

# **Why Ethics Standards are Of Limited use on their own for Professionals Working in Land, Property and Construction and if to be Effective How Such Standards Need to be Embedded, Monitored and Regulated Against**

**Gary STRONG and Peter BOLTON KING, United Kingdom**

**Key words:** standards, risk management, professional practice, International Ethics Standards, trust, client and public protection, implementation, monitoring, regulation.

## **SUMMARY**

This paper follows on from the paper delivered last year and will explore the challenges faced by any International Ethics Standard and the work being done to produce the same. Can a code of ethics on its own be more than of limited use?

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## 1. INTRODUCTION AND BACKGROUND

In the RICS paper delivered at last year's conference, we set out the rather depressing position professionals currently find themselves in. Whatever we might think, most surveys and barometers continue to show decreasing levels of consumer trust in professionals. We went on to explain why standards were important and in particular why, above all, it is critical to achieve a high ethical standard, as this goes to the heart of what being a professional should be about.

This year, the 2015 Edelman Trust Barometer reveals an alarming evaporation of trust across all institutions, reaching the lows of the Great Recession in 2009. Trust in government, business, media and NGOs in the general population is below 50 percent in two-thirds of countries, including the U.S., U.K., Germany and Japan.

Although this is a worrying trend, there are some positive developments in the field of responsible business practice. In 2012 Dr Rieneke Slager of the International Centre for Corporate Social Responsibility Nottingham University Business School produced a paper, *The FTSE4GOOD index: engagement and impact*. This study explored the impact of the FTSE4Good Index focusing specifically on the process of engagement that underlies the Index and the impact of this engagement on the Environmental, Social and Governance (ESG) performance of companies.

Dr Slager concluded that *"The analysis of the introduction of the FTSE4Good countering bribery criteria in 2006 found that companies that had been in engagement with the FTSE Responsible Investment (RI) team were more likely to have better antibribery and anti-corruption procedures in place over time. Companies that used the GRI reporting standards, and those that communicated their FTSE4Good inclusion to external stakeholders, were also more likely to have better procedures and systems in place.*

*Overall the study shows the powerful effects of measurement and engagement on ESG practices. In an environment where measurement and monitoring of ESG is becoming increasingly widespread, investors should pay more attention to the potential of these developments to improve ESG-related practices of business."*

Positively, the above and a growing body of other research suggests that acting ethically in business fosters greater trust, transparency and confidence among investors, improves industry reputation, customer retention and also employee motivation. It is also reassuring to

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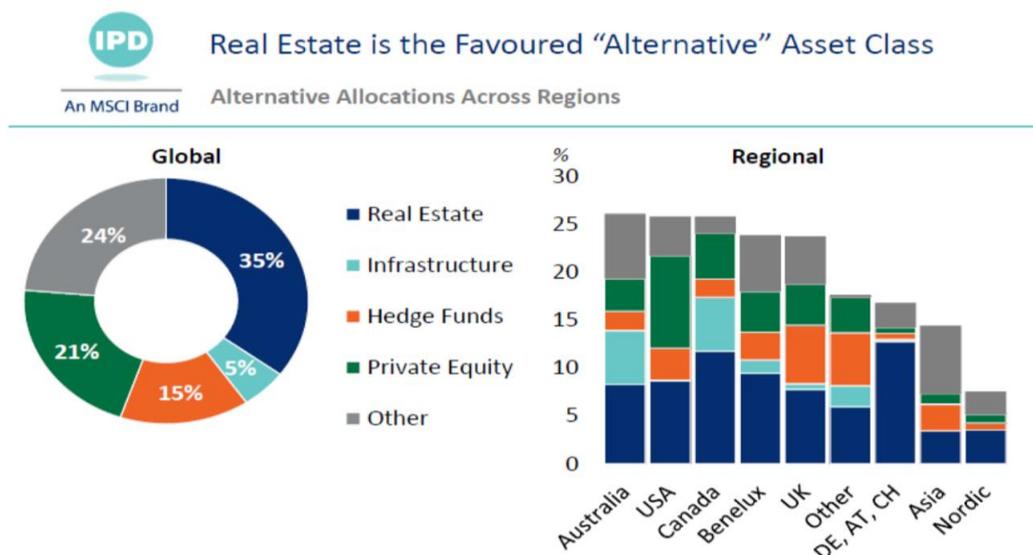
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note that some real estate firms operating in the global market already have strong ethical policies and practices with clear value statements and departments that assist with implementation. This therefore appears to indicate that companies increasingly realise the importance of ethical behaviour and there is an increasing understanding of this by consumers who will perhaps start to look more critically at the companies they are dealing with.

