PRACTICAL ASPECTS OF ETHICS

Iain GREENWAY

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ABSTRACT

With the globalisation of markets and increasingly high public expectations of professional behaviour, ethics and their application in practice are of vital importance to surveyors. The paper outlines the basis for ethics, considers the necessary content of a code of ethics and, through the use of examples, examines a number of real-life ethical conflicts. The paper builds on the FIG Model Code of Professional Conduct and supports the work of FIG Working Group 1.2 (Business Practices).

1. INTRODUCTION

Ethics can often be seen as a topic for academic discourse, only affecting real life in rather indirect ways. The importance of the subject for practitioners is, however, growing for a number of reasons, not least that the majority of practitioners feel that standards of ethical behaviour have declined over the years and are likely to decline further (Hoogsteden 1994, 1). This is in an age when public expectations of professionals are growing in the light of scandals such as those associated with Ivan Boesky and Robert Maxwell. Ethical priorities can be particularly tangled for professionals, with their sense of duty being split in a number of different directions. Allred (1999) suggests that professionals are subject to (often conflicting) standards of their own, their company, their profession, and the public. An RICS Working Party on Professional Ethics in the mid-1990s (unpublished) found increasing tensions between commercialism, professionalism and ethical behaviour.

Ultimately, companies (and individuals) with clear values who apply those values consistently will be more successful than companies without such clarity, as they will not put themselves in positions which later become compromising and need time and effort to resolve. This is supported by evidence (Jones and Pollitt 1998); in summary, their findings are that principled decision making is compatible with profitable decision making.

This paper examines the issues in turning ethical principles – the subject of academic and smoking room discourse – into practice. It draws on the FIG Model Code of Professional Conduct (FIG 1998), summarises the work to date of FIG Working Group 1.2, of which the author is Chair, and attempts to stimulate further debate on this important topic.

2. ETHICAL THINKING

It is important that we start with development of ethical and philosophical thought, however dry it may seem, so that we can set individual plans and actions in the context of a coherent set of principles.

Perhaps the most fundamental starting point is to attempt to answer the question 'what is ethics?' A New Zealand government paper (SSC 1999) suggests that ethics is 'what ought to be; the ideals of what is just, good and proper'. Powers and Vogel (quoted in Chryssides and Kaler 1993) suggest 'in essence, ethics is concerned with clarifying what constitutes human welfare and the kind of conduct necessary to promote it'. The Oxford English Dictionary ventures 'the department of study concerned with the principles of human duty'. And the RICS Working Party suggested that professional ethics 'are giving of one's best to ensure that clients' interests are properly cared for, but that in doing so the wider public interest is also recognised and respected'.

A number of schools of thought have worked over the centuries to expand on these definitions. Four of the schools which have developed in western societies, and which have long provided a basis for decisions on ethical and other issues, are:

- *Consequentialism*, developed by Jeremy Bentham and others, takes the view that all that matters is the consequences of a decision; motivation is not relevant. On this basis, decisions are made by a process akin to a cost-benefit analysis, with a goal of maximising the net expectable utility of all parties affected by the decision;
- *Contractarianism*, on the other hand, is based on the concept of fairness. All individuals are accorded equal respect as participants in social arrangements, leading to the idea of a social contract and the right of individuals to veto a proposed solution (this is not available as an option under the consequentialist approach);
- *Pluralism, or duty-based ethics*, focuses on the concept of duty – individuals have an obligation to each other to be open, honest and fair. This philosophy was expounded by Immanuel Kant in the late eighteenth century but also draws heavily on a number of the world's religions;
- The *aristocratic tradition* is particularly associated with the work of Friedrich Nietzsche in the late part of the nineteenth century. He focused on the need of the individual to be enriched by the decision made and to feel comfortable with it. Other affected parties were largely irrelevant in the decision-making process.

Other traditions have developed in the east, influenced by a society and experience very different from the Greek, Roman and European history of the west. In particular, the sayings of Confucius provide a very powerful basis for Chinese thinking. Confucius focused on the central place of authority. He also saw the harmonising of human relations as very important, This leads to an emphasis on resolving disputes by negotiation rather than by resorting to legal processes.

