

Regulating Professions: Shifts in Codes of Conduct

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Abstract

Professional institutions were established by professionals, for professionals. The way that these professions evolved has led to a need for them to regulate themselves. This has resulted in the development of codes of conduct to which members must adhere, under threat of expulsion. Since these professions were established, the definition of ‘consumer’ or ‘client’ has changed radically. This has led to discrepancies between self-regulation and imposed government regulatory measures. Clients rely on professionals having a code of conduct to protect their interests, however these codes are under attack as they are often considered to be anti-competitive. Government is influencing the way these organisations conduct themselves, as is clear from changes in the profession’s codes of conduct over the last two decades.

Keywords: self-regulation, consumer, client, professional, competition.

1. Introduction

1.1 Overview

The development of the professions is an interesting but complex story. In the UK, many of the construction professions were created by entrepreneurial adventurers who forged new techniques and ways of working, and developed distinctive bodies of knowledge [1]. As the technologies involved were inherently dangerous, practitioners adopted models of self-regulation based on those of the existing medical professions, as well as the mutual cooperation model of the guilds. Practitioners felt the need to protect themselves from charlatans who would not only work more cheaply, but also bring the field into disrepute. Thus professional self-regulation is a two-edged phenomenon: public protection and protection of the profession [2].

Apart from regulating entry into the profession, the primary form of self-regulation for architects has been the publication of codes of professional behaviour. The idea behind this is that any member who behaves unprofessionally may be barred from practicing.

1.2 International relevance

UK government takes an ‘ad hoc’ approach to regulating the professions, in contrast to many European countries, where the regulation of professions is treated more systematically. Due to its unique history, the UK avoided the Napoleonic legal reforms which swept through the Continent in the early 19th century. As a result, the UK retained its political system intact since 1688, despite significant social and electoral reforms, whereas many European political systems have their origins in the 20th century.

In the UK, the status of many professions was formalised in the first half of the 19th century via the grant of royal charters to self-regulating institutes. For example, the Royal Institute of British Architects (RIBA) was established in 1834. After a period of self-regulation, the government introduced a regulatory body called the Architects’ Registration Council of the United Kingdom (ARCUK) in 1931, which was replaced by the Architects’ Registration Board (ARB) in 1997.

Paradoxically, while the title ‘architect’ is protected under UK law, there is no restriction on carrying out the functions of an architect. Thus individuals who are trained and registered as architects are subject to professional regulation. In contrast the unqualified may practice architecture subject only to the general law, as long as they do not call themselves architects.

While the RIBA does not currently have a statutory role, it functions as a professional society dedicated to advancing the cause of good architecture, as well as promoting architectural education and good practice. The RIBA is a self-regulating body, and its members must adhere to the RIBA Code of Professional Conduct, which has been subject to many revisions in the past 25 years.

This research is concerned with examining whether such a code is responsive to changes in the wider business, economic and legislative environment. The purpose of this ongoing PhD research is to track the significant changes to the RIBA code of conduct since the 1981 edition of the RIBA Code of Professional Conduct and Standard of Professional Performance, and identify the drivers of these changes.

The importance of this research is to trace whether these changes are responses to commercial or to regulatory pressures. For society at large, in other words, this raises the important question of whether professional codes of conduct focus on the public good, or on institutional survival, or a mixture of the two. This question has been debated within the RIBA and other construction professions since at least the 1970s [3] and continues to be topical. Even today, there are serious questions about the future of the professions in the construction sector [4].

1.3 Regulatory background

Article 81 of the Treaty establishing the European Community (EC) prohibits agreements or decisions by participants within a market sector ‘which have as their object or effect the

prevention, restriction or distortion of competition' [5]. Subsequent legislation has created more effective mechanisms for enforcing Article 81 within the UK. 'Since 1 May 2004 not only the European Commission, but also the Office of Fair Trading (OFT) has the power to apply and enforce Articles 81 and 82 of the EC Treaty in the United Kingdom' [6].

In 2000 in the UK, the Office of Fair Trading began conducting investigations into professions whose services constitute a significant portion of the economy. Such professions as accountancy, law and architecture fell into this category, while teaching and the medical professions were excluded [7]. The purpose of their investigation was to reveal whether the selected professions were carrying out practices deemed anti-competitive.

Perceived restrictions on competition targeted by the OFT included limitations on entry, demarcation, and conduct. The OFT's stated position was that '(a)part from those shown to be necessary for economic efficiency and consumer benefits, restrictions on competition should go' [8]. This portion of the research will focus on those restrictions which fall under the heading 'conduct,' including fixed and recommended fee scales and advertising.

