

## **A Single Ethical Code for the Construction Industry – What do Young Professionals Think about It?**

Jim Mason, Department of Construction and Property University of the West of England, Bristol, [jim.mason@uwe.ac.uk](mailto:jim.mason@uwe.ac.uk)

### **ABSTRACT**

The theme of engagement with the next generation of industry leaders was spelt out recently in the Wolstenhorne Report “Never Waste a Good Crisis”. An important element in any engagement is listening to the other’s views. This paper uses the topical issue of ethical improvement within the construction industry as an opportunity to take a sounding from thirty Masters’ level Construction students. The students were specifically asked for their views in response to the proposition that the industry needs a single ethical code. The responses address this question and some wider issues. The responses presented in this paper give a valuable insight into how young professionals see the industry developing over the coming decade.

The Single Ethical Code for Construction Professionals has been promoted in recent years by the Society of Construction Law. The views of the students deliver a sense of the need for change in the industry and there is broad agreement that a Single Code could help deliver this. The paper concludes with the key recommendations to take forward from the students’ views and provides further discussion points around the state of the industry as the new decade dawns.

**Keywords: professional, ethics, enforcement, code, unethical behaviour, young professionals**

### **1. Introduction**

This paper returns to the subject of a Single Ethical Code (SEC) which the author last wrote about in 2008 for the COBRA conference in Dublin (Mason, 2008).

In that paper the reader was presented with the SEC promoted by the Society of Construction Law (SCL)<sup>1</sup>. The Code has been described as “the first line of defence against corruption” (Uff, 2003). The advantages to the construction industry in adopting the code would lead to “an appreciable reduction in poor designs, shoddy workmanship, delays, claims, excessive charging, cost overruns and disputed claims”(Thornton, 2004). Unfortunately, there has not been much in the way of recent progress with the code. With a considerable degree of foresight, both writers seemed to appreciate this risk and said that the task they set themselves was not an easy one. His Honour Judge Thornton described the task of creating the code as “bold, difficult and somewhat presumptuous” as well as “brave, pioneering and highly desirable.”

The SEC set about the task of writing the code in 2003. The code was set out in the following terms:

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<sup>1</sup> Available at [scl.org.uk/ethics](http://scl.org.uk/ethics) accessed on 14 June 2010

### Statement of Ethical Principles

Ethical conduct is the compliance with the following ethical principles:

1. **Honesty** - act with honesty and avoid conduct likely to result, directly or indirectly, in the deception of others.
2. **Fairness** - do not seek to obtain a benefit which arises directly or indirectly from the unfair treatment of other people.
3. **Fair reward** - avoid acts which are likely to result in another party being deprived of a fair reward for their work.
4. **Reliability** - maintain up to date skills and provide services only within your area of competence.
5. **Integrity** - have regard for the interests of the public, particularly people who will make use of or obtain an interest in the project in the future.
6. **Objectivity** - identify any potential conflicts of interest and disclose the conflict to any person who would be adversely affected by it.
7. **Accountability** - provide information and warning of matters within your knowledge which are of potential detriment to others who may be adversely affected by them. Warning must be given in sufficient time to allow the taking of effective action to avoid detriment.

These principles were written to apply to the work of all professionals working in the construction industry, whatever their original qualification or affiliation and to individuals, whether they work for or on behalf of an independent professional or as a partner, associate, director or employee of a firm or company.

It was intended that the statement of good practice is in addition to any other professional code that may apply. Further, the statement of good practice was seen as part of and additional to contractual and other duties taken on under the civil law and potential breaches of the criminal law.

The Code identified unethical conduct as deliberate or reckless disregard for the ethical principles, as they would apply to the ordinary standards applicable to the activity being undertaken by reference to the recognised practice in that profession.

