

2017

## The Evolution of Ethics in the Irish Real Estate Profession

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### Recommended Citation

Colley, L. & Scott, L. (2017). The evolution of ethics in the Irish real estate profession. *13th International Postgraduate Research Conference in the Built Environment*, University of Salford, United Kingdom, 14-15th. September. doi:10.21427/y9k3-aq15

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Funder: Independent News & Media

# THE EVOLUTION OF ETHICS IN THE IRISH REAL ESTATE PROFESSION

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Since the Economic Collapse of 2008 much discussion and analysis of the role of ethics in the financial sector in Ireland has occurred. However little if any of this focus has been on the real estate profession. The purpose of this paper is to examine how the Irish Real Estate Profession deals with the issue of ethics. How has this relationship evolved over time? Has the Irish political context influenced the approach to ethics on a societal level and has this fed into the profession's approach? The role of ethics education is also examined in current Irish real estate qualifications, Property Services Regulatory Authority license requirements and the various professional body membership requirements.

The first phase of this research project has addressed the underpinning and background research literature on this topic. The evidence indicates that the Irish Real Estate Profession relies on a self-regulation approach to ethics in line with global RICS Standards. The literature review indicates that very little data exists on complaints and reprimands. Ethics forms a tokenistic element of education for the profession and in continued professional development. The issue of "whistle-blowers" is also a complex one in an Irish context and is currently being debated at a national level.

Keywords: education, ethics, Ireland, real estate, self-regulation.

## 1. INTRODUCTION

This paper addresses the ethical evolution of the Irish real estate profession from 1900 to 2017 which forms part of the literature review phase of a funded Independent News & Media PhD project on "Property Valuation Best Practice for Conflict of Interest Management: The Irish Experience.

The discussion about the Irish economy and in particular the property market is often referred to as a 'National Obsession' or a 'National Past-time'. Following the global financial collapse in 2008 and the resultant recession in Ireland, culminating in a bank bailout estimated to have cost the State 60 billion euros, much public anger and recrimination was evident. The establishment of the National Asset Management Agency (NAMA) to manage the now state owned property packed loan books of financial institutions, the lack of public sought accountability for the failings in regulation of the markets particularly financial and property and the lack of the 'Sacrificial lamb' or 'Scalp' of individuals who had appeared to contribute to the bubble, were particular bones of contention. (Hearne, 2015). Many of the individuals now under scrutiny were professionals in trusted positions with long, well regarded careers and questions were beginning to surface around accountability and ethical behaviour. (Cahill, 2014). However these were not new issues either nationally or internationally where a series of global financial scandals had cast aspersions over the integrity of many professions "*There is certainly unease about professional ethics, not only by the professionals themselves, but by the general public, who are the clients or consumers of professional services*" (McDonnell, 2000, p.1).

A full scale investigation was ordered in February 2010 by the then Minister for Finance Brian Lenihan TD into the performance of the Central Bank and Financial Regulator which resulted in the establishment of the “Banking Inquiry” culminating in a report produced in May of that year. One of the key findings was that *“A rather defensive approach was adopted to external critics or contrarians. For years many observers had raised some concerns publicly or privately, albeit sometimes in coded form, about the sustainability of the property boom, which was indeed dramatic by international standards.”* (Governor of the Central Bank, 2012, p.10). Focus continued around this time on the role of the perceived lack of ethical behaviour by the financial institutions, politicians and key wealthy individuals. The property industry itself, the role of property professionals during this time period, regulation of the property industry and the quality and reliability of the services provided, largely avoided scrutiny on a meaningful level.

A report published by The Central Bank of Ireland in December 2012 titled “Valuation Processes in the Banking Crisis – Lessons Learned - Guiding the Future” did identify potential issues within the property profession and recommend best practice for the credit institutions going forward. Most notable was the issue of conflict of interest and it is stated that *“During the volume led transaction phase of the property development boom, certain valuation practises were accepted by credit institutions that involved significant conflict of interest.”* (Central Bank of Ireland, 2012, p.11). This finding, however, did not lead to any calls for a formal review of the role of the property profession in the collapse or indeed the potential for need of reform going forward.

