

ADVICE ON ETHICAL CONDUCT

Made by the Council on 21 July 2004, to come into effect on 1 November 2004. Modified by the Council on 17 July 2012.

Introduction

The purpose of the 'Advice on Ethical Conduct' is to give members further advice and information about particular areas of professional practice that the Institution would like its members to follow in order to behave ethically. In most instances, a member's failure to adhere to the guidance is unlikely, of itself, to constitute a breach of the Rules of Professional Conduct. The advice covers those matters which members should consider and take into account rather than simply those things which, if disregarded, would be likely to attract censure. The exceptions to this are the additional advice regarding the prevention of bribery and corruption, and the advice on equality and diversity. Any form of involvement in bribery and corruption would be likely to breach Rule 1 of the Rules of Professional Conduct, as well as the law in the UK and many other countries. Similarly, any breaches of the UK law governing equality and diversity would be likely to breach Rule 1 of the Rules of Professional Conduct.

Sustainability and the Environment

Members should promote the use of recycled or reusable materials wherever practicable and should make use of energy-efficient techniques in the construction and life maintenance of projects. Members should, as far as practicable, use their influence to minimise the production of waste and should maximise environment-friendly reuse, recycling or disposal. Members should minimise the impact on the natural and non-built environment, e.g. by recommending the use of 'brown-field' sites in preference to 'green-field' sites where practicable, and conserve natural environments wherever practicable. They should take account of the 'global' environmental impact of any project they undertake, including foreseeable future effects, not simply the immediate effect upon the site of the project and the adjacent area.

Increasingly, engineers are called to account for their decisions, especially where projects are controversial or are opposed by particular interest groups. Members should therefore ensure that there is an audit trail to show that they have taken all relevant factors into account, and above all, that they have not acted in a way that appears to breach the ICE Code of Professional Conduct. Members should ensure that they are able to show that parties opposing the project have been given time to lodge objections, and that the objections have received due consideration. Members who fail to take these actions may be vulnerable to disciplinary action by ICE in the event of a complaint against them.

Bibliography:

UK Standard for Professional Engineering Competence (also known as the 'UK-SPEC') published by EC(UK) on its website: www.ukspec.org.uk. This contains the requirement for both Chartered and Incorporated Engineers to "undertake engineering activities in a way that contributes to sustainable development". (For more details, see the website).

Risk

'Risk' is the balance between hazard and probability. All projects or business ventures involve some sort of risk. All projects can go wrong; this does not vary with their size. Whether a project can be said to have been a 'failure' will depend not only on its performance in simple structural terms. It will be judged according to its lifetime performance in relation to the investment concerned and the negative impact concomitant with every addition or modification to the built environment.

Any member with responsibility for a project, or any part of it, must, by maintaining awareness in his discipline, be aware of the hazards and their causes, the likelihood that they will cause damage to people or property and where the responsibility for them lies. Members should be sufficiently familiar with the underlying procedures, processes and mechanisms to analyse their risks, recommend sensible management measures and give informed, expert judgements on the causes and probabilities of failure, based on the residual risks. This may involve assistance from trained risk analysts, but the member's responsibility for the judgement is his alone.

An example of a primary tool for determining risk is Enterprise Risk Management (ERM). This is used to assess the risk to an organisation that would arise from any given project or objective. ERM provides a risk-management framework in which critical events or situations are identified and assessed in relation to the risks that they present. Typically, this involves identifying particular events or circumstances relevant to the organization's objectives, assessing them in terms of likelihood and magnitude of impact, determining a response strategy, and monitoring progress. By identifying and proactively addressing risks and opportunities, organisations protect and enhance the outcomes for their stakeholders and for society as a whole.

No member can be expected to eliminate all risk. But members of the ICE have an ethical responsibility to take all appropriate measures to limit risk, in particular by ensuring that there is adequate risk analysis/assessment, and an effective management process both during the construction and post-construction phases in any project, e.g. through the use of such tools as Risk Analysis and Management for Projects (RAMP). RAMP, in particular, is designed to evaluate all major risks over the lifetime of a project, including the risk that the net revenue stream may vary significantly from that forecast.

Bibliography:

Risk Analysis and Management for Projects (RAMP) (2002) – ICE, Faculty of Actuaries, Institute of Actuaries. Published by Thomas Telford Publishing Ltd. RAMP website: www.RAMPrisk.com.

Project Risk Analysis and Management (PRAM) (1997) – Association for Project Management (www.apm.org.uk)

Preventing Disasters

Members should make themselves aware of relevant good practice advice on the prevention of disasters; for example, UK-based members need to know of the Royal Academy of Engineering 'Guidelines for Warnings of Preventable Disasters'. If a situation is developing

which is causing a member concern, the member should not hesitate to consult the ICE for guidance if this is needed. Members working in the UK should also be aware of the provisions of the Public Interest Disclosure Act 1998, which permits certain disclosures in the public interest and prohibits dismissal in relation to those disclosures.