In my original paper I opined that the SEC would not make any difference where individuals were set on consciously behaving unethically. However, it did appear likely that it could make a difference in the situations where there is unintentional ethical transgression and people lacked the necessary guidance

In the intervening years since the launch of the code it is probably fair to say any clamour for its wide scale adoption has died away. In my view a contributing factor to this result was the fact that the SCL did not feel able to take any responsibility for enforcing the code. The SEC therefore appears destined for the same fate as many good and bold initiatives in the industry – big plaudits but little practical take-up. Notwithstanding this, the sentiment behind the code and the desire to improve things within the construction industry remain alive and well.

## 2. The Study

As part of our Masters provision at the University we run law themed modules one of which is Construction Contract Law. This module is delivered to students on the Masters in Construction Project Management, Masters in Law for Construction Professionals, Masters in Quantity Surveying and Graduate Diploma students in Quantity Surveying. In a seen examination the students were set a question asking them for their views on the prospects for the SEC. Their answers contained some valuable insight into the views and profiles of the Masters' students. I have set out their views anonymously in this paper with their assent.

The students are all in full time employment within the construction industry. They are therefore well placed to give their frank and honest appraisal of the industry they work in. A large proportion of the students are on the Graduate Diploma programme having completed a first degree in a non-cognate subject. The comparison between what they are experiencing in the construction industry and how this sits with their previous working experience is another interesting angle underlying their responses.

There are naturally limitations on the study. We discussed the SEC during contact teaching sessions and there is a risk that the students' views were influenced by my own. Whilst we take steps to engender and encourage free thinking in our students there remains the possibility that they are merely repeating back my own ideas. I have sought to remove the content where this did occur from the quotations set out below. I have concentrated instead on their views.

Whilst the examination question related solely to the SEC, many of the quotation selected below touch on other issues and underlying concerns about the state of the construction industry in 2010. It is these views as much as anything directly on the SEC which make this paper relevant for this conference and policy makers within the industry.

A further limitation of the study is that there is a risk that students were quoting from unreferenced sources. The assessment from which the data has been gleaned is a seen examination where the students are encouraged to prepare their answers prior to writing them out under exam conditions. The usual rules around strict referencing are relaxed slightly and several sources may therefore have been missed.

## 3. The Literature Updated

In my original paper I defined ethics as the moral principles by which a person is guided.<sup>2</sup> Professionalism has been described as being in possession and autonomous control of a body of specialised knowledge, which when combined with honorific status, confers power upon its holders (Greenhalgh, 1997). The exercise of this control by the respective professional bodies is often manifested in the promotion and enforcement of an ethical code<sup>3</sup>.

I rehearsed the argument that there were no such things as "business ethics" and that such a term was an oxymoron (Ferguson, 1994). The better position appeared to be that general concepts of ethics must be applicable to business, on the grounds that business exists not solely to suit certain individuals, but to serves society and, in addition, meets collective and social needs such as the promotion of sustainability and environmental aspects of the construction industry's activity (Cohen et al, 1998).

<sup>2</sup> <http://dictionary.oed.com> accessed on 14 March 2008

<sup>3</sup> See for example, Royal Institute of Chartered Surveyors (2007) *Rules of Conduct for Members* available at [rics.org](http://rics.org)

There have been developments in the Office of Fair Trading (OFT) investigation into bid rigging within the Construction industry. The efforts of the OFT to combat corruption culminated in fines totalling £129.2 million on 103 construction firms in England which were found to have colluded with competitors on building contracts. The OFT has concluded that the firms engaged in illegal anti-competitive bid-rigging activities on 199 tenders from 2000 to 2006, mostly in the form of 'cover pricing'.<sup>4</sup> The response from the industry has been to take measures to ensure tendering procedures now comply with the governing regulations. For example, the United Kingdom's Construction Group which includes many of the bigger construction companies launched a Code of Competition Compliance on 20 August 2009<sup>5</sup>.

The dust has now settled on what was a difficult period for the industry. The lingering feeling inside the industry is that the OFT did not properly understand the way the industry works (Bingham, 2008). Another popular sentiment is that contractors had no choice but to put in high bids for work because clients would remove them from tendering lists if they did not. For their part, the impression is that clients have taken this on in part as fair criticism.