## **2. ETHICS & PROFESSIONAL STANDARDS**

Very little research exists in regard to the real estate profession and ethics specifically and this research explores the unknown territory to try to make sense of what has shaped the profession today. It aims to chronologically explore and decipher the evolution of the profession in the context of the country’s development.

Much research has been undertaken around the area of ethics, ethics in business, professional standards and codes of ethics. (Hurley, 1996), (Kaler, 1999), (Wofford, 1999), (Wolverton, 1999) and (Plimmer & Sayce, 2003). There are many ethical theories or schools of thought but at its most basic the word Ethics comes from the Greek word ethos, meaning ‘Character or custom’. An individual’s ethical position on an issue will usually inform their view on the rights and wrongs and dictate their response or behaviour i.e. ethical relativism. Most individual’s assessment of the ethical issues are derived from their concept of ‘Norms’ i.e. what is the usual acceptable response relative to their family, religion, political views etc. i.e. their culture. ‘Culture’ is defined by Hofstede (1991) as the *“collective programming of the mind which distinguishes the members of one group or category of people from another”*.

### **2.1 Professions**

Professions comprise of many individuals and their individual “norms” and “customs”, therefore, it is necessary to agree on a set of “norms” or standards for an array of issues

including ethics i.e. “ethical relativism”. *“Professional ethics are important for establishing the standard of behaviour expected of individual professionals.”*(Dabson, Plimmer et al, 2007, p.9). Depending on the locality the professional body may be relied upon by Government to control and monitor the profession or there may be additional laws which supersede any professional dictate. Often it is noted that that where a legal framework exists that the professional body’s standards *“Are normally expected to be in excess of any legally required standard and may be regarded as reflecting the culture of the group of individuals to whom they are applied.”* (Dabson, Plimmer et al, 2007, p.9). The importance of these standards and their value to all stakeholders cannot be underestimated *“It cannot be disputed that principles and codes of practice are important, both for professionals, for their clients and for the general public at large”* (Plimmer & Sayce, 2003, p.3). Some are critical of the role of ethical codes and the influence they have on the overall standard of professional services. Deinhardt (1995) argues that ethical codes cannot and do not alter the ultimate behaviour of a professional and that ultimately codes *“promote unethical behaviour, because the true aim of such codes is to serve the interests of those who write them”*.

## **2.2. Codes of Ethics: Issues**

An issue with standards or codes of ethics that are applied across a profession e.g. surveying, accounting etc. is that the ‘Customs’ or ‘Norms’ may lead to some degree of variety in interpretation and practical application. One way to deal with this issue is through active governance where the aim of this governance is to ensure compliance by all members to the codes of ethical conduct.

Another way to ensure appropriate application of ethical codes is through education. There is debate over whether ethics can be taught with the resulting outcome being a more ethical individual and the defence for a lack of focus on ethics education is the idea that an individual’s behaviour is ingrained from their cultural experiences as discussed above. There is research to confirm that ethics education is worthwhile in that *“Students are receptive to education programmes designed to develop moral judgement”* (Harris, 1998) and that *“It is important to have a language of ethics that we can all understand and that is clinical and non-evaluative”* (McCoy, 2009).

## **2.3 Methodology**

This work forms part of the literature review of an Independent News and Media PhD project on “Property Valuation Best Practice for Conflict of Interest Management: The Irish Experience. This paper was compiled by means of a literature review of all available literature relevant to the aim of tracking the ethical evolution of the real estate profession in Ireland.

### 3. ETHICAL EVOLUTION: THE IRISH REAL ESTATE PROFESSION

In considering the ethical evolution of the Irish real estate profession, it is necessary to consider this in the context of political and economic developments across the same time periods.

