
Editorial: Integrity – where art thou?

Editorial

233

This editorial is being written shortly after the 40th Cambridge International Symposium on Economic Crime held at Jesus College, University of Cambridge. The 40th iteration of this unique global event is not only a testament to its founder, Professor Barry A.K. Rider OBE, but also to the timeless nature of its subject matter and how, like physical diseases, economic crime adapts to environmental changes (i.e. technological changes) and new legal constructs.

This year's symposium focused on "integrity" which some may think an odd choice, as is it not axiomatic that those who engage in economic crime lack integrity? When examined in a broader context, however, integrity is an integral part of who we are and what we do, both individually and as a society.

Do some of us exhibit more integrity than others? Does a person who defrauds a pensioner of £25,000 of life savings through a Ponzi scheme possess the same lack of integrity as a person who steals the same pensioner's handbag on the high street with a wallet containing £25? One could say the latter because there was a physical affront to the person and the potency of causing bodily harm.

In the regulation of financial services in the USA, there has long existed a legal distinction between the obligations of securities brokers and investment advisers. A securities broker generally need only make a recommendation to a client as to the purchase or sale of a security that, after due inquiry, is suitable for the client [1]. However, an investment adviser stands in a fiduciary relationship with the client and always must place the interests of the client first, absent permissible instances where a conflict of interest may be addressed by prior disclosure and consent of the client [2]. However, should not both securities professionals act with the same level of integrity as both are dealing with a client's financial wellbeing?

What about the integrity of those society relies upon to enforce and uphold the law, such as law enforcement and statutory regulators? Is there a minimum test of integrity which should be met prior to being accepted into those organisations? In a 2023 report, Baroness Casey found that, among other things, the UK's Metropolitan Police was institutionally racist, sexist and homophobic within and without the organisation and was unable to police itself [3]. No doubt there are many persons of excellent integrity who work in regulation and law enforcement, but the Casey Report does point out potential weaknesses.

Can lack of integrity be measured? One method might be to measure civil and criminal enforcement taken by state actors. In September 2022, the U.S. Securities and Exchange Commission (SEC) collectively fined 16 financial firms US\$1.1bn for failure to comply with SEC recordkeeping and books and records requirements [4]. In the same year, the SEC fined the accounting firm of Ernst and Young US\$100m for cheating by its audit professionals on exams required to maintain their licenses in the USA as certified public accountants and for withholding evidence of this misconduct from the SEC [5].

These enforcement actions may reflect how lack of integrity is addressed. Was the failure of recordkeeping intentional and designed to hide unlawful activity [6], or was it merely inattention to detail? Did it result in financial harm to clients? Was the amount of the fine and the number of firms involved more of a warning rather than a remedy?

Most would agree that cheating on exams, particularly by licensed professionals, may be the very definition of lack of integrity. Indeed, Rule 102(e) of the SEC Rules of Practice



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provide that the SEC may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before the SEC in any way to any person who is found by the SEC, after notice and opportunity for hearing in the matter, “to be lacking in character or integrity or to have engaged in unethical or improper professional conduct” [7].

Nevertheless, the cheating of exams was addressed by a US\$100m fine on a firm which, for the year that ended 30 June 2022, had revenues of US\$45.4bn [8]. Why were not the cheating professionals or the firm suspended from practice before the SEC under its own Rules of Practice? [9] Does this send a message that it is acceptable to address a lack of integrity by writing a check?

The Financial Industry Regulatory Authority (FINRA), which is the self-regulatory organisation for securities brokers in the USA, has published statistics indicating that, from 2017 to 2022, the number of member firms decreased by 448 and the number of licensed individuals decreased by over 8,500 but, during the same period, investor complaints filed with FINRA increased from 3,002 to 11,180 [10]. Does the almost 400% increase in customer complaints mean that those who remained subject to FINRA jurisdiction have less integrity than those who left?

Admittedly, without any peer-reviewed research or other independently derived evidence and armed only with decades of experience as a lawyer, regulator and part-time academic dealing with clients, students and scofflaws, I am of the view that integrity, by and large, is learned and influenced by the environment(s) to which we are exposed during various stages of individual development.

In our early years, integrity is somewhat basic in learning right from wrong as inculcated by parents and pre-school teachers/minders – don’t hit others and please pass the salt! Moving through primary and secondary education, teachers and parents have the opportunity to instil more societal norms of integrity, such as being polite, waiting your turn, no talking back to adults and dealing with peer pressure. At university level, professors teach about demonstrating integrity in research and writing and the evils of plagiarism.

Religious leaders, both ordained and lay, as well as leaders of non-profit, civic-minded and local volunteer organisations, may be influential in shaping the views of youth as to actions which reflect integrity and those which do not. In a religious context, this may take the form of equating actions lacking integrity as sinful.

As we move from formal education into the working world, whether through university degrees or apprenticeships, mentors often influence (both good and bad) how we express integrity with customers, clients, colleagues, service providers, subordinates and supervisors. Those new to the working world are keen observers of who and what gets them advancement within the organisation. However, advancement does not necessarily correlate with integrity.

Society also has developed enforcement mechanisms to address those who lack the requisite level of integrity, usually set forth in statute, regulation and common law. Under society’s civil justice system, acts or omissions constituting lack of integrity that have caused physical or monetary harm to others may give rise to a remedy of monetary damages. Similarly, criminal codes specifically set forth acts and omissions which, by definition, demonstrate a lack of integrity by those guilty of such acts or omissions for which the societal remedy is the possibility of incarceration, forfeit of property or