All of these traditions have developed out of a particular society and history. Most explicitly acknowledge the power of the outside world. The aristocratic approach, however, concentrates on the individual, seeing external influences as the seeds for conflict within each person.

3. TURNING THINKING INTO PRACTICE

Leading on from the above consideration, we need to ask whether global society holds that there are intrinsic rights and wrongs. Or is it, as Shakespeare has Hamlet say, that 'there is nothing either good or bad, but thinking makes it so'?

The work of FIG in compiling its Model Code of Professional Conduct (FIG 1998) included examination of the philosophies underlying ethical decision-making processes in different countries. The Golden Rule 'do unto others as you would have others do unto you' was found to be a basic common denominator in the building of model and religious codes of conduct. Close behind was the Hippocratic Oath 'not knowingly to do harm', dubbed the silver rule. Lively discussion of environmental concerns led to the addition of a third rule – the Green Rule – answering the rhetorical question 'Is it sustainable?' (Allred 1999). The golden and silver rules have ancient bases, and underlie many of the schools of thought which have developed around the world (being more explicitly expounded in some than in others).

Attempting to turn this into something rather more specific, Hodgson (1992) suggests seven fundamental duties that have to be fulfilled for an action to be considered ethical:
- Dignity of life: people's lives are to be respected
- Autonomy: all people are intrinsically valued and have the right to self-determination
- Honesty: the truth should be told to those who have a right to know it
- Loyalty: promises, contracts and commitments should be honoured
- Fairness: people should be treated justly
- Humaneness: our actions ought to accomplish good and we should avoid doing evil
- The common good: our actions should accomplish 'the greatest good for the greatest number of people'.

A key element already mentioned above is that of national differences. Some work amongst a mixed group of nationals on the Cranfield MBA programme in 1995 (unpublished) suggested the following prime considerations in a number of countries:
- *China* – the need to be honest to yourself, considering the interests of all parties; the importance of human relations; that trust, honesty and negotiation should be the basis for doing business; the need for balance between the interests of various parties; and the need to take responsibility for your own actions.
- *Dominica* – how will I feel the next morning? How will my family react to the decision reached? What will be the impact of the decision on family life and community profile?
- *Poland* – Will anybody be hurt? What is the organisational view? Am I going to be hurt? Am I being fair to others?
- *Singapore* – the responsibility to do good ('Good men have good returns'); the obligation of companies to provide a world-class service to their customers.
- *UK* – the Golden Rule; the importance of reputation; the common good; feeling comfortable with yourself.

The list above, although to some extent subjective (based on the individuals involved in the work), shows a number of tensions: that between Catholicism and Communism in Poland, for instance; and that between capitalism and a Christian tradition in the UK. Globalisation makes national and regional boundaries increasingly irrelevant, with individuals from one culture working within another, often with little chance to take guidance from corporate headquarters.

Another divide which cannot be ignored is that between the public and private sectors. The situation is probably more complex in the public sector, as a primary focus on providing profits for shareholders gives a clear frame of reference for private sector business decisions. In the public sector, other stakeholders gain importance, as the externalities are larger (or, in the case of public goods, predominant), and so the decision-making framework is less clear-cut. There is also the additional difficulty of political and parliamentary involvement in managerial decision-making processes (this difference is developed in Vallance 1999).

In all of the above, we can see reflected the social acceptance of Contractarianism and pluralism in preference to Consequentialism. We can also see strong suggestions that there *are* intrinsic rights and wrongs, and that these are consistent across cultures.

4. CODIFICATION

In theory, these rights and wrongs do not need to be written down into codes – they should be innately within us and so reflected in all that we do. A number of factors however, make codification necessary:

- Companies are becoming larger and more complex, with the sphere of influence often covering several continents. One of the findings of the BCCI inquiry (Passas 1994) was that the bank was not controlled by anyone;
- Coupled with this, and with ease of travel, employees of large firms will often be away from colleagues when making decisions that bind the corporation. They need to have a framework of standards readily to hand;
- A number of scandals since the early 1970s have focused press and public attention on the standards of organisations. A classic example of what is now considered unacceptable behaviour was that undertaken by ITT in Chile (Kline 1994), attempting to bring down the elected government. A good example of ethical conduct is also in order: that of Johnson and Johnson removing Tylenol from sale when potential problems were found with it. The public expects to see frameworks which constrain the actions of large corporations and the individuals within them, and that the frameworks will be available for inspection;
- Pressure groups are becoming more powerful. CNN broadcasts live to the world, despite the censorship of the domestic media in many countries. Greenpeace is a formidable exploiter of the media, as witnessed over Shell's attempts to ditch the Brent Spar oil platform. Companies need to have a solid defence against any allegations made by these groups.