#### 3.1 1900 to 1929

At the turn of the twentieth century, the Irish political landscape was a complex one. The roots of which spread as far back as 1155 when John of Salisbury visited Pope Adrian IV at Rome and got permission for Henry II to invade Ireland. At the turn of the twentieth century the Irish desire for independence was reaching a crescendo with successive Home Rule Bills being defeated in the House of Lords and recent establishment of the Gaelic League, the Irish Socialist Republican Party and Cumann na nGaedheal (Ferriter, 2005). The unfulfilled desire for independence had a profound effect on the Irish psyche not least in the attitude towards those in positions of power resulting in an almost two-tier society, a 'Them and us' outlook. (Inglis, 2014). Also, the perception that the continuation of English Rule was achieved through corrupt means by patronage and bribery influenced the early decisions made by those seeking independence, *"Memories of the long-term implications of a disreputable political system were the underlying motivation of the governments and civil servants of the early 1920s to prevent the perception of history repeating itself."* (Byrne, 2012, p.19).

Due to the influence of English Rule in Ireland, those who wished to conduct a property related service had to obtain a "Licence" which was *"Governed by a variety of Victorian statutes dating from 1845, while the law relating to appraisers' licences dates back to King George III in 1806."* (Power, 1997, p.25). A licence was obtained by application to the Courts and the payment of a monetary sum. There was no requirement to be educated or experienced in the property industry or indeed to maintain any level of professional standards. The situation was somewhat different within the United Kingdom where the Institution of Surveyors was founded in 1868, incorporated by Royal Charter in 1881 and renamed the Royal Institution of Chartered Surveyors at this time.

In 1922 the Irish State was founded. However, the terms upon which this was achieved was the basis for a fundamental split within the Irish political system that led to a Civil War. Despite this fact *"The Governments of the early 1920s established, legitimised and consolidated many of the institutions of government, which remain with us today."* (Byrne, 2012, p.25). From its very first days of business, corruption and ethical behaviour was a significant issue debated in the newly formed Dáil Éireann. When calls arose for legislation on the matter the Irish Taoiseach, Eamonn DeValera, stated *"Ultimately of course, the conduct of members will be determined by their own sense of what is fit and right and proper."* (deValera, 1947).

1922 was also a significant year for the Irish Property Profession *"As it was in 1922 that the Irish Auctioneers' and Estate Agents' Association (IAA), subsequently to be renamed Irish Auctioneers and Valuers Institute (IAVI), came into formal existence."* (Power, 1997, p.15). The core aim of the IAVI was to obtain protection for the property industry through the

cessation of unqualified persons obtaining a licence. Eleven objectives were established for the Association, none of which referred either expressly or by implication to ethical behaviour of members. *“By the end of 1929, it was considered that about three-quarters of the practising auctioneers, valuers, house and estate agents in the Saorstát were now members of the IAA.”* (Power, 1997, p.22).

### 3.2 1930 to 1949

The 1930s saw many changes across both the political and economic landscape with the rise of Fianna Fáil and their protectionist economic policies which were a significant change from Cumann na nGaedheal's liberalist ideals. Across this decade there were many political scandals which at their core were based on the ethical stance of power holders and their allocation of resources in line with the new protectionist outlook. *“The establishment of the Control of Manufacturing Acts 1932-34, initiated under Patrick McGilligan and enacted under Seán Lemass, provided the Minister for Industry and Commerce with varying degrees of latitude in the issuing of licences, shares, leases and export quota.”* (Byrne, 2012, p.36).

Much was changing in Ireland in connection with the right to own and lease property under various Land Acts. *“Socially, the Land Acts had brought about dramatic social changes throughout the country in previous decades, shifting economic power from the elite landlord class to a wider and more prosperous property-owning democracy.”* (Power, 1997, p.37) The Landlord and Tenant Act 1931 while heavily criticised by some quarters for interpretive issues is widely seen as *“One of the most important legal reforms made by the legislature since the setting up of the Irish Free State.”* (Power, 1997, p.43). The main changes brought about under the Act were rights to renewal, rights to compensation for improvements and the ability to create new building leases.