## 2. GLOBAL CHANGES

The above also needs to be considered in the context of the rapidly changing world we live in. Real Estate is becoming a globalized sector with increased investment and ownership of buildings and infrastructure across borders. Currently our sector advises on assets worth between 50% and 70% of the world's wealth and as the chart below shows real estate and infrastructure are the favoured 'alternative' asset classes.



This international investment and particularly the on-going interest in real estate can only continue to increase with an additional 1.3 billion people set to join the middle class by 2030 (HSBC 2012). Bearing in mind the geographical areas which will account for this additional flow of wealth it also poses some additional questions around standards. Historically standards have tended to be published in the West. With the increasing shift of global wealth and disposable income to areas like India and Asia, questions about who is best placed to set standards and arbitrate over interpretation and implementation should be considered.

Geir Sigurosson in a 2014 paper *'Ethics and Ego'* points out that *'there are major differences between the East-Asian and Western ethical traditions that emanate from divergent views of the kind of role selfhood or ego should play in social human life. He proposes that 'Western thinking is characterized by a stronger focus on the self and that the East-Asian approach differs from this in that it seeks to balance excessive introspection with a cultivated 'sense' of identification with the whole, be it society or the natural realm.'* He concludes that *'both west*

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*and east philosophes have their strengths and weaknesses*'. Hence both traditions, it is argued, have something to offer one another.

A number of academic papers on business ethics and 'ethical relativism' outline findings which are relevant to issues that might be encountered when drafting an international ethical standard. Research titled 'Ethical Perceptions of Business Students: Differences Between East Asia and the USA and Among "Confucian" Cultures' (Kung Young Chung et al, Journal of Business Ethics, April 2008), surveyed 842 undergraduate business students in America, China, Japan and the Republic of Korea. Participants were asked how they might act in four different business situations with potentially unethical business behaviour. They were also questioned extensively about the importance of business ethics in strategy and personal behaviour. The paper abstract notes: 'The authors argue that the key value of the reported research rests on a demonstration that national differences within a common cultural (*e.g.*, East Asian or Confucian) area can be as great as differences across cultural (East vs. West) areas and that practitioners of global business must fine-tune their expectations as to acceptable business and personal actions to accommodate specific national historical experiences to be effective.' By considering findings from relevant business ethics research papers and by ensuring that representatives from as many parts of the globe contribute to and consult on international ethical standards, potential philosophical differences can be minimised during the standards setting process.

The ever faster digital revolution brings its own challenges. Certain digital practices such as trolling might well be considered unethical by many and need to be considered as part of any standard and in moving forward to setting International Ethics Standards, as described in this paper, it is probably wise to reflect on these and other global changes. Hopefully by ensuring that representatives from as many parts of the globe as possible help to write such standards potential philosophical differences can be recognised and solutions found.

### **3. INTERNATIONAL ETHICS STANDARDS COALITION (IESC)**

While numerous professional organizations have their own ethics standards based on common principles such as integrity, transparency and trustworthiness, there is no over-arching international standard to which all real estate and related professional organizations subscribe. In last year's paper, we mentioned that, because of this lack of consistency, and the positive progress of other International Standards Coalitions, there was increasing desire to look at producing international ethics standards and we would like to take the opportunity to provide an update.

As a result of the initial encouraging discussions, a global coalition of real estate and related professional organizations has now come together to create a universal set of ethical principles which will underpin the many well established codes of conduct being used by professionals today. The chief objective of the new International Ethics Standard (IES) Coalition is to re-define the role of ethics in real estate to meet the needs of today's global market. The IES Coalition gathered for the first meeting at the United Nations in New York

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last October 2014. The group agreed that in many parts of the world, there is a real and perceived problem with an inconsistent approach to ethics in real estate which must be addressed.

### 3.1 Challenges and scope

It was felt that the challenges included:-

- *Some organisations do not have any ethical codes at all.*
- *Where they do exist often they are not sufficiently enforced.*
- *The general public is often unaware of ethical standards. Do not know how to identify practitioners that deliver ethical standards/code.*
- *The link between international ethical standards and market buoyancy is clear but often not explicitly linked.*

When discussing scope some of the questions discussed included:-

- *Should standards be limited to fundamental principles or should they address detailed aspects of professional practice (e.g. in guidance notes)?*
- *Should the standards set out the minimum – but this may be perceived as the lowest common standard and diminish their standing? Or should they be high standards – therefore difficult to adopt across all organisations?*
- *Should the standards enhance existing codes or should they be stand alone. Or both?*
- *Should the ethics extend to the private lives of professionals – e.g. minimum standard of personal conduct? Should this be included?*
- *Should the IES be limited to the real estate profession alone or should they extend to other professional disciplines?*