The OFT's investigation brings to light the relationship which the client/consumer is meant to have with the professional. The OFT acknowledges that a high quality service is inherently supplied by a person who is qualified, which is the traditional basis of professional practice. However, they advance the thesis that a consumer and a client are one and the same, which marks a new departure in the history of the client-professional relationship. In deregulating the professions, the OFT is pursuing a consumer-centred agenda. This is reflected in the dual mandate of the Architects Registration Board (ARB), a statutory body set up in 1997: "Protecting the consumer and safeguarding the reputation of architects" [7]. The precursor to the ARB had itself been under threat, as the legislation concerning the protection of the term "architect" had been under threat for some time [9].

The frequent changes and amendments to the RIBA Code of Conduct since 1981 are a reflection of the forgoing influences and form the subject of this study. It is interesting to see how the profession has responded to these pressures, and it seems safe to assume that formal responses to perceived changes in the business environment of architects will be reflected in the way that a code of conduct is revised and amended. Thus, it is proposed to track the RIBA's response to the enforced deregulation of the profession through content analysis of successive editions of the code of conduct, to examine whether substantive changes are reflected by changes in vocabulary or scope of the code of conduct.

The RIBA has generally responded by complying with the OFT's requirements, deleting or amending clauses of the code, whilst resisting wholesale changes. However, January 2005 marked the publication of a completely rewritten Code. This research is intended to track both of these responses to the deregulation of the profession through content analysis. Content analysis is a research technique that is designed to elicit meaning and context from documents. The purpose is to examine the words and the meanings with documents, and in order to do this data collection

consists of identifying the presence, frequency, prominence, direction and intensity of particular ideas, words or phrases [10].

1.4 Research method

Based on the history and sociology of the key professions in the UK, the evolution of codes of practice are contextualised, with particular reference to advertising, property development, fee discounts/competition, professional indemnity insurance, client expectations, business exigencies for the practice, etc.

By using the content analysis methods of word frequency count and keyword-in-context, this research is an attempt to track changes in the RIBA Code of Conduct between 1981 and 2005. It is anticipated that patterns will emerge reflecting overall trends in professional regulation as well as shifts in professional practice.

2. Codes of conduct from 1981-2005 (total word and significant word count)

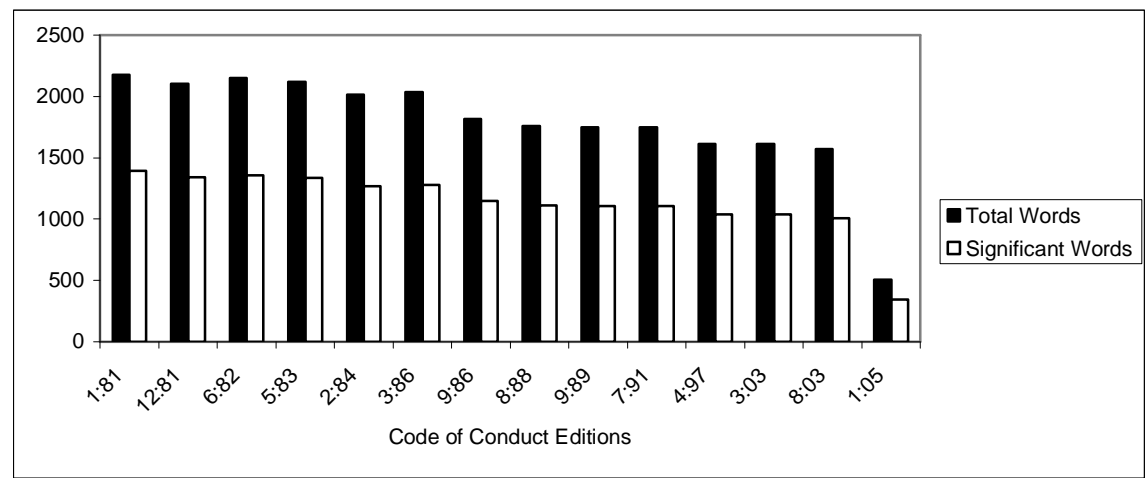


Figure 1: Numbers of words in successive editions of RIBA Code of Conduct

2.1 Methodology

The first part of the research entails mapping out the RIBA Codes of Conduct from 1981 to 2005 to observe how the content of the Codes have changed over the last twenty years. The objective is to see if there are any patterns that emerge out of the alterations in content within this timeframe. Figure 1 indicates a full word count of the contents from 1981 to 2005. The content of the Codes during this period have been edited to include only those words deemed significant

for the study. Table 1 shows which words were excluded from the total word count in arriving at the significant word count.

Table 1: Words excluded from the significant word count

a	be	doing	in	so
an	been	done	into	that
and	before	for	is	the
any	being	from	made	to
are	by	has	make	with
as	do	have	of	
at	does	having	on	

2.2 Observations

Based on Figure 1, the following observations can be made:

- § word pattern and count is fairly consistent from January 1981 until June 1991.
- § word pattern dramatically changes in April 1997, but remain constant in the subsequent 2003 editions.
- § there is a another dramatic shift in word pattern in the January 2005 edition, where word count dramatically drops.