Within this climate of legislative control, the property industry was still seeking regulation led by the IAVI. They were successful in getting their demands to Bill stage twice in the early 1930s: Auctioneers, Valuers and Estate Agents Bill 1931 and 1933. Both Bills failed to pass with the second attempt ending when *“Minister for Finance Mr McEntee said that, while the Government was not prepared to accept the provisions of the measure, it recognised that certain steps should be taken against dishonest practitioners and accordingly, a bill was in preparation which he believed would afford the public the necessary protection.”* (Power, 2012, p.47).

Politically there were four tribunals over a twelve year period: The Wicklow Gold Inquiry 1935, The Great Southern Railways Tribunal 1943, The Ward Tribunal 1946 and The Locke Tribunal 1947. The nuances of each obviously varies although at the heart of each was corruption, relationships indicating conflict of interest and the new Irish State trying to figure its ethical positioning on matters of professional conduct. While often the allegations initially were politically timed and motivated against competitors, at the root was a Government trying to confirm the boundaries within which acceptable behaviour occurred. *“Debates on conflicts of interest were not new, but the attention they received was. Questions on whether the private life of a politician influenced their actions as a public representative were raised in a sustained way.”* (Byrne, 2012, p.62). Interestingly no

legislative reform or guidelines were produced as a result of these tribunals and these ethical debates would continue to be a feature of Irish politics.

The Irish property industry was still seeking legislative control after their two failed attempts early in the 1930s. They were finally successful to some degree with the Auctioneers & House Agents Act 1947. However, the desire for control over those whom could obtain a licence was not linked to educational and/or professional experience as desired. The Act's definition of a "Certificate of Qualification" does not refer to any form of academic qualification or indeed previous professional experience, it refers to a process of notifying both the public and the Gardaí of your intention to obtain a licence. The Act contained no mention of required professional standards, monitoring of conduct or indeed penalties if found to be failing in professional duties.

The IAA itself had introduced a new "Code of Conduct" just prior to the Act that included *"No member shall conduct himself either in his personal or professional capacity, in such a manner as would be likely to prejudicially affect his own professional status, or injure the reputation of the Association."* (Power, 1997, p.60). By the end of 1949 there were 580 members of the IAA who were bound to adhere to this rule, however, there was no legislative control so self-regulation remained the only regulation of the Irish real estate profession.

### 3.3 1950-1979

*"By the middle of the 1950s a serious crisis of confidence developed, caused by widespread anxiety that the performance of the economy was so poor the country was falling behind Western European Standards, not only in productivity, but in the social benefits that productivity might confer."* (Lyons, 1973). During this period there was a marked change in Ireland's demography with more people living in urban areas than in rural ones for the first time since the formation of the State.

The 1950s marks a period of professional jostling as the industry tried to establish its "ownership" of other functions such as rights to sell and value. The main adversary was the Irish legal profession who had been providing these services to clients unofficially for some time. *"The matter of professional boundaries had, however, been causing friction for some time."* (Power, 1997, p.90). The 1951 annual general meeting was asked by a member *"if it was professional and recognised by the Incorporated Law Society for Solicitors to act as valuers"*. (Power, 1997, p.90). The legal profession was not the only industry to receive criticism for some practices.

The 1960s represented a period of awakening within the Irish economy and the property industry was suitably influenced. *"The blinds were let up, the windows were thrown open, the doors were unlocked; and good, bad or indifferent, the modern world came in among us at last"*. (Tobin, 1984). The IAA joined the International Real Estate Federation (FIABCI) and provided the National Chapter's executive and coordinating functions. The modern commercial property market effectively began with the introduction of the 1963 Planning and Development Act where power to rezone agricultural land was ultimately left with public officials. In short, the capacity to zone agricultural land incentivised property speculation. *"The potential for enormous financial profits created an added inducement for*

*corrupt transactions between developers and local officials and representatives.*" (Byrne, 2012, p.70).