The meeting took considerable time to discuss and agree the following principles:

- *This initiative should clearly focus on international ‘ethics’ standards and **not** international ‘ethical’ standards, which can be understood to include personal conduct and moral judgements. ‘Ethics’ will relate to professional practice.*
- *IES could introduce international ‘principles’ which can be adopted across all professional organisations. These organisations can, if they wish, add additional details for their members, reflecting local laws and regulations.*
- *IES would act as a framework; would allow for a competitive environment for organisations to deliver. The quality of ethics will improve in worldwide public perception and trust. We can expect that market transparency and trustworthiness will improve as a result. Property would become a more attractive asset class.*

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- *Coalition members would be co-owners of the intl. standard and share the legal ownership.*
- *There should be a duty on coalition organisations to implement the standard and drive forward the principles in the marketplace.*
- *That market-driven adoption means that where enforcement can be proven and publicised commercial organisations can create a competitive advantage by publicising this fact. This would act as a means of raising the bar when it comes to implementation and enforcement.*

In order to ensure transparency and best practice, it was felt really important that there should be a separation between a Board looking after Governance, and standards setting. As a result the fundamental point was unanimously agreed, that an independent Standards Setting Committee would be appointed by the Board and that this committee should be asked to:-

*“Develop as a group of independent experts a world leading international ethics standards for property and related professions in order to:-”*

1. *Undertake a review of existing ethical standards/codes and identify areas of commonality around principles.*
2. *Identify where there are areas of divergence and inconsistency in the use of ethical principles.*
3. *Develop a standard taxonomy of terms.*
4. *Define the identified ethical ‘principles’ in a way that they can be understood at an international level. Definitions should include contextual information but not seek to explicitly list behaviours or actions that would constitute ‘rules’ on how to apply the ethical principle.*

In summary, at the meeting it was agreed that the International Ethics Standards would consist of high-level principles which will be implemented through codes of conduct owned by coalition organisations and provide assurance, consistency and confidence to all users of professional services. It was also agreed that full membership was open to not-for-profit organisations in real estate or related professions. In addition, companies, firms and other interested stakeholders can join as supporting partners and this already includes the UK Land Registry.

The IESC has now been set up and a Charter and Bylaws agreed. The independent Standards Setting Committee, is tasked with producing a draft code by the end of 2015 which will then go out for open consultation.

At the time of writing, more than 40 organisations from around the globe had joined the coalition with many others in the pipeline. Full information can be found on the IESC website which will shortly go live. By creating the IES and establishing the global coalition, participating organisations believe that we can make sure professional ethics is even higher up the agenda and stimulate conversations about enhancing client confidence and public protection. The coalition believe that this is a powerful and positive step for the property profession and for the many thousands of professional practitioners around the world.

Following the New York meeting, a number of very positive comments were made which are worth setting out:-

**Robyn Waters - (FIABCI World President)** said: *'This new Coalition has the potential to transform the public perception of the entire real estate industry by creating and implementing international standards of ethical conduct. This, in turn, will help to enhance confidence and stability in the global market place, leading to improved ratings for property as an asset class.'*

**Hamilton de Franca Leite – (SECOVI SP)** *'I believe that the project has the power to transform the real estate market in Brazil in a very positive way.'*

**John Leary- (Counselors of Real Estate)**

*'In terms of the markets around the world, the adoption of, and promulgation of, international ethics standards can do nothing but improve the situation. The more common footing we can have with others. The dollars investing in real estate don't care where they come from anymore and don't necessarily care where they are going. So the more protections you can build around the confidence level of the participants in the global real estate market the better off we will all be.'*

**Karin Barthelmes-Wehr (Initiative Corporate Governance of the German Real Estate Industry)**

*'This is a huge project. It is very ambitious but also very important. We have been doing this for the German real estate market in establishing principles of ethical behaviour and now we have to do this worldwide and I think this is of tremendous significance.'*

**Ken Creighton – (RICS)**

*'Currently there are lots of different codes of ethics with inconsistencies. This doesn't provide the clarity, the consistency, and the transparency that the marketplace expects in this modern intertwined economy. The coalition wants, as a profession, to come together and be very clear and very transparent about what professional ethics should be and get behind them as a profession.'*

#### **4. IMPLEMENTATION OF IES**

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The IES coalition members have presently committed to work together to produce the ethics standards but clearly a standard is of little use if it is not implemented effectively. Adoption and implementation will vary from organisation to organisation and market to market. At one end of the scale, some markets are very mature and have existing ethics standards which will happily sit under the IES high level principles, while others will need to engage extensively with a variety of members and stakeholders to successfully introduce IES at an organisational and market-level.