It is apparent in Figure 1 that there is a sharp decrease in the word count from the 2003 edition to the 2005 edition, which indicates a major alteration to the content of the Code during those periods. This signifies a concerted effort to rewrite, not merely amend, since edits and simple revisions may usually be expected to cause only minor variations in document length.

3. Specific keywords

3.1 Methodology

In Figure 2, specific keywords in the research are counted within each of the Code editions. These words have been selected as they relate to the portions of the code that have previously been under question by government, such as the responsibilities of the professional to the public. Part of the investigation is to determine if their meaning and use has changed over time, or to see if their use has diminished.

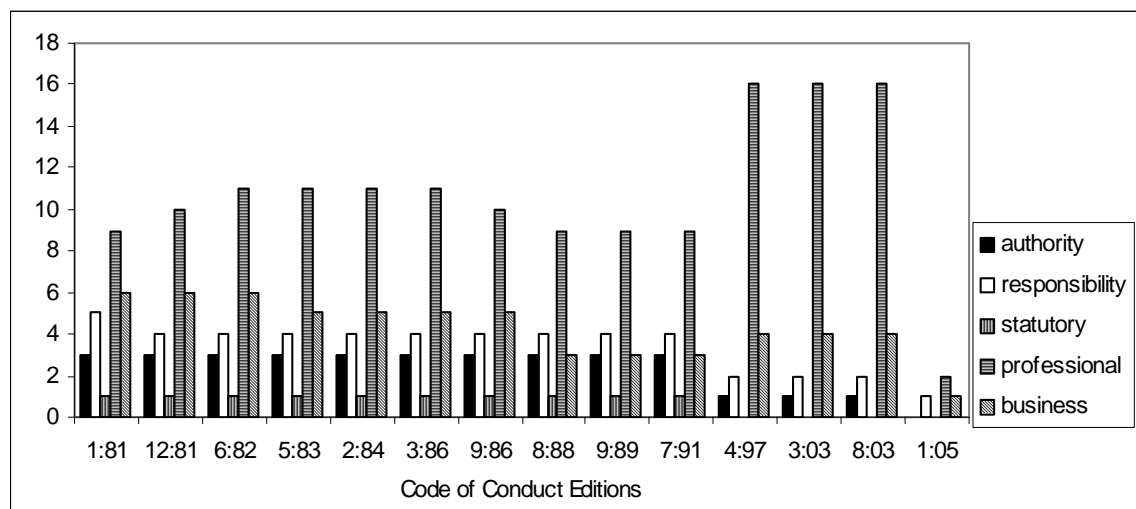


Figure 2: Number of oFigure 4: Example of mapping technique, illustrating changes to Principle No. 3

Words have been selected for analysis that are expected to form part of the a meaningful message to members of the profession with references to:

- services provided to the client
- issues of professional integrity
- corporate (acting as a single body) as opposed to competitive behaviour

Potential conflicts between these categories are addressed at certain points in the various editions of the code of conduct. This particular avenue will be explored further in future research.

3.2 Observations

Based on Figure 2, the following observations on specific word count and pattern of use from 1981 to 2005 editions may be made:

- § the word count pattern is consistent in that there is a reduction in the use of terms from the January 1982 edition through to the January 2005 edition.
- § the word ‘professional’, whose use jumps dramatically from the April 1997 to the August 2003 edition, is an exception to the trend noted above. ‘Professional’ is then dropped completely in the January 2005 edition.
- § the word ‘authority’ is dropped entirely in the January 2005 edition.

Comparing the overall word count in Figure 1 and the specific keyword count in Figure 2, some specific keywords follow the trend discernable in the overall word count, while others follow their own pattern. For example, the specific keywords ‘authority’ and ‘responsibility’ follow the trend of the overall word count, whereas ‘professional’ has its own distinctive pattern.

4. Keywords in context

4.1 Methodology

Although word count is used as a method of analysis, further validation of results is necessary to indicate the use of the word in context and to identify distinctions of meaning. In Section 3, specific words were counted and observed. However, there are other specific words that occur which have alternate meanings depending on their context. The table in Figure 3 indicates examples of alternate meanings identifying the edition and the precise context in which the specific word is used.

4.2 Observations

As indicated in Figure 3, the word ‘competition’ is used in the contexts: ‘architectural competition’, ‘competition between members’ and ‘any form of competition.’ In note 2.9.6 of the January 1981 edition, “architectural competition” refers to a formal process where architects are invited to submit design solutions to a defined brief in order to win an award. In note 3.2.2 of the same edition, “competition with other members” refers to a member’s behaviour. It is considered ‘unprofessional’ for members to compete with each other on the basis of price or by questioning the reputation of another member.