Despite the growth and changes over this period the property profession was still regulated by the Auctioneers, Valuers and Estate Agents Act 1947 which was now significantly insufficient when considered in line with the expansion of more sophisticated services being provided by the industry. *"It was no mere coincidence that 1964 marked a high point of the IAA's educational efforts with the establishment of a high-level structured course."* (Power, 1997, p.111). Membership of the IAA was now conditional on completion of this course or a similarly recognised programme. The industry itself, through self-regulation, was trying to increase the standards of services being provided to the public. Professional conduct did form part of this educational programme but most certainly the focus was on valuations and law.

The Government did produce a new Act in 1967, The Auctioneer and House Act. However, there was no place for professional standards or penalties for poor behaviour instead it increased the bond required to obtain a licence, the introduction of a client account, and an additional requirement on the "Certificate of Qualification" to include certification of compliance by an accountant. These additions were certainly aimed at narrowing those eligible for a licence to provide property related services.

*"From January 1, 1971, the IAA was renamed The Irish Auctioneers and Valuers Institute (IAVI)"* (Power, 1997, p.123). The Institute of Professional Auctioneers, Valuers and Livestock Salesmen (IPAV) was also founded this year adding another dimension of self-regulation to the profession.

In 1973 a review of the property industry was undertaken by the Revenue through the National Prices Commission (NPC). Their aim was to examine auctioneering fee structures and a consultant was duly appointed to carry out the review. *"The NPC report was the most comprehensive study of the profession yet completed, but was by its own admission flawed in certain key aspects."* (Power, 1997, p.127). The main flaw related to the level of engagement on the professional groups and the number of replies received by those professionals surveyed weakened the value of the report findings. Again this review focused purely on fees and no review was sought or carried out on professional standards and level of services provided by the industry.

A new Act was enacted by the Government in 1973, The Auctioneers and House Agents Act of 1973, however, this was not well received by the professional bodies such as the IAVI. In their view the Act was *"Introduced without prior consultation with the Institute – which transferred the obligation to pay the auctioneer's fees in the case of a sale of a property from the purchaser to the vendor of the property by making void any contract for the purchaser to pay such fees."* (Power, 1997, p.126). In 1977, the IAVI continued to improve levels of professional regulation as they introduced a voluntary compensation fund for those who may have been penalised by poor performance or negligence of a member.



### 3.4 1980-1999

*“It was the best of times, it was the worst of times – the 1980s, when the property market plumbed new lows before ultimately scaling fresh heights.” (Power, 1997, p.161).*

There was no further State led regulation of the property industry but the IAVI continued to develop their standing with a focus on education and communication with the public. *“In 1985, the educational programme was transferred from the College of Commerce in Rathmines to the College of Technology, Bolton Street, Dublin on a three year, whole-time diploma basis. The opportunity was taken to suitably upgrade the programme at the time of transfer. Auctioneering, valuation and estate agency courses were also commenced at both Limerick and Galway Regional Technical Colleges and the University of Ulster at Jordanstown.” (Power, 1997, p.168).* The educational programmes focused on the technicalities of valuations, law, building construction etc. and a small tokenistic element on professional practice.

In 1983 the IAVI had a public case of misconduct relating to the avoidance of stamp duty being facilitated by a member. Their response was significantly important as it was an opportunity to reinforce their stance on misconduct to both the public and its members. Following notification of the claim, the council accepted the resignation of the member in question and placed a notice in the national daily newspapers to the effect on April 18<sup>th</sup> *“It is a matter of considerable regret that this default has arisen, particularly as there has been no claim against a member of the Institute on grounds of dishonesty since 1959.” (Power, 1997, p.174).* A strong response that highlighted the need for proper channels for the regulation and governance of the industry.