Clearly the coalition has no mandate to insist on adoption and it will be up to member organisations to decide what implementation looks like. Any coalition member implementing the standard must give sufficient consideration to potential reputational risk if they fail to effectively promote and implement the standard. Either as single entities or as groups, it is envisaged that once Ethics Standards are agreed, guidance, training and other products will be produced.

Additionally a communication framework will be agreed and an IESC website has been launched.

Coalition members will be responsible for encouraging both market and stakeholder 'buy in' and it is encouraging that, even before a draft standard is available, a number of companies, firms and Government Departments have expressed the desire to become a 'supporting partner'.

As word spreads, it is fascinating to note that applications are being received from a variety of property and related organisations spread throughout the world. A full list of current coalition members can be seen on the IESC website. A video put together following the initial New York meeting can be seen at:- <https://www.youtube.com/watch?v=LhkEMCgOt8U>

## **5. THE WAY FORWARD FOR THE STAKEHOLDERS AND OTHER INTERESTED PARTIES**

Many bodies already have high level ethics standards, some local and some, like RICS, as Global Standards, which form a conceptual framework. These are either mandatory or form best practice. The Coalition members will have to decide how they individually wish to implement the new IES. To some extent this will be dependent on any existing ethics standards, national and state laws and the geographical spread of their membership. Global bodies, such as RICS, might well decide that once IES are published, their current ethics standards will be replaced by the new standard. Consideration will then have to be given as to whether these are mandatory on members as is the case with RICS. For global players, guidance will potentially have to be adapted to include definitions around the ethical standards and examples of the kind of behaviours or actions that would help members to demonstrate compliance – or, if not met, may lead to a breach of any Code of Conduct with potentially consequent disciplinary action.

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## **6. INTERACTION BETWEEN ETHICAL STANDARDS, TECHNICAL STANDARDS AND REGULATORY STANDARDS**

Many organisations, such as RICS, currently has a mixture of mandatory standards, such as ethics and valuation, technical standards and guidance along with regulatory standards. Concepts such as the RICS Red Book valuation standards will be familiar to many which again comprises a mixture of mandatory sections and guidance. This is further complicated by the need to accommodate differences in law and practice throughout the often many countries members operate in.

The coalition members currently have different ways of dealing with breaches of their own rules. These range from a very light touch approach by some umbrella bodies to formal regulation, dealt with by an independent part of the organisation which in turn has independent regulatory boards and disciplinary conduct and appeals panels.

Bearing in mind the plethora of standards and guidance currently in existence in many organisations, it is clear that some will need to undertake a review as to their format and status. Consideration will probably have to be given as to how elements of standardisation can be achieved. One option is that a clear pathway can potentially be envisaged based on a pyramid structure. As ethical behaviours are critical to both business, consumers and society in general, agreed and adopted international ethics standards would sit at the very top of the pyramid and underpin everything underneath. The next tier might be other international standards such as valuation, measurement and construction.

For the RICS a third tier of the pyramid will potentially comprise a number of related and mandatory professional statements which would further build on international standards and below this would be sectorial guidance as to how members meet the above mandatory requirements. Within a global framework will be a potential need for regional, or more likely country specific, content which may have to be mandatory, to take account of local laws, or in the form of additional guidance to take account of local practice. Nevertheless all of this must take into account the overarching, sometimes mandatory, ethics standards.

An example of how this works can be seen in the recently updated Real Estate Agency and Brokerage Guidance (REABG). This RICS document is now in two parts. The first section contains a new Practice Statement that is mandatory for all members, regardless of location, who operate in the agency or brokerage sector. Twelve high level principles, many of an ethical nature, are listed which should not cause difficulty for any member. The second section of the book contains guidance as to how members in the sector might show compliance with the mandatory principles. It is recognised that further localised guidance might be required to reflect different practices.

## **7. THE PROBLEM OF PROVIDING GUIDANCE ACROSS A MULTI-DISCIPLINED GLOBAL MEMBERSHIP**

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As mentioned earlier, it is envisaged that draft International Ethics Standards will be available for global consultation by the end of 2015.

What cannot be underestimated is how these high-level standards should be interpreted and implemented by members of the coalition, bearing in mind that some might be making compliance mandatory for their members. This is further complicated for those whose members operate across a multitude of different specialisms, often working in many countries. An extensive programme of member communication will be required to embed the standards within organisations and potentially within qualifications and regulations.