COMPETITION	
January 1981 Edition	
note 2.9.6	An employing architect should permit the architects he employs to enter architectural competitions but they should not do so without the knowledge of their employer
note 3.2.2	It would be contrary to this Rule for a member to submit estimates of fees and expenses knowing that they would be used for the purpose of competition with other members .
January 2005 Edition	
RULE 2.2	Where members are engaged in any form of competition to win work or awards, they should act fairly and honestly with potential clients and competitors. Any competition process in which they are participating must be known to be reasonable, transparent and impartial. If members find this not to be the case, they should rectify the competition process or withdraw.

Figure 3: Example of key word in context

In rule 2.2 of the January 2005 edition, the term “competition” is used to refer to both a competition to enter into and competition among members for work. Thus, the word ‘competition’ has two different meanings in different contexts in the January 1981 edition, whereas in the January 2005 edition, it is used with both meanings in the same context.

Specific keywords may have different meanings attributed to them by regulatory bodies. For example, the Monopolies and Mergers Commission, a UK regulatory body, have investigated what they deem as “anti-competitive” behaviour in the professions, resulting in the eradication of fee scales [10]. The discrepancy in the use of specific words such as ‘competition’ by the profession and by regulatory bodies will be investigated in further research.

5. Code breakdown: principles, rules and notes

5.1 Methodology

The Code is broken down in Principles, which are further broken down into Rules and Notes. The table in Figure 4 is used to distinguish between types of amendment by means of graphical notation.

5.2 Observations

Each of the categories from the 1981 to the 2005 editions of the Code was tracked, as indicated in Figure 4. From 1981 to 1991 the majority of content appears to have remained unchanged. The following types of change in content were noted:

	1:81	12:81	6:82	5:83	2:84	3:86	9:86	8:88	9:89	7:91	4:97	4:97	3:03	8:03	1:05	1:05
PRINCIPLE 3																
RULE 3.1																
RULE 3.2																
RULE 3.3																
RULE 3.4												3.7			J	3.5
RULE 3.5											...	2.6.3			...	
RULE 3.6												2.8.1			J	
RULE 3.7			3.3								...	3.5				
note 3.0.1																
note 3.1.1																
note 3.2.1																
note 3.2.2																
note 3.3.1																
note 3.3.2																
note 3.4.1																
note 3.5.1																
note 3.6.1 a)																
b)																
c)																
d)																
e)																
f)																
g)																
h)																
i)																
j)																
note 3.6.2																
note 3.6.3			3.3													

LEGEND		existed in January 1981
		no change
		amended
	...	moved
	3.3	moved from named location & amended
		new
	J	deleted in favour of individual judgement
	X	deleted

Figure 4: Example of mapping technique, illustrating changes to Principle No. 3

- content is unaltered (remains unchanged)

- amendments:
 - § content re-used, with slight amendments, maintaining original meaning
 - § content re-used, with amendments, altering original meaning
 - § re-written with an altered meaning
- moved as a result of ‘reshuffling’ but maintaining original content
- moved and amended
- deletions
- additions

The instances of major change in editions of the Code become apparent between the 1991 and the 1997 edition and then again in the 2005 edition, where the content is almost completely altered. Deletions appear to be particularly meaningful because it appears that the professional institution has responded to government demands primarily by ‘striking out’ content. Figure 4 illustrates the evolution of Principle no. 3, by way of example. There are also several instances of compulsory rules being replaced by a requirement to exercise professional judgement. This may indicate a more proactive approach to self-regulation, centred on the individual practitioner.

6. Conclusions

A review of the RIBA Codes of Conduct from 1981 through to 2005 has revealed a number of fundamental themes relating to professional regulation:

In the research carried out thus far, instances of deletions seem to be particularly meaningful because it appears that from 1981 to 1997 the professional institution has responded to government demands primarily by ‘striking out’ content. This appears to indicate a policy of minimum compliance to regulatory pressures.

The concept of ‘competition’ in particular is central to understanding the conflict between the interests of the profession, as represented by the RIBA, and the interests of the public, as advocated by the Office of Fair Trade. Thus the word ‘competition’ takes on various meanings in the editions of the Code of Conduct, in the context of the removal of competitive barriers.

Finally, in 2005 a re-written version of the RIBA Code of Conduct has addressed the deregulation of the profession by replacing mandatory rules with the use of professional judgement. This is a more pro-active approach to the regulatory pressure than the previously mentioned strategy of deletion.

Thus the methodologies of word count, keyword in context and a study of the categories of changes to the code appear to offer a promising direction in further research.

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