Given all of this, no less an authority than Peters and Waterman (quoted in Hodgson 1992) say that they 'firmly believe that any organisation, in order to survive and achieve success, must have a sound set of beliefs on which it premises all of its policies and actions.' Desjardins (1993) sums it up by saying: imagine yourself in a jungle. A guide is essential, whereas a map is useless, as you don't know where you are starting from.

There are, however, pitfalls in the articulation of codes:
- They must not become lists of do's and don'ts, attempting to cover every possible situation. The emphasis must be on providing simple frameworks which can guide actions;
- Actions are much more significant in determining corporate ethical culture than any code. The codes will not gain ownership unless senior managers are seen to be living by them;
- They must be carefully thought out, with large numbers of employees being involved in their development, rather than knee-jerk reactions to particular crises. This re-emphasises the need to have a policy in place, rather than attempting to develop one 'on the hoof'.

Johnson and Johnson's Credo is in many ways a model example – it includes phrases such as 'we must maintain in good order the property that we are privileged to use, protecting the environment and natural resources', and 'everyone must be considered as an individual'. The company's philosophy is based on Kantian principles of duty and fairness – nowhere is there mention of ends justifying means. A former chairman of Johnson and Johnson (quoted in Hodgson 1992) reinforced the need for the Credo to remain unspecific: 'as soon as you make a rule, people argue about it. What is so powerful about the Credo is that the document is so simple: you have to decide what is the right course in a specific circumstance.'

What needs to be covered by a code? Work in Australia (Ryan 1994) suggested seven issues which managers saw as key:
- Protection of the environment;
- Integrity and honesty;
- Standards of fairness in relations with vendors and suppliers;
- Providing a useful product/ service to customers;
- Providing a fair and safe workplace;
- Providing opportunities for creativity and innovation; and
- Providing an opportunity for people to reach their own goals whilst working towards the company's goals.

We must consider what must be added to the issues outlined above, for professionals. The International Federation of Accountants (1992) suggests that a profession is distinguished by the following characteristics:
- Mastery of a particular intellectual skill, acquired by training and application;
- Acceptance of duties to society as a whole, in addition to duties to the client or employer;
- An outlook which is essentially objective; and
- Rendering professional services to a high standard of conduct and professionalism.

It is the second of these points that need concern us most here: as with public sector bodies, the situation is complicated by the interaction of more than one key stakeholder – and such an interaction will, inevitably, lead to ethical conflicts on occasions. The FIG Model Code of Professional Conduct is an example of a code which attempts to outline potential sources of conflict, and to provide guiding principles which should be applied by surveyors.

Aside from the FIG work, most national associations of surveyors have developed ethical codes, often detailed further into codes of conduct, transgression of which can mean expulsion from the associations after deliberation by a 'court' of your peers. Codes are necessary to guide professionals, publicly set standards which other stakeholders can expect to be met, and define the sanctions which will be applied when professionals fall short of those standards. They are an important part of the confidence-building process.

5. APPLYING THE CODES

Taking the next step on our journey from academic treatise to practice, we need to consider the issue of applying the codes that are created. It is perhaps helpful to consider such a process as a filtering exercise. As De George (1995) suggests, 'ethics [alone] will not tell a business how to act, but can tell a business how not to act. In this sense [an ethical code] is a sieve through which business decisions have to pass'.

The Cranfield work referred to earlier took the different tests applied in different countries and constructed five filters, which differed in relative importance between countries. The filters were religion/ ideology; family and friends; corporate culture; national culture; and personal values. Corporate culture, for instance, was found to be stronger in the east, and personal values stronger in the west.