There are many examples where practices that some might consider unethical are elsewhere regarded as normal business practice which may, or may not, be particularly transparent. To date some large organisations, such as RICS, have been successful in implementing high level principles-based standards throughout the globe excepting that, as previously mentioned, there needs to be more localised guidance to help members meet such requirements. International ethics standards will be no different. It is perhaps worth noting that RICS has already developed a toolkit to support the implementation of their Global Professional and Ethical Standards which is available at [rics.org/ethics](http://rics.org/ethics).

Once IES is published, organisations often in conjunction with each other, will no doubt initiate a series of consultations about proposed guidance. In reality it is envisaged that many of the principles contained in IES will be easily applicable across the world although some will require careful thought and discussion.

As part of this work, organisations will look to provide additional training whether this be by way of face-to-face, e-learning, webinars, seminars or conferences. In some cases it may well be sensible to work with IES coalition partners to jointly brand such events or material.

## **8. SHOULD COMPLIANCE WITH ETHICS STANDARDS BE REACTIVELY OR PROACTIVELY MEASURED?**

This was touched on in last year's FIG paper and the more recent ethics coalition work has again emphasised the fact that it is not enough to have standards in place without the checks and balances to ensure professionals have truly adopted them and are complying with them. Without such checks, individual, companies, organisations and governments leave themselves wide open to be accused of merely paying lip service to standards. It goes without saying that there are plenty of high profile examples where such an attitude has led to serious reputational damage and in some cases worse.

Those who are prepared to fully embrace the International Ethics Standards can without doubt put themselves at a real advantage and will probably be taking a proactive attitude to compliance. Embedding ethics throughout a professional body or business should be thought

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of as a wide-ranging exercise which is fundamental to the operating values of the organisation, not just a tick box audit.

Many organisations in the coalition, including RICS, currently take a mixed approach to regulation. Depending on the organisation, members of the coalition might join as individuals or as firms. Thereafter IES coalition members regulate reactively, proactively or through a mixture of both. Continuing Professional Development (CPD) is advisory in some organisations and mandatory in others. Many do increasingly require their members to record a set minimum of hours of life-long learning each year and this sometimes includes a mandatory element of ethics training.

It is worth noting that, as far as RICS is concerned, although individual members join the organisation, approximately 10,000 firms are currently 'Regulated by RICS' on a compulsory or voluntary basis. Part of the risk-based audit process carried out on these firms, by the Regulation department, includes a mandatory requirement to meet RICS' current ethics standard. The above processes will continue to apply when the new International Ethics Standards replace the current code and themselves become mandatory.

From a reactive point of view, clearly many IES coalition members take into account compliance with rules and mandatory codes when investigating any complaint.

All International Ethics Standards Coalition members will find their own solutions about how to best monitor ethical compliance. Balancing audits against cost, heavy handedness against proportionality, and a risk-based approach will always be a fine line. What each organisation must demonstrate fully to their members is that acting ethically is fundamental to being a respected professional.

Ethical behaviours are critical to both business, consumers and society in general. We must continually strive to try to change what for many is 'normal business practice' and this goes to the heart of what the International Ethics Standards Coalition is striving to achieve. "Actions speak louder than words!"

## **BIOGRAPHICAL NOTES**

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

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Peter Bolton King FRICS started work in 1973 and after qualifying as a Chartered Surveyor he became his firm's youngest ever partner. In 1987 the business was sold to the financial sector when he became an area sales director. In 2003 Peter was appointed Group Chief Executive of the National Federation of Property in the UK and in April 2012, joined the Royal Institution of Chartered Surveyors (RICS). He is currently the Global Property Standards Director for RICS and holds a number of other Industry appointments on their behalf. His international knowledge is widely recognised and he has held positions as Chairman of the International Consortium of Real Estate Associations (ICREA) and as a Director on the FIABCI world board. Peter is passionate about raising standards in the industry and has recently been appointed as Chair of Trustees for the International Ethics Standards Coalition.

## CONTACTS

Mr. Gary Strong FRICS  
Royal Institution of Chartered Surveyors  
Parliament Square  
London  
United Kingdom  
Tel. +44 (0)20 7695 1522  
Email: [gstrong@rics.org](mailto:gstrong@rics.org)  
Web site: [www.rics.org/knowledge](http://www.rics.org/knowledge)

Mr. Peter Bolton King FRICS  
Royal Institution of Chartered Surveyors  
Parliament Square  
London  
United Kingdom  
Tel. +44 (0)20 7695 1725  
Email: [pbking@rics.org](mailto:pbking@rics.org)  
Web site: [www.rics.org/knowledge](http://www.rics.org/knowledge)

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