The responsibility to prevent disasters does not lie simply with those who first become aware that a set of circumstances has arisen which might lead to a disaster. Members who are in senior management positions have a duty to establish procedures so that potentially hazardous situations can be reported to those in a position to take action and ultimately to prevent them becoming actual disasters. They should ensure that all relevant staff are fully versed in these procedures, and they should provide that the lines of communication reach not only those who have the responsibility to take corrective action, but also those who can understand the implications of the situation.

Bibliography:

Guidelines for Warnings of Preventable Disasters – this can be downloaded from the Royal Academy of Engineering website:

<http://www.raeng.org.uk/policy/pdfs/Draft%20Guidelines.pdf>.

This document contains details of suggested actions for people making or receiving warnings of disasters, plus a discussion by the late ICE President, Edmund Hambly, drawn from his own experiences, of the problems and issues facing engineers who become aware of situations where a disaster may occur.

The Public Interest Disclosure Act 1998. This is shown in full on the Parliamentary website: www.parliament.uk.

SCOSS & CROSS (Standing Committee on Structural Safety & Confidential Reporting on Structural Safety)

The Standing Committee on Structural Safety (SCOSS) is an independent body and was established in 1976. It is supported by the [Institution of Civil Engineers](#), the [Institution of Structural Engineers](#) and the [Health and Safety Executive](#) to maintain a continuing review of building and civil engineering matters affecting the safety of structures.

SCOSS identifies in advance those trends and developments which might contribute to an increasing risk to structural safety. SCOSS interacts with the professions, industry and government on all matters concerned with design, construction and use of building and civil engineering structures.

SCOSS has introduced the Confidential Reporting on Structural Safety (CROSS) scheme. This aims to improve structural safety and reduce failures by using confidential reports to publicise lessons that have been learnt, and to generate feedback and influence change.

More information, including details of the confidential reporting procedures and safeguards are given on the CROSS website:

www.cross-structural-safety.org/about-us

Whistleblowing

'Whistleblowing' may be defined as "publicly raising concerns about misconduct within an organisation where internal reporting systems do not exist or are ineffective".

Statutory protection for whistleblowers: the Public Interest Disclosure Act 1998 (PIDA - the UK legislation covering whistleblowing).

All ICE members who are UK based or are engaged by UK firms and who are contemplating whistleblowing should take note of the provisions of PIDA, which applies to people at work raising concerns about crimes, civil offences (including negligence, breach of contract, breach of administrative law), miscarriages of justice, dangers to health and safety or the environment and the 'cover-up' of any of these. It applies whether or not the information is confidential and whether the malpractice is occurring in the UK or overseas. Detailed information on the operation of PIDA may be obtained from 'Public Concern at Work' (see below).

Many organisations and firms working in the built environment have codes of conduct that contain policies and procedures for the protection of whistleblowers. ICE members who are concerned about wrong doing within their organisation, whether this involves corrupt behaviour or otherwise endangers the public good, should first consult their organisation's code or procedures for reporting wrong-doing if they have not already done so. There may, however, be good reason not to use the organisation's internal procedures, e.g. they have already proved to be ineffective or not to have protected whistleblowers, causing the livelihoods and professional prospects of whistleblowers to have been compromised.

ICE cannot become directly involved in individual whistleblowing cases. However, ICE recommends that members who are considering whistleblowing or who have already embarked on such a course should consult "Public Concern at Work" (PCaW).

Public Concern at Work (PCaW)

Through its helpline (telephone 020 7404 6609 or email helpline@pcaw.co.uk), PCaW's lawyers provide confidential advice, free of charge, to people who are concerned about wrongdoing at work but who are not sure whether to, or how to, raise their concerns. Examples of the wrongdoing about which PCAW can give advice are fraud, public dangers and risks to consumers. For persons who are in this position, PCAW aims to help them identify how best to raise their concerns, while minimising any risk to them and maximising the opportunity for any wrongdoing to be addressed.

PCaW also provide information about how PIDA operates. It does not take cases or represent clients, but for persons wishing to make claims under PIDA and needing help to do so it will give information on other useful sources of advice.

Bibliography:

The Public Interest Disclosure Act 1998. This is shown in full on the Parliamentary website: www.parliament.uk.