Politically this was a dark period for allegations of corruption that went right to the most senior offices of the State. *“This period was distinct from previous scandals because it marked the possibility of the gravest form of corruption, that of state capture within political decision making.” (Byrne, 2012, p.103).* *“The Beef Tribunal Inquiry (1991-1994) was perhaps the most extraordinary political episode in modern Irish history. For the first time since the 1940s, the reciprocal relationship between politics and vested interests was placed under intense political, public, judicial and media scrutiny. This was a period when questions about political corruption, golden circles and the integrity of public officials were raised in a meaningful way.” (Byrne, 2012, 107).* Transparency and professional reputations were the order of the day and the property industry was aware of these demands.

*“In February 1996, the IAVI Practice Handbook was launched at the Merrion Square headquarters by Minister for the Environment, Brendan Howlin. The publication of the manual represents yet another significant landmark in the ongoing IAVI commitment to improving auctioneering standards.” (Power, 1997, p.216).* The goal of the Handbook was to produce a transparent base for all aspects of services provided by its members. From an ethical stand point, section 1 laid out the “Code of Conduct” for members which was binding. Rule 4 stated *“Members shall at all times make it their first duty to protect and promote the legitimate and ethical interest of their clients to the utmost of their ability.”* Rule 14 stated *“No member shall act for two parties in the same transaction without the full knowledge and consent of both parties.”* Rule 22 states *“If, on a consideration of any matter referred to it, the Disciplinary Committee decides that a member of the Institute has been guilty of a breach of the rules of conduct the Committee may: Hold that a breach of the rules*

*has been committed but decide to take no further action.*” Rule 27 states *“The Institute shall be entitled to publish in the “Property Valuer” journal of the Institute and in general the press or any publications selected, notice of the expulsion or suspension or resignation of any member.”* This was a strong position taken by the IAVI, however, no examples of what constituted acts that would place a member in breach were provided, no requirement to publish numbers of complaints, outcomes etc. was included and ultimately these rules were relevant to its members only.

A survey undertaken of Irish attitudes towards the real estate industry revealed a worrying trend that 25% of respondents would not avail of services provided. Writing in a subsequent issue of the IAVI journal, auctioneer John Harrington articulated the sentiments of many of his colleagues on the key issue of standards. He acknowledged that greater professionalism, coupled with high-end marketing and a good corporate image would go some way to restoring the public confidence. In a bid to further regulate and legitimise the industry the IAVI joined the European Property Agents Group, the European Secretariat for the Liberal Professions and TEGOVOFA.

Moving towards the Millennium the Irish State still grappled with corruption in the form of *“political favouritism, tolerated conflicts of interest, tax evasion, fraudulent practices”* (Byrne, 2012, p.131) and Irish society was in an apathetic state on the trustworthiness of *“those in suits”*.

### **3.5 1990-2010**

The period of the late 1990s up to 2012 was again marked by three sizeable tribunals: The McCracken Tribunal 1997, The Moriarty Tribunal 1997-2011 and the Flood/Mahon Tribunal 1997 – 2012. Ethics, professional integrity and the boundaries of improper conduct were at the heart of all three with the slight difference from previous periods being *“For the first time that unaccountable political decisions were not isolated incidents, as previous episodes seemed to suggest. The various inquiries instead exposed how those at the highest positions of power periodically abused their political discretion to benefit private interests.”* (Byrne, 2012, p.134). Public apathy continued as did a rising tide of frustration over the benefit-cost outcome of these tribunals. However, as the economy had now entered the period referred to as “The Celtic Tiger” the politicians were somewhat shielded by the available Exchequer coffers for investment in services and infrastructure, that for the most part grumblings were muted.