Pronouncements from the SCL on ethics have included a review by Professor Lavers of the position in eight European Countries on selected ethical issues (Lavers, 2008). The outcome of the study was to highlight areas of commonality on issues such as retention and termination of the contract whilst diversity appears on other issues such as the duty to warn and the role of the contract administration.

Elsewhere, there have been words of caution against the increasing trend for companies to promote their value statements in client facing literature (Zhang et al, 2008). This paper quotes an earlier paper (Lencioni, 2002) claiming that many value statements are "bland, toothless, or just plain dishonest" which "create cynical and dispirited employees, alienate customers, and undermine managerial credibility." There are obvious parallels with the pitfalls that could await an overly ambitious ethical code. This point is taken up by my colleague Peter Fewings in his book "Ethics for the Built Environment" (Fewings, 2009) "in the context of the built environment, professional ethics are often quoted in the form of professional codes of practice, but there is some criticism as to the effectiveness of these codes and some public suspicion that they might be self-serving."

The major development in terms of government sponsored initiatives has come in the shape of *Never Waste a Good Crisis* (Wolstenhome 2009). Subtitled "A report into progress since *Rethinking Construction* and thoughts for our future" this document has clear pedigree as the inheritor of the movement for improvement in the industry in the last seventeen years since the Latham report (Latham, 1994). The forewords to the report feature the major players during this period in the form of Sir Michael Latham, Sir John Egan and Nick Raynsford, MP.

The report primarily reinforces the best practice advice set out by *Rethinking Construction* (Egan, 1998). The report also contains some stark warnings about the

<sup>4</sup> <http://www.offt.gov.uk/news-and-updates/press/2009/114-09>

<sup>5</sup> <http://www.ukcg.org.uk/UK-Contractors-Group-UKCG-Code-of-Competition-Compliance-cbb744f>

financially difficult times to come and the limited progress made on the improvement agenda set. The report concludes with a challenge to the present leaders of the construction industry to move aside in favour of the next generation. The executive summary concludes: “If our present leaders do not feel up to the task, they should at least support the development of the next generation, who appear to understand very clearly what is needed.”

This statement that the next generation understand what is needed is cryptic. The purpose of this paper is to gain some insight into what this “clear understanding” amounts to, within the framework of ethical improvement within the industry.

#### **4. Findings**

As previously mentioned, the exam question answers being reviewed here relate solely to the SCL’s SEC. The scope of the responses go much wider than the code itself and bring in other points including: the general health of the industry, its attractiveness to recent graduates and some of the less savoury practices encountered.

The views of this group of students are particularly interesting and relevant given that the students did not come into the industry via the standard undergraduate route. These students have come through the Graduate Diploma route whereby their first degree in any related or unrelated subject gives the student academic credit and a shorter route to achieving the diploma qualification and opening the route to the student to accreditation with the Royal Institute of Chartered Surveyors. This route has been extremely popular at the University of the West of England. These newcomers to the industry bring diversity and fresh perceptions on established practice. It is therefore intriguing to ask “what do they think of the industry?” and “do they accept the status quo?” The importance of “customer relations” cannot be overstated to a business. Here is a group of extremely valuable “customers” who certainly merit being listened to most carefully.

The responses have been grouped together the themes set out below. The themes were identified as capturing the essence of the comments voiced by the students and through which the accompanying narrative could weave together their responses. All the student quotes appear in italics and speech marks.

- Definition
- Context and Views on the Current State of the Industry
- Recent Ethical improvements and Opportunities
- The Obstacles to Further Improvement
- Purpose/Limitations of the Code
- The Positive Steps Required
- The Timetable for Action
- Other issues/Last Thoughts

All good legal topics start with a definition and several students attempted one:

#### 4.1 Definition

*“Professional ethics involve professionals gaining a deeper understanding of duties owed to the public, each other and themselves in the practice of their profession.”*

*“Ethics involves doing the right thing and the degree of integrity and trustworthiness.”*

*“Ethics should be considered to develop society and not just the individuals involved”*

These first attempts at a definition are along familiar lines. The aspirational language used is recognisable as standard ethical definitions. One definition which exposed the limitations of the standard approach to ethics was the comment that:

*“Ethics and the question of an ethical code conjure up images of fair trade coffee and perhaps fair trade tee-shirts which are sold on a very limited scale and adopted by only a few retail outlets.”*

This is nearer to another common perception of ethics, that they are a token effort at making a difference and though well intentioned are of little practical effect. This comment provides a useful touchstone for rest of the discussion and amounts to a contemporary equivalency of how ethics are viewed.