'Whistleblowing' – Guidance to ICE members. This is published as a PDF document on the ICE website at:

<http://www.ice.org.uk/Information-resources/Document-Library/Whistleblowing-Guidance-to-ICE-members>

Clarity of communication with clients

Unclear terms of engagement with clients, especially in domestic and small works engagements, are a common cause of client dissatisfaction, sometimes leading to complaints against members. To deal with this problem, the ICE has produced the 'Agreement for consultancy work in respect of domestic or small works', which sets out in the form of a simple checklist the types of services to be provided and the payment terms. The Agreement is available from the ICE Bookshop. Some members may prefer to use the Association of Consulting Engineers 'Short Form Agreement'. But whether or not members use one of these Agreements, they should ensure that the written terms of engagement are set out clearly in simple, layman's language, with full details of the fees to be charged.

Structural surveys are a common area of misunderstanding, with clients and members frequently at odds over what they think a 'structural survey' actually entails. It is better that members avoid altogether the use of the term 'structural survey'; this, too, is the advice of the Construction Industry Council (see the CIC leaflet, 'Definitions of Inspections and Surveys of Buildings'). Members should always make clear at the outset, in simple, layman's language, what the survey will cover and what will not be covered. Members should take all reasonable steps to satisfy themselves that the client fully understands the service that is to be provided.

Bibliography:

Agreement for consultancy work in respect of domestic or small works. Published by Thomas Telford Publishing ISBN: 0 7277 2626 9. Obtainable from the ICE bookshop, One, Great George Street, Westminster, London SW1P 3AA.

ACE Short Form Agreement 2002. Published by the Association of Consulting Engineers Alliance House, 12 Caxton Street, London SW1H 0Q, tel. - 020 7222 6557, fax - 020 7222 0750, e-mail consult@acenet.co.uk.

Definitions of Inspections and Surveys of Buildings. Obtainable direct from the Construction Industry Council, 26 Store Street, London WC1E 7BT, tel.020 7637 8692, fax 020 7580 6140, e-mail cic@cic.org.uk.

Declaring an Interest

The Code of Professional Conduct states that members must declare an interest. It is appreciated that it is increasingly difficult, as consulting firms become fewer and bigger, to avoid situations where members, i.e. their employers, have an interest in a project that they are considering. However, ICE members should consider carefully before entering into any engagement where this may arise. Members should in all cases make full disclosure of any interest to all the relevant parties.

But even though the parties involved may have said at the outset that they are content with the arrangements, their views may change if unforeseen difficulties arise. This is likely if some parties are affected more adversely, or benefit disproportionately, relative to others, particularly if this arises from decisions in which the member has had to apply his or her professional judgement. The disadvantaged parties may then challenge the member's objectivity and it may become difficult to resolve this in such a way that the member's integrity remains unquestioned. Such an outcome is clearly undesirable.

It is therefore most important that members keep all interested parties fully informed of all relevant developments, and they maintain an audit trail to demonstrate that they have done this. In particular, members should ensure that they are able to show that interested parties have been given time to lodge objections to any proposal which adversely affects them, and that the objections have received due consideration.

Provisions of the Party Wall etc Act 1996

Members should comply with the law in all the countries in which they operate. The Party Wall etc Act 1996, which applies throughout England and Wales, is highlighted because it is a continuing source of complaints about the professional conduct of members.

New construction projects and projects on existing structures frequently involve work affecting adjacent properties and may be covered by the Party Wall etc Act 1996. Members must therefore ensure that they are sufficiently aware of the provisions of the Act to be able to apply them properly, together with the procedures and the strict timing that the Act lays down.

Members who are responsible to their client for the design of works and then accept appointment as party wall surveyor under the Act must understand and appreciate the differences between their relationship with their client, as designer, and their statutory role as appointed surveyor, with an appointing owner. As appointed surveyor under the Act, a Member's statutory duty is to impartially apply the provisions of the Act, even where doing so may conflict with their client's instructions or require amendment of the design already prepared by the Member. This distinction must be clearly explained to their client before accepting a statutory appointment as party wall surveyor. If in doubt, or where a Member feels there could be a perceived conflict of interest, the Member should decline to accept appointment as party wall surveyor under the Act.

Failure to apply the Act properly might, in certain circumstances, cause a member to be in breach of the ICE's Code of Professional Conduct, and thus in danger of disciplinary action.

Bibliography:

The Party Wall etc Act 1996: explanatory booklet. Published by the Department of Communities and Local Government. This contains basic advice about the Act and gives details of other sources of information about the Act. It can be reached via the website of the Department of Communities and Local Government:

(www.communities.gov.uk).

The Party Wall Act Explained. Published by the Pyramus & Thisbe Club. The Pyramus & Thisbe Club was founded in 1974 as a forum for discussion on all matters in connection with party wall matters. Enquiries of the Pyramus & Thisbe Club should be made via www.partywalls.org.uk or the Pyramus and Thisbe Club, Administration Office, Rathdale House, 30 Back Road, Rathfriland, NEWRY, BT34 5QF. Telephone: 028 4063 2082. Fax: 028 4063 2083. E-mail: info@partwalls.org.uk.