Conflicts will arise when these different filters produce different results, unless one filter predominates over all others. The suggestion above was that codes should not attempt to cover every eventuality; this is reinforced in a professional environment by the quality of judgement expected from a professional. The FIG, ACSM and Danish Association of Chartered Surveyors' codes follow these general principles, enunciating values and principles rather than detailed lists of do's and don'ts; the RICS Working Party on professional ethics agreed with this line. Work in New Zealand (SSC 1999) notes some variation between countries in the balance between control (such as laws), guidance (such as codes of conduct) and structure (such as ensuring strong leadership). For instance, the USA majors on control whereas The Netherlands concentrates on guidance. The report also makes the point that rules and guidance are generally created in response to something that has gone wrong.

Schmidt (1999), an American writer on the subject of ethics, comments that most practitioners are unlikely to be closely familiar with the contents of ethical codes, and so it is their individual filters which predominate, whatever may be written down. He cites as an example that provisions in many US states' codes prohibit the review of another surveyor's work before his contract has been terminated. Such provisions are illegal under the Federal Trade Commission Act and the Sherman Anti-Trust Act.

A further factor is the importance of leaders, stressing again a point made earlier. This is developed further by Cuilla (1999), who says that leaders must be morally good *and* effective – he cites President Carter and Adolf Hitler as individuals who each passed one test and failed the other.

Hodgson (1992) offers the following guidance for putting codes into practice:
- Become more sensitive;
- Treat customs as legitimate and workable until proven otherwise;
- Find legitimate ways to operate from the host country's ethical business perspective;
- Avoid rationalising borderline actions;
- Refuse to do business when laws or general principles are seriously compromised;
- Be as above-board as possible; and
- Avoid purely legalistic but ethically questionable strategies.

One element that can be immensely helpful in helping individuals to develop explicit awareness of their personal filters, and confirming how these fit with corporate and professional codes, is the use of examples. Hoogsteden (1994, 2) explains how these are used in New Zealand's survey education. The RICS Working Party proposed the use of examples in an expanded module on ethics in UK surveying education, as well as in the entry process to becoming a chartered surveyor (the Assessment of Professional Competence) and in CPD. Interestingly, the RICS research showed that 75% of clients questioned felt that chartered surveyors should look after their client's interests, irrespective of the interests of any other party; only 49%, however, felt that this was the case in practice.

Summing up the discourse to date, it is ultimately the individual's values which win through – he/ she must be comfortable with the decision taken. Their options, however, are constrained by the 'front page' rule – would they be happy for their decision to be reported on the front page of a newspaper?

6. THREE EXAMPLES

In an attempt to get under the skin of ethical issues a little more, FIG Working Group 1.2 (Business Practices) constructed three examples of ethical dilemmas which could be encountered by surveyors. These were created with reference to a number of sources, in particular with the help of Wilhelm Schmidt, Jerry Ives (one of the authors of the ACSM code of practice) and Ken Allred (lead author of the FIG Model Code of Professional Conduct).

The three dilemmas were published in the FIG Commission 1 newsletter, in the FIG Bulletin and on the FIG web site, and in Surveying World in the UK. There was a very limited number of responses, although the reach was good – responses included a surveyor recently returned from Swaziland, and a surveyor in Burkina Faso. The paucity of comment is in itself an issue of concern, given the importance of ethics. Particularly interesting (and concerning) was a comment from one country that surveyors there would not be willing to comment, because they couldn't be sure of anonymity.

The dilemmas were:

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?

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?

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?

The responses, although few in number, gave a range of answers to each question. It was also noticeable that there was no correlation between the responses on the different dilemmas (that is, two individuals making the same response to one dilemma did not necessarily do so with another dilemma).

7.   UNPACKING THE EXAMPLES

Taking the dilemmas in turn, what do surveyors, schools of thought and some of the codes say?

Dilemma 1 – the client and the environment

The responses included: withdraw from the contract unless I receive a satisfactory explanation from the client, and consider 'whistle-blowing'; comment to the client, but trust in the planning processes; review the terms of the contract.