#### 4.2 Context and Views on the Current State of the Industry

The students gave their thoughts on the current ethical climate within the construction industry. The drivers for improving ethical standards were well understood, evidenced by such statements as:

*“Ethics has become a hot topic in recent years as professional bodies like RICS and CIOB endorse ethics as professional behaviour in an attempt to eradicate the preconception of the building industry being ruthless. This image has been built up after years of unethical practice.”*

*“The construction industry has not had a very enlightened past when concerning ethics. Be this building practices, waste management fraud, lack of concern for neighbours and bribery, the industry has had a long slog in the past 15 years to change its image.”*

Another commentator did not see the problem of unethical behaviour being limited to construction:

*“The construction industry is shrouded in corruption. The perception of fat cats in suits accepting bribes and backhanders, agreeing between themselves whether or not to tender is a view held by most lay people, and indeed the film industry. The idea of an honest businessman is an exception rather than the rule and the construction industry is tarred with the same brush.”*

One comment relayed a personal experience that had clearly left an impression:

*“I have had firsthand experience of a scaffolding subcontractor coming into my office with brown paper bags for meetings he was going to later in the day. When questioned he said simply it was the only way to win work with local firms.”*

Another comment drew a made a link between “unregulated” industries (i.e. those without a comprehensive ethical code). The suggestion is that unregulated industries meet similarly unsavoury ends.

*“Examples of industries which are not regulated include the financial services and the construction industry. Recently we have seen the consequences –the national bail out of a number of trusted high street banks and the OFT investigation.”*

### **4.3 Recent Ethical Improvements and Opportunities**

Some comments picked up on positive signs in the area of ethical improvement and sought to borrow ideas from other industries.

*“The Office of Fair Trading have made progress in that it has banished any “window dressing” and now we move on to consider the commitment to compliance.”*

*“Contracts such as PPC2000 NEC3 and JCT CE have helped to bridge the gap from the highly complicated legal behemoth that is the JCT SFC towards a more ethical agreement.”*

*“Promotion and regulation of sustainable and environmental aspects of construction activity are examples of what is achievable through a new ethical approach.”*

*“The Construction Industry Council has its Independent Appeals Tribunal which is also thought of as an Ethics courtroom.”*

*“A single ethical code has worked well for the General Medical Council covering the various medical professions using the code to bring together the fragmented construction industry would benefit the image and integrity of those professionals.”*

*“Hewlett-Packard, Dell and IBM got together and introduced an Electronics Industry Ethical Code which they would do business under – they are trying to move to a more ethical business environment.”*

*“The industry should follow the example of the Canadian Society of Engineers in Ontario which holds public hearings and publishes its findings. This will enhance the credibility and ensure ethical behaviour is understood by all.”*

*“The SEC would be a good move for the industry giving a uniform approach and enabling the industry to set minimum standards for ethics.”*

*“Bring in standardisation and it may change attitudes.”*

*“A new charter of ethics would boost the prestige of the industry and serve as a recruitment marker ensuring the best graduates and individuals entered the industry and drove up standards in the process.”*

#### **4.4 The Obstacles to Further Improvement**

Many of the views expressed here are again familiar from the literature and are common takes on the problems facing those who would create a more ethical industry.

