Professional Ethics in Property and Construction – Hong Kong

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Presentation by

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- Tutor in M&E Quantity Surveying
- Course Director, BSc Building Services QS
- Originally from Ireland
- Member of RICS and SCS
- Masters in Construction Project Management
- 10 years M&E QS practice experience
- Special interest in business ethics, life cycle costing and value engineering
Content

- Philosophy of Ethics
- Learning from some traditions
- CEM Research on Ethics
- RICS and Ethics
- CIOB Research
- The UK Bribery Act and its implications
- My own experience
- An Ethical Dilemma – Construction
- An Ethical Dilemma – Property
- CEM courses and our current offering to Hong Kong Students

Philosophy of Ethics
Philosophy of Ethics

- “The Science of Morals”
- “Right” and “Wrong”
- Having the right feeling at the right time
- Ethics impose a higher level of responsibility, both legal and also moral obligations

“Ethics is a complicated matter, it is partly a matter of general principles or even rules, like those of manners, but is largely a matter of judgement and decision, of reasoning and sentiment, of having the right feeling at the right time and every time is different.”

Philosophy of Ethics

- Avoid harming others
- Respect the rights of others
- Do not lie or cheat
- Keep promises and contracts
- Obey the law
- Be fair
- Prevent harm to others
Do you know what all these businesses have in common?

- Lloyds TSB
- Barclays
- Clarks
- Cadburys
- Rowntrees

Having some moral authority ............... 

- ... arred from any official positions
- ...inspired trust as with Quakers Truth is truth
- ...very successful bankers as banking depends on trust
- ...Quakers see life as a whole
- ... their unwillingness to support war opened up business opportunities
When having high values starts to pay .......

- Their respect for the worth of every individual influenced the way in which their businesses were managed. It encouraged the view that everyone’s contribution to the business was of value.
- Another belief was the importance of arriving at decisions by agreement.
- The encouragement to look for a better way forward, rather than accept the world as it is, stemmed from the belief that you should follow the Divine Light within yourself. It made Quakers ready to challenge accepted practices and to innovate.
- The Quakers respected education. It was not until 1871 that Quakers and Catholics could enter Oxford or Cambridge.

On leaving for America 1682 views on how his children should be educated ....

- "For their learning be liberal......but let it be useful knowledge, such as is consistent with Truth and godliness.....I recommend the useful parts of mathematics, as building houses or ships, measuring, surveying, dialling, navigation, but agriculture is especially in my eye; let my children be husbandmen and housewives, it is industrious, healthy, honest and of good example, like Abraham and the holy ancients, who pleased God and obtained a good report."
- [http://www.youtube.com/watch?v=_o6TEZyg9VY](http://www.youtube.com/watch?v=_o6TEZyg9VY)
### Professional Ethics – What do we need to think about?

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### Why do we need to set a standard?

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© CEM
The role of RICS

- RICS needs to continue its efforts to police the industry and enforce its ethical standards

- RICS should look to increase its efforts to:
  - Foster an ongoing debate within the profession about the range and variety of ethics management processes
  - The RICS Bye-Law B5.1.1(a) ‘Every Member shall conduct himself in a manner befitting membership of RICS’

- The system in the RICS is self-regulating so members have an obligation to ensure they do not act in a manner that compromises or impairs

Professional ethics guidance by RICS

1. Act honourably
2. Act with Integrity
3. Be Open and Transparency
4. Be Accountable
5. Act within your Limitations
6. Be objective at all times
7. Always treat others with respect and never discriminate
8. Have courage to take a stand
9. Set a Good Example
10. Comply with the relevant laws and regulation
11. Avoid conflicts of interest
12. Respect confidentiality
RULES OF CONDUCT FOR FIRMS

- RICS will regulate matters such as professional indemnity insurance and complaints handling procedure
- Five principles based on
  - Proportionality
  - Accountability
  - Consistency
  - Targeting
  - Transparency

RULES OF CONDUCT FOR MEMBERS

- Integrity
- Competence
- Services
- Life Long Learning
- Solvency
- Information to RICS
- Co-operation
Assessment of Professional Competency

- You must demonstrate that you understand the significance of professional ethics and are willing to meet the standards required of you.

- The RICS consider it so important you have to achieve Level 3 in competency (Conduct rules, ethics and professional practice M005)

- The areas of assessment include understanding a befitting manner, CPD, dealing with clients money, professional indemnity insurances and putting all this into practice.

RICS Perspective on Ethics

“A culture of integrity cannot be imposed from the outside; it has to come from within”

Robert Peto FRICS
RICS President
Corruption in the UK Construction Industry

Research by: The Chartered Institute of Building Survey 2006

CIOB Survey 2006 – Corruption in the UK Construction Industry

‘Corruption within the UK construction industry is an issue that is the subject of perception and rumour rather than of facts’

‘This survey has attempted to look at the issue from the point of view of those who work within the industry in order to gain a better perspective on the issues they face.’

CIOB Survey 2006 – Corruption in the UK Construction Industry

The survey ‘found that there was a great deal of variation in the way that respondents perceived corruption as well as in how widespread they though it was.’

‘Many respondents had had direct experience of corruption.’