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

The responses included: I would use bribes, following the culture and custom of the country in which I was working; bribes would be unacceptable but small unofficial payments for services rendered (10% of the average daily wage of an administrator) would be bearable; find some justification for the need to bribe; 'I simply would not do business under those conditions'.

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

The responses included: reduce your fee, passing on the subcontractor's charge and an administration fee of 15%; charge the originally agreed fee; discuss the issue with the client and negotiate an adjustment; stick with the original fee unless your conscience forces you to discuss the matter with the client.

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.

So what have the dilemmas taught us? That the use of examples has brought value issues into focus; and that there are no clear universal agreements on what is right and what is wrong in practice, particularly when considering examples that are – following the suggestions for successful codes – deliberately vague. We should note that this is when asking professionals – those with some duty to shape the values of technicians and others – for their views.

8. SUMMARY

Ethics is becoming an increasingly important topic for all organisations, not least surveyors (the 'green' issues impact us rather more directly than they do many other professions). The creation of codes of ethical practice is an essential task for companies, to ensure consistent application of principles, and to provide all stakeholders with confidence in this regard. Societies are continually developing their views of acceptable and unacceptable practices and values, and corporate codes of practice need to reflect (but not slavishly follow) these societal changes. Codes must also reflect the basic principles of right and wrong which underlie much thinking and practice – to answer Hamlet's question posed in section 3, there *are* things that are deemed fundamentally good (and bad).

There is evidence that principled decision-making is compatible with profitable decision-making. This requires corporations and individuals to take time to develop their own sets of filters through which they determine their actions when facing particular circumstances; it is folly to believe that you can make rational, thoughtful and consistent decisions on the hoof. Ultimately, it is the individual's filters which determine individual action. If these are too far removed from corporate filters, the conflict must be resolved within the organisation, or the individual asked to leave.

The use of examples can be a powerful way in which to debate the issues. The responses submitted by surveyors to the dilemmas posed by Working Group 1.2 show that many real-life situations are not clear cut, and that a number of issues affect responses. Some of the common balances (taken from Harpur 1999) that need to be struck are:
• Truth versus loyalty (particularly in dilemmas 1 and 3);
• The individual versus the community (particularly in dilemma 1);
• Short term versus long term (all dilemmas);
• Justice versus mercy (particularly in dilemma 2).

Surveyors, no less than any other professionals, must also be aware that governments have a habit of intervening with legislation when self-regulation by a professional body is deemed (by public opinion) to have fallen into disrepute. Careful development of

codes and handling of individuals who fall short of them is therefore an important role for professional bodies.

The next step for Working Group 1.2 is to create a guide for managers and professionals covering issues of business practice, including ethics. This paper has been designed to stimulate the debate we see as essential before such a guide can be completed, and we welcome further input.

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Biographical Note:

After completing an M.A. in Engineering at Cambridge University and an M.Sc. in Land Survey at University College London, Iain Greenway joined Ordnance Survey in 1986. A variety of posts in geodetic and topographic survey followed, including a key role in implementing the GPS national control network for Great Britain, and short-term consultancies supporting land reform in Bulgaria and Russia.

Ordnance Survey sponsored Iain through an MBA at Cranfield University in 1994/95, which included a term studying at Macquarie University, Sydney. Back in Ordnance Survey, he worked in strategic planning, product management, sales, and strategic pricing. He is now on a year's secondment to Her Majesty's Treasury, working on the improvement of public sector productivity in the UK.

He has authored papers on the future of the land survey profession, a variety of technical matters, and managing change in Ordnance Survey, as well as completing a number of management consultancy inputs in Swaziland and Lesotho.

Iain is a Chartered Surveyor (ARICS) and a member of the Chartered Institute of Marketing (MCIM). He is the RICS delegate to FIG Commission 1, Chair of the FIG Task Force on Standardisation and of Working Group 1.2 (Business Practices). He is a member of the Management and Editorial Boards of the journal Survey Review.

Contact:
Iain Greenway
25 Greville Road, Southampton SO15 5AW, UK
Tel.: +44 20 7270 4925, Fax.: +44 20 7451 7603
E-mail: igreenway@compuserve.com