The property industry was gaining rapid pace along with the economy, the residential markets in particular were experiencing high levels of activity with anecdotal evidence of gazumping and poor agent practices. In July 2005 the report by the Auctioneering/Estate Agency Group was published containing a list of recommendations to reform the Irish property industry. The brief given to the Group by the then Minister for Justice, Equality and Reform was *“To carry out a review of all aspects of the auctioneering profession in Ireland and equivalent services in appropriate comparable jurisdictions.”* It is important to note that this was produced by the Group focused on the residential market as they believed *“It is in this area that most problems are perceived to exist.”* (Auctioneering/Estate Agency Review Group, 2005, p.7) They noted the role of the professional bodies in providing governance

and guidance to the profession but expressed concern *“That there is no appropriate system to control entry to, or to set or maintain practice standards in this market.”* (Auctioneering/Estate Agency Review Group, 2005, p.7). The most significant recommendation to come from the review was the establishment of an *“Auctioneers and Estate Agents Regulatory Authority in order to achieve uniformity and transparency in licensing, regulation and information provision.”* (Auctioneering/Estate Agency Review Group, 2005, p7).

As a result of the review and after much delay caused by economic and political developments, the Property Services (Regulation) Act was enacted in 2011. As a direct result the Property Services Regulation Authority was established by Minister Shatter on the 3<sup>rd</sup> April 2012. *“The main function of the Authority is to control and regulate Property Services Providers (i.e. Auctioneers/Estate Agents, Letting Agents and Management Agents) this includes the licensing of all such services providers, the establishment of a complaints investigation and redress system for consumers, the setting and enforcement of standards in the provision of property services, the administration of client accounts, the establishment and maintenance of a compensation fund and the creation of three Public Registers.”* (PSRA, 2016). The three registers in question are the Residential Property Price Register, Commercial Leases Register and the Register of Licensed Property Services Providers.

Criticism of the PSRA has been widespread largely focused on the lack of transparency and slow processing times *“The first thing to note about the PSRA is the lack of transparency on its record to date.”* (Leman, 2015). *“The authority has also been provided with significant powers to tackle improper conduct by estate agents. There have been unconfirmed reports of action against some estate agents.”* (Irish Times, 2014). Presently the PSRA has a section on their website briefly detailing six cases involving *“Convictions, Prosecutions, and Major Sanctions”* but no detail is included on the number of complaints received.

On 18<sup>th</sup> December 2012 the Central Bank of Ireland published *“Valuation Processes in the Banking Crisis-Lessons Learned – Guiding the Future”* which was the second document published after a commitment made by the Central Bank *“To provide credit institutions with details of lessons learned from the banking crisis, and to provide guidance on recommended practice.”* Of particular relevance to the property industry was the observation that *“Many best practice valuation standards have been overlooked, omitted and in some cases totally disregarded during the property market boom.”* This finding however did not lead to any calls for a formal review of the role of the property profession in the collapse or indeed the potential for need of reform going forward.

### **3.6 2010-2017**

The Celtic Tiger continued and led Ireland into one of the biggest property bubbles in the developed world's history. Much analysis and conjecture continues on the causes of its collapse, the choices made to avoid national bankruptcy and the austerity measures selected but the impact on an ethical level are less considered. Certainly the financial industry and its perceived lack of ethical practices: bonuses, selling products they knew to be high risk but not marketing as such etc. has come under the most scrutiny but the role of property professionals has not been analysed. Property was undoubtedly the key asset class involved in

the Irish financial collapse yet the industry has managed to escape any meaningful analysis of ethical standards during the period.

Anecdotally due to the establishment of the PSRA, the role of the professional bodies was to some extent less prevalent within the Irish property market. In April 2011, after a long consultation and implementation process, the Society of Chartered Surveyors Ireland was formed by a merger between the IAVI and the SCS. The new body states that “*Working in partnership with RICS, the pre-eminent Chartered professional body for the construction, land and property sectors around the world, the Society and RICS act in the public interest: setting and maintaining the highest standards of competence and integrity among the profession; and providing impartial, authoritative advice on key issues for business, society and governments worldwide.*” (SCSI, 2017).

