standards are not technical in nature and can potentially work across a whole range of professions or be applicable to a whole range of professionals, not just in land, property and construction but much wider, such as engineers, architects, builders, others involved in the business transactions of land, for example, lawyers, accountants, financial institutions, financiers and company secretaries to name a few. So whilst the initial focus of the coalition work on ethics will be ethical standards for professionals working in land, property and construction; the possible next stage of that work may be towards building international ethical standards that can be applicable across a whole range of professions. Think how powerful that would be if you had whole professions signing up to one set of ethical standards globally. This would help to bring consistency and high standards, especially when backed up by regulation or quality assurance, to business, clients, the public and other stakeholders globally.

5. ETHICAL REGULATION

The importance of quality assurance or regulation has already been mentioned in this paper. It is worth exploring the tenants of what ‘good regulation’ or ‘ethical regulation’ looks like. Regulation evolves and can change in focus at different times. For example, good regulation in the past has been focused around ‘lighter touch regulation’ (in an attempt to place appropriate burdens and costs on business), and there have been calls for more effective regulation (in light of concerns about failures in regulation, for example, in the financial sector).

To be effective and ethical regulators need to not only meet the principles of better regulation but also go further. The principles of better regulation are:

- proportionate – regulation being introduced where its aims are clear and focus is on the problem or risk identification;
- targeted – regulators should focus their resource according to an assessment of the risks;
- transparent – regulators should be open though taking account of legal requirements around data protection etc;
- be accountable – regulators should be prepared to justify their decisions and be open to public scrutiny;
- be consistent – a lack of consistency will lead to a lack of trust in the regulator.

However, as Sir Christopher Kelly in his Standards matter – A review of best practice in promoting good behavior in public life’ highlights there are other considerations that also need to be looked at, for example:report ‘

- pay attention to public opinion – to help judge what standards of behavior are appropriate. However, regulators will need to be prepared to go against public opinion where that is justified but explaining why;
- communicate – with those that they regulating but also the general public and other stakeholders about the standards they are promoting and why they are important;
- be willing to use their discretion – to refuse to investigate trivial matters;
- achieve clarity about what falls within their responsibility – and what does not;
- have a range of appropriate and timely sanctions at their disposal – an effective disciplinary toolkit; and
- be robustly independent – of those they regulate.

So, as well as the importance of standards and the interplay between entry, technical, regulatory and ethical standards the other fundamental aspect is the quality assurance or regulation against those standards. This combination goes to the heart of protecting clients and the public but also has major benefits for the professionals and other stakeholders as well. Helping to raise standards, improve behaviours and knowledge of professionals can only be a good thing.

6. EMBEDDING INTERNATIONAL ETHICAL STANDARDS

Whilst the idea of trying to embed ethical standards across a range of organisations within land, property and construction and also across other professions may seem like a mammoth task, in reality, it is no different to say the RICS introducing and embedding ethical standards amongst its members – yes there are challenges but the building blocks to help meet those challenges are the same. For example, providing the conceptual framework, including information defining the standards, examples of the behaviours that will go to demonstrate the standards, further information around the main ethical issues professionals will come across, for example, conflicts of interest, speaking up or whistle blowing, promoting trust in the profession, acting in the best interest of your client but also the wider public advantage, decision trees, case studies and help lines. A key element is placing a requirement on professionals to keep up to date on ethics as part of their CPD obligations. The final piece in the puzzle is the checks and balances of regulation to ensure that the standards are followed.

7. THE BUSINESS CASE FOR ETHICS

Clearly, behaving ethically goes to the heart of what being a professional is about and so acting ethically is the right thing to do irrespective of whether it is good for business or not. However, there is good news – it may go without having to be said but acting ethically is good for business. There is hard data to show this link as well. For example, the work undertaken by the Institute of Business Ethics (IBE) – Does Business Ethics Pay? – Ethics and financial performance, and Does Business Ethics Pay? - Revisited – the value of ethics training.