‘41% (of 1403 respondents) had been offered a bribe on at least one occasion.’

CIOB Survey 2006 – Corruption in the UK Construction Industry

Types of corruption considered in the survey:

- Cover pricing – submitting a high tender when contractor does not want to win the contract rather than not submitting a tender
- Bribery to obtain planning permission
- Employment of illegal workers
- Concealment of bribes
- Collusion between bidders for market sharing purposes
- Bribery to obtain a contract
- Leaking of information to a preferential bidder
CIOB Survey 2006 – Corruption in the UK Construction Industry

Types of corruption considered in the survey (cont)

- Production of fraudulent timesheets
- Production of fraudulent invoices
- False or exaggerated claims against a contractor in order to withhold or reduce payment in a contract
- Inclusion of false extra cost to a contract claim
- Bribes from the building contractor to also win operation and maintenance contracts.

Other types of corruption identified by respondents:

- Theft of materials from sites
- Leaking of information to allow friends/family to put in the most competitive quote
- Refusal to consider more than one subcontractor for work.
CIOB Survey 2006 – Corruption in the UK Construction Industry

How common do you think corruption is within the UK construction industry?

- Majority of respondents acknowledge that all the above practices are corrupt.
- Practices involving bribes or the concealment of a bribe were most commonly considered to be very corrupt.
- Cover pricing was more often seen as only moderately or not very corrupt.

What types of corruption do you think are most prevalent within the industry?

- There were differing views on how common respondents felt the different types of corruption were.
- Employment of illegal workers was viewed as being the most common form of corruption.
- Corruption in the operation and maintenance phase was more often viewed as being not very or not at all common.
CIOB Survey 2006 – Corruption in the UK Construction Industry

- 34% of respondents said they had come across cartel activity in the UK Construction industry
- Over half of the sample felt that corruption levels in UK construction had not changed over the last 5 years. However those who had felt corruption levels had changed, thought that it had decreased.
- Over two thirds thought the UK construction industry was not doing enough to combat corruption.
- 75% of respondents did not feel that the UK government was doing enough to tackle corruption.

The results of the survey strongly suggest that many of those working in the UK construction industry in 2006 were not happy with the situation and wanted to see more measures put in place to prevent corruption occurring.
CEM Research

- Reputation for impartial, authoritative and robust research
- Work in partnership with a range of sponsors and partners, including property businesses and public sector bodies
- Main areas of research:
  - The Environment and Sustainability
  - Regeneration and Urban Renewal
  - Technology and the Built Environment
  - Property Valuation, Accounting and Taxation
  - Ethics in Surveying
- [www.cem.ac.uk/ourresearch](http://www.cem.ac.uk/ourresearch)
- Or email our department
  - research@cem.ac.uk
Ethics for Surveyors: An Educational Dimension

**Aim**
- Investigate professional ethics within multi-disciplinary commercial real estate practices

**Methodology**
- Analysis of an online ethics debate
- Interviews with individuals from 9 of the 25 largest real estate firms

The research found:

- High ethical standards are essential to maintaining the reputation of individual surveyors, firms and the wider profession
- Evidence of significant ethical issues in surveying practice, and a suggestion that standards vary between firms and areas of business
- The corporate culture of large real estate firms is more important than professional culture in determining their employees’ ethical behaviour
- RICS has a major role to play in regulating the profession
- Education is ideally placed to raise awareness of ethical issues and to structure and manage the ethics debate
Ethical Issues in Surveying Firms: Does Size Matter?

Research Aim:
- To explore whether there are differences of approach between small and large firms as to how they promote ethical behaviour within their organisations and deal with ethical dilemmas faced by their staff

Research Methodology:
- A questionnaire sent to all members of the RICS Commercial Property Professional Group
- A focus group attended by nine participants drawn from small and large firms

Main findings
Questionnaire respondents' current and previous employment

“there is a greater tendency for career moves from large to small firms than in the opposite direction”
Main findings

- Newly qualified members are heavily influenced by senior colleagues at their firm
- Ethical training should be continued through life long learning, to reinforce good practice and guard against the formation of ‘counternorms’

69% of questionnaire respondents from large firms said their firm has a formal ethics policy to guide staff

37% of questionnaire respondents from small firms said their firm has a formal ethics policy to guide staff
Main findings

- Firms look to recruit to their own image and the ‘right type’ of people

- CEM’s GDP students suggested that ethical standards do influence choice of firm

RICS and ethical standards in the surveying profession

<table>
<thead>
<tr>
<th>RICS:</th>
<th>MEAN SCORE</th>
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<tr>
<td>ethical standards are more important than those set by an employer</td>
<td>3.54, 3.56, 3.72, 3.64</td>
</tr>
<tr>
<td>ethical standards are less important than those set by an employer</td>
<td>2.40, 2.51, 2.62, 2.45</td>
</tr>
<tr>
<td>needs to do more to enforce ethical standards in the profession</td>
<td>3.31, 3.15, 3.32, 3.36</td>
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</tbody>
</table>