The SCSI Rules of Conduct include, in their Professional and Personal Standards section, requirements for members to “*at all times act with integrity and avoid conflicts of interest and avoid any actions or situations that are inconsistent with its or their professional obligations.*” Failure to do so it is noted “*May lead to action by the Director of Regulation and Professional Conduct Committee under these Rules.*” There is no readily available information at present on the number of complaints received about members, numbers of disciplinary proceedings and their outcomes.

The SCSI offer their own part time degree in partnership with Dublin Institute of Technology and there are approximately twenty-two educational programmes at either undergraduate or master’s level across the Republic that are accredited by the SCSI. In examining the programme documents for each it is evident that little if any credits are linked directly to Professional and Personal Standards and ethical conduct.

In March 2017 the RICS published the first edition Professional Statement “Conflict of Interest” with rules coming into effect on 1<sup>st</sup> January 2018. Compliance with its contents is mandatory for all members and it defines a conflict of interest in three contexts: a party conflict, an own interest conflict and a confidential information conflict. Some activities are banned outright, however, a sizeable amount of situations where conflict would arise are permissible if “Informed Consent” is received prior to providing any services. There is no additional monitoring of compliance detailed so breaches will either have to be reported to the SCSI or may be captured through their risk assessment procedures.

Throughout the history of the State and right up to present day, the role of “whistle-blowers” is a controversial one. Some argue this is linked to before the formation of the State, where those in authority were seen as a “foreign entity” that were not to be trusted and Irish people deal with their own transgressions amongst themselves. “*Attitudes towards informers have traditionally been hostile and perceived as having traitorous qualities.*” (Byrne, 2012, p.134). While undoubtedly there has been progress around this issue, the recent “whistle-blower” controversy in the Gardaí demonstrates that all may not be well. While an inquiry is to determine the facts of the matter it is worth noting that “*An investigation by Mr Justice Kevin O’Higgins in 2016 found there had been a corporate closing of ranks, alteration to the Pulse recording system and delays in producing documents concerning allegations made by Sgt McCabe. The latest exercise, conducted by Mr Justice Iarfhlaith O’Neill, arose from allegations by former head of the Garda Press Office Supt David Taylor that he had been formally instructed to discredit Sgt McCabe*” (Irish Times, 2017). While evidence of such

alleged mistreatment of an individual reporting misconduct at the highest levels of a national institution like the Gardaí are in the public mind, is it reasonable to expect others to come forward to report misconduct in their spheres of practice.

#### **4. CONCLUSIONS**

This exploration of the evolution highlights the emergence of the context of ethics in the Irish property sector and points to many factors that have influenced and impacted it.

For much of the last nearly one hundred years the real estate profession in Ireland has been purely self-regulated from a professional standards and ethical view point. Any legislation referred to the procedure of obtaining a licence to practice and no monitoring of the industry was deemed necessary. The IAVI, SCS (both merged to form the SCSi) and IPAV to varying degrees provided the only monitoring of educational requirements of members, rules of conduct and disciplinary proceedings for failure to comply. The PSRA was formed in 2011 and after a slow start is providing some evidence of monitoring of professional standards and ethical behaviour of licence holders however for an industry of its size and relevance to national issues a much more active approach is required.

The PSRA does detail varying educational requirements to obtain licences, however, as highlighted above the accredited programmes do not offer significant education in the area of ethical issues.

In obtaining membership to the professional bodies all require evidence of knowledge of their standards ethical conduct which are tested through a mix of interview and diaries of professional practice. Once a member continued professional development is necessary however there is no particular onus that any element of this must relate to professional conduct.

As evidenced through the vast array of tribunals and political scandals over the history of the State, individuals do report inappropriate conduct. However, it cannot be denied that due perhaps to historical influences, those that do inform are not always received in a positive manner. Bearing this in mind it is logical to argue that a more aggressive system of auditing led by the PSRA is required as opposed to relying on a system of complaint and follow-up as has been the main feature of Irish real estate profession regulation up until the last number of years.

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