The Party Wall etc Act 1996. This is shown in full on the Parliamentary website: www.parliament.uk.

Proceedings of the Institution of Civil Engineers – Civil Engineering February 2003 Briefing Note 'How to avoid complaints' (ISSN 0965 089 X)

Respecting and Promoting Equality and Diversity

Everyone has the right to be treated equally, no matter what their gender, race or ethnic origin, nationality, religion or other beliefs, sexual orientation, disability or age. The right of all persons to equal treatment is enshrined in Articles 1 and 2 of the Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948. The UDHR is the foundation of much of the legislation enacted by individual countries to uphold and promote equality.

The Equality Act 2010 is the legal framework for equality in the UK. Details of this legislation are shown on the website for the Equality and Human Rights Commission, at:

<http://www.equalityhumanrights.com/advice-and-guidance/>

As well as making discrimination on grounds of gender, race, sexuality, etc illegal, UK legislation outlaws indirect discrimination and harassment. The sexual innuendo and homophobic or racist remarks and jokes that used to feature in some workplaces are no longer simply offensive and unacceptable; they are against the law. ICE members who are in positions of authority in their organisations or firms should be mindful that an employer is liable in law if employees are subjected to direct/indirect harassment, victimisation or discrimination, and the employer does not take reasonable steps to prevent such activity.

ICE members should also remember that the Guidance Notes to Rule 1 of the Rules of Professional Conduct include the requirement to treat all persons with consideration and respect and without bias. Additionally, those ICE members who are positions of authority must ensure that persons for whom they have management responsibility show due consideration for others and treat all persons without bias and with respect.

Preventing Bribery and Corruption

Members should familiarise themselves with, and comply with, the relevant anti-corruption laws of the countries in which they work or of which they are citizens or residents. Members based in the UK or working for UK-based firms should be mindful of the provisions of the Bribery Act 2010, under which UK-registered companies and UK nationals can be prosecuted in the UK for an act of bribery committed either in the UK or partially or wholly overseas.

But irrespective of anti-corruption legislation, whether in the UK or in other countries, and the ICE's Rules of Professional Conduct, members should be aware of the wholly malign effect of bribery and corruption, particularly upon the poorest nations. In some parts of the developing world bribery and corruption in construction and civil engineering is so widespread that it has significantly reduced the number of infrastructure projects. This could not have occurred without the participation in bribery and corruption of contractors and consultants based in the developed world. The effect has been to markedly reduce the amount of work that these contractors and consultants might otherwise have obtained.

Until recently, it has been a standard justification for such behaviour that competitors indulge in these practices, and that failure to do so may disadvantage companies who are not dishonest. This can never be accepted as an excuse for members of the ICE to participate in bribery and corruption. Members who have senior management positions have a particular obligation here. They should make positive efforts to ensure that, as far as reasonably possible, bribery and corruption does not exist, and cannot occur, in the organisations for which they work. They should set in place anti-corruption protocols and procedures so that junior employees are not drawn into corrupt practices through intimidation or persuasion by senior colleagues, and whereby they are able to report such practices without fear of reprisals of any kind, in particular, damage to their careers or prospects of advancement.

TI(UK), the UK sector of Transparency International, the world-wide coalition against corruption, has published a number of Business Tools which are designed to assist in the prevention of corruption in the construction and engineering industry. The ICE recommends all members of the ICE, especially senior managers, to take advantage of the work that TI(UK) has done here.

Another source of information and management tools to prevent corruption is the Global Infrastructure Anti Corruption Centre (GIACC), an independent not for profit organisation which provides resources and services for the purpose of preventing corruption in the infrastructure, construction and engineering sectors. The GIACC Resource Centre is a web-resource which provides free access to information, advice and tools designed to help stakeholders understand, prevent and identify corruption.

Bibliography:

Transparency International Business Tools. These are freely downloadable from the TI(UK) website www.transparency.org.uk, mostly as Word documents.

Global Infrastructure Anti Corruption Centre. GIACC's free web-based resources and advice is available via its website at: www.giaccentre.org

The Bribery Act 2010 – a reminder to members. Guidance is published on the ICE website at: <http://www.ice.org.uk/Information-resources/Document-Library/The-Bribery-Act-2010-a-reminder-to-members>

End Note – future revisions and contact point for advice

It is intended that from time to time this document will be updated. Members are invited to comment upon it, and to propose new topics for inclusion. To do so, please contact the Professional Conduct Department at the ICE.