Mean score: 5 = strongly agree
Hong Kong Institute of Surveyors

  - Standard of Conduct
  - Disciplinary Powers
  - Disciplinary Bodies
  - Disciplinary Procedure
- Please check this link on the Hong Kong Institute of Surveyors

The Bribery Act 2010
The Bribery Act 2010

The Act will:
- be a legal framework to combat bribery in the public or private sectors
- replace the fragmented and complex offences at common law and in the Prevention of Corruption Acts 1889-1916

- create two general offences covering
  - the offering, promising or giving of an advantage, and
  - requesting, agreeing to receive or accepting of an advantage
- create a discrete offence of bribery of a foreign public official
- create a new offence of failure by a commercial organisation to prevent a bribe being paid for or on its behalf (it will be a defence if the organisation has adequate procedures in place to prevent bribery)
The Bribery Act 2010

The Act will:

- require the Secretary of State to publish guidance about procedures that relevant commercial organisations can put in place to prevent bribery on their behalf
- help tackle the threat that bribery poses to economic progress and development around the world.

What impact does Bribery Act have in Russia?

This new UK anti-bribery legislation affects not only firms working in the UK, but also firms, companies and partnerships who carry out any part of their business in the UK. It does not matter in which country the offence takes place or in which country the firm is incorporated or formed.

- If a firm is undertaking work in Hong Kong but part of their organisation is in UK, the Bribery Act applies.
- If a Hong Kong firm is undertaking work in the UK, the Bribery Act applies.

(www.gibsondunn.com/publications/Pages/UKEnactsNewBriberyAct.aspx)
The Bribery Act – personal liability

If a company commits an offence, and a senior person in the company has given consent, then that individual person is guilty of the offence as well as the company.

(www.gibsondunn.com/publications/Pages/UKEnactsNewBriberyAct.aspx)

The Bribery Act – penalties

The penalties if found guilty are:

- 10 year jail term for individuals
- an unlimited fine for a company convicted of failing to prevent bribery.

(www.allenover.com/AOWEB/AreasOfExpertise)
Preventing bribery

It is vital that companies, firms and partnerships are able to demonstrate that they have ‘adequate procedures’ in place to prevent employees committing bribery offences. Otherwise, the organisation will be guilty of an offence.

Even if an organisation knew nothing about an offence, it could be found guilty of a criminal offence unless it can satisfy the court that it had taken adequate anti-bribery steps. It is vital therefore to scrutinise compliance measures.

(www.gibsondunn.com/publications/Pages/UKEnactsNewBriberyAct.aspx)

The Bribery Act

Although planned to come into force in April 2011, the Government has recently indicated that there will be a delay in its implementation.

The UK government is going to publish guidance on anti-bribery steps and procedures that are to be followed by firms, organisations and companies.
the future……

The 7 year prison sentence for undertaking fraudulent valuations imposed on a former UK valuation surveyor in July 2011 demonstrates that the Courts will make examples of valuers who set their own ambition above their professional and legal duties.

For more details see:
Property Week, 17/06/2011 pp 12-13

My Experience of Professional Ethics in Construction

Small niche markets often means small no. of individuals involved:-

..Often there is greater likelihood of subcontractor collusion
..QS needs to be vigilant that tenders aren't fixed
...It is important to check for cover prices in a collusive market
...It is important to ensure named suppliers are treating the information confidentially
Apprentice – Your fired!!!!!

- [http://www.youtube.com/watch?v=J8oxVK6wAL0&feature=related](http://www.youtube.com/watch?v=J8oxVK6wAL0&feature=related)
- So what are the issues here?
- Can we identify any of the challenges in property/construction from this video?
- Is sales culture driving property / construction in the wrong direction?
- What about the issue of being fired? What factors effect the fear of being fired?

An ethical dilemma? – Property

- Victor is working as a valuation surveyor for a well respected Global Real Estate Firm. A long term client of his comes to the office as he is closing a major deal to purchase a prime property in London city centre. He has offered a significant bonus to Victor to undertake the valuation if he meets his specific requirements. The financial backers, Bank of London, are financing the transaction and need an accurate valuation from Victor’s firm. The client has asked Victor to add 35% to the market valuation so that he can acquire the property. Victor calls his client with his concerns but the client is extremely annoyed at him and tells Victor that he will never do business with his firm again if he doesn’t undertake the valuation. What should Victor do?
An Ethical Dilemma – Construction

- Kate is a senior contracts manager for an international construction company. She is attempting to break into a new market in a relatively undeveloped country. Standards of business practice are relatively relaxed and “under the table payments” are the norm before firms get onto tender lists for major projects. Although the internal policy of Kate’s firm prohibits offering any advantage to secure business, Kate feels she will be at a significant disadvantage if she follows the firm’s policy. “My superiors simply do not understand the situation here, when in Rome act as the Romans do”

Do you know what to do?

- Gifts and hospitality
- Conflicts of Interest
- Insider Dealing
- Disclosure of confidential Information
- Whilst blowing
- Copyright and ownership of files
CEM at a glance

- Over 4,000 students
- Established in 1919
- 86 different countries
- Supported distance learning
- Property and Construction
- Dedicated research team
- Global network of students
- CEM are leading the way in research in the area of Sustainability and the Built Environment