*“Even though almost all the bigger companies nowadays have their own ethical codes, still there is a huge amount of unethical behaviour in the industry.”*

*“The tender process on large scale jobs lends itself to cover pricing. Firms do not want to appear work shy; rather they want to stay on “preferred tenders” lists helping them to secure future work.”*

*“There is also the problem of companies merely paying lip service. Our firm includes mutual dependency and openness in its core values but this does not affect the way they work at all.”*

*“The closer to the front line of the construction project the more likely the ethical standards of the person are going to be lower.”*

*“Individual beliefs are very often smothered by the employing company’s views which can force the employee to act as the company requires.”*

*“The answer is simple - money. Some parties are taking the risk to gain the profit from unethical behaviour.”*

*“There is a fine line between what some people perceived to be unethical and what others in the industry see as “fair game”.”*

*“When it comes to the business world personal ethics seem to be pushed aside in favour of profits and financial gain.”*

*“Another difficulty is the international application – bribes are considered common practice in some areas.”*

*“Each profession has its own adjudication process normally held privately using self administered rules. In addition, not all professionals are subject to registration or licensing. It is more difficult to enforce ethical standards on generic “engineers” or “surveyors” where there is no tangible threat to remove their right to operate.”*

*“Unless construction industry professionals are required to carry a licence, like doctors, they can’t be stopped from acting unethically.”*

Some new angles on the obstacles to promoting an ethical code did arise in the form of a criticism of specific professional bodies and an apportionment of blame at the door of the specialist contractors. This latter point is particularly interesting in that it



demonstrates that main contractors and/or clients consider that the lack of competition for certain aspects of the work creates unethical behaviour further down the supply chain. Conversely, the last quote puts the blame for unethical behaviour at the door of the clients who attempt to extract too much from their supply chains in terms of cost savings.

*“Another difficulty is the reluctance from professional bodies RICS and CIOB who obtain significant competitive advantage through their own ethical stances and codes.”*

*“Here lies one of the main obstacles – fragmentation. The lack of a leading body, excluding the government, makes tackling the issue a daunting prospect.”*

*“Perhaps it is the nature of specialist contractors and the very few number of any one type that is the cause of the dishonesty.”*

*“Forcing contractors to work under their profit margins does not enforce “fair reward”.”*

#### **4.5 Purpose/Limitations of the Code**

The students next considered how the SEC would work in practice and the practices that would need to be established for its successful operation and implementation.

*“The code should sit above and not seek to replace existing codes such as RICS as these are bespoke to the professionals involved in that sector and have been developed over a number of years. A SEC could not hope to capture all the elements of each niche and should not attempt to do so.”*

*“The question remains how the code would interact with the law and what would be the consequence of a breach be? The OFT penalty of up to 10% seems to have created a suitably horrified reaction.”*

*“The main difficulty with ethics in construction is that there are no laws and therefore no punishment to enforce their value or use.”*

*“Most disappointingly although understandably the Society of Construction Law felt unable to issue and regulate the masses. Here lies one of the main obstacles – fragmentation. The lack of a leading body, excluding the government, makes tackling the issue a daunting prospect.”*

*“The problem with ethics is mainly down to their standing in English law. Law likes to remain black and white, however ethics is largely grey. The problem lies in providing a level of sanction for this grey area.”*

*“The problem the industry faces is each professional body may produce their own standards and there is no recognised ethical principles that all should follow and be regulated on.”*

*“There is some argument that ethical codes do not help much when faced with complicated ethical issues and less woolly advice is required – perhaps a work book would assist here.”*

This last point is a further good idea in terms of making the idea of ethics less “fair trade” and more practically useful.