In the initial research the IBE looked at a group of companies quoted in the FTSE 350 index at 31 December 2001. In broad terms the research showed that:

- there is a strong positive association between having a code of ethics, addressing non-financial risk effectively and being amongst Britain's most admired companies;
- 19 of the 24 companies that have consistently been in Management Today's previous tables of Britain's Most Admired Companies have codes of ethics; and
- between 1997 and 2001, there was strong indicative evidence that large UK companies with codes of ethics produced an above average performance when measured against a similar group without codes. Those companies with codes out performed those without codes in three of the four measures of financial performance used in the study – Market Value Added (MVA), Economic Value Added (EVA) and Price/Earnings Ratio. The fourth measure – Return on Capital Employed indicator showed less difference between the two samples.

The IBE update report – Does Business Ethics Pay? – Revisited looked again at companies in the UK within the FTSE 350 and used accounting ratios to reflect actual historic performance (Return on Capital Employed and return on Assets), and market measures to reflect market perceptions of the companies and are more forward looking (Total return and Market Value Added). The updated research also looked at how companies performed and split the research into companies that merely reveal their ethical codes – Corporate Revealed Ethics (CRE) and

companies who embed their ethical policies into their organisations - Corporate Applied Ethics (CAE). The results, in broad terms, showed that:

- companies with CRE underperformed when compared to those with CAE for all of the financial performance measures used; and
- there is a more positive relationship between training in business ethics (applied ethics) and financial performance compared to having no training.

Interestingly, the researchers in the Revisited research look at 80 listed previous related studies looking at the impact and relationship of ethics and corporate social responsibility measures on financial results. The results were that:

- 38 studies showed a positive relationship;
- 18 studies showed no significant relationship;
- 7 studies showed a negative relationship; and
- 17 studies showed a mixed relationship.

8. CONCLUSION

Acting ethically should be part and parcel of being a professional – a defining characteristic – a key component in the package of standards that professionals should meet. Professionals should act ethically because it is the right thing to do. Professional bodies, trade associations and other organisations such as business attach a lot of importance to having in place ethical standards that their members or employees follow. We have discussed the importance of not just setting ethical standards but also embedding those standards into what members or employees do on a day to day basis. Conceptual frameworks, helplines, training and regulation can all help to embed ethical standards.

The good news is that acting ethically, doing business ethically, is actually good for business in lots of ways. Acting ethically helps to build the reputation of individuals, firms, professions; it attracts people to want to work for ethical organisation or become a member of a profession that is seen as having high ethical standards, it improves employee and member retention; and, of course, research has shown that it is good for the financial performance of companies and organisations.

It is also good for client and public protection - the expectation or assurance that professionals will act ethically. This is enhanced with matters like training and regulation – or applied ethics as opposed to revealed ethics. There is a good opportunity here to bring together professional bodies, trade associations and other organisations to look at having consistency in terms of ethical standards globally; to sign up to those standards and help embed them for the benefit of their members but also clients, the general public and other stakeholders. The question is how far can this go? Certainly the aim should be to work this across land, property

and construction but what about across a much broader range of professions.

BIOGRAPHICAL NOTES

Gary Strong is a Chartered Surveyor, Chartered Arbitrator, Chartered Loss Adjuster and Chartered Building Engineer. He has worked in central government, private practice and now is Director of Practice Standards for the RICS. During his career of 30+ years he has come across many ethical dilemmas in how professionals operate in many countries around the world, and has a particular interest in the topic. He is setting up a Commission 1 Working Group to lead a review of the FIG Ethical Standards, ensuring that these tie in with any international standards in ethics that will be developed.

David Pilling is a Barrister by training and has worked as a civil servant on policies relating to employment and education. This included writing reports on school security, the future role and training of educational psychologists, working on legislation on better regulation and special educational needs. David has also worked for the General Medical Council with the fitness to practice committees and also on the initial policy thinking around revalidation for doctors in the UK. Since 2005 David has worked for the RICS in the Regulation Department. During this time David has overseen RICS become approved by HM Treasury as a Designated Professional Body for general insurance mediation work; putting in place an ombudsman service to resolve consumer complaints against RICS regulated firms, and more recently consulting, developing and putting in place global ethical standards for RICS members along with the supporting conceptual framework.

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