#### **4.6 The Positive Steps Required**

The students brought some previously raised indications of positive steps required from the literature as well as some creative new suggestions for improvement:

*“The SEC will help but other ways to improve need to be looked at to prevent the increase in unethical actions in order to recoup as much from a contract as possible.”*

*“If a prosecution system could be established it would definitely reduce the number of infringements.”*

*“For further improvement one must look to the adoption of more collaborative systems in the construction industry; the respondents in longer term trust based relationships find it easier to sign up to a statement of ethical principles.”*

*“There is no reason why the code could not be included in consultant’s appointments.”*

*“The industry could try and include the code in the Standard Form of Building Contract. In 1944 JCT included a provision for fair wages which was not law but which the industry agreed to abide by, a similar thing may happen now.”*

*“A legal entity is essential to develop case law and guidance.”*

*“Having a SEC may sound great but until it is enforced and policed it will remain a “buzz phrase” in the industry, Imagine every government project where every construction company wishing to bid for work must sign up to Single Ethical Code and comply with it via the Office of Government Commerce. A bit radical but it’s what is needed. If it was a success then the private sector could copy and enforce/police. The UK could pioneer this radical move.”*

*“The SEC is a good start but needs to be picked up and followed by the key players in the industry. Key larger companies need to ensure they lead the way.”*

*“If leadership from top down stamps hard on moral and ethical ambiguity then the whole industry will benefit.”*

#### **4.7 The Timetable for Action**

Several comments identified the need for urgent action for improvement on the ethical front.

*“The wake of the OFT report has left a number questioning what is ethically wrong or right – therefore a perfect opportunity for government to take control in clarifying and then regulating.”*

*“It will take a generation of estimators in order to fully stamp out this (cover pricing) behaviour.”*

*“A new regulatory body will be required regulating an entire industry from large companies to single workmen - this is a significant feat.”*

*“The task of the student generation to revolutionise an industry of entrenched attitudes is a large and slow task.”*

#### **4.8 Other Issues/Last Thoughts**

Some of the questions and issue here raise some provocative and controversial issues. Several students signed off their work with indictments about the ethical state of the industry. Others with observations and a reminder of what is at stake from allowing unethical behaviour to go on unchecked.

*“Why are bid rigging companies still members of the CIOB?”*

*“Why did the SCL decline to regulate the scheme when it was their brainchild?”*

*“The Considerate Contractor scheme has tackled outward appearances only.”*

*“The reality is in my view that acts of immoral behaviour will continue.”*

*“The SEC cannot mitigate against a human’s instinct for self-preservation i.e. winning work for his company and so I fear a SEC would not improve the morals.”*

*“The reason ethical improvement seems such a long way off is that corruption and dishonesty are as entrenched in the construction industry as concrete and steel.”*

*“The answer is yes we should have the SEC. This should be an overarching code inclusive of all those working in the industry after all the actions of a sole trader repairing a boiler could well result in death as much as a negligent design.”*

*“A single ethical code will bring the rules to the forefront.”*

*“Is a professional code enough to guide us or simply a limit to excess?”*

*“Just because it is hard does not mean it should not be done. The potential rewards are too great to ignore.”*

The last word should be given to the student drawing the analogy with fair trade coffee and the ethical agenda. He goes on to say *“fair trade construction seems a long way off”*.

## 5. Conclusion and Recommendations

In my submission there is a good deal to take away from the above exercise in terms of fuel for debate on the further implementation of ethical improvement within the industry. The following list is a distillation of the key ideas presented:

1. Make ethics less woolly and give more practical guidance -a workbook or ethics hotline would improve matters.
2. A government backed pan-industry regulatory body capable of enforcing ethical abuses is required.
3. The OFT investigation has provided further impetus for change.
4. Ethical improvement of the industry is a long term undertaking requiring at least a generation of industry professionals to see it through.
5. If the code is to be adopted, inclusion of the code in standard form contracts and forms of professional appointments would be a positive step.
6. A code on its own does not address the deep rooted causes of ethical abuse which include fragmentation, lowest priced tendering and the claims culture.
7. Ethical improvement is a side benefit of longer term collaborative arrangements within the industry such as partnering.
8. Other industries and countries have important lessons for the United Kingdom, including the electronics industry and professional bodies publishing their ethical deliberations and hearings.
9. The benefits for the industry of ethical improvement include presenting a cleaner image to the world and the recruitment of more talented and dedicated individuals.

## 6. Acknowledgments

I would like to thank the students whose work I have reproduced here and to wish them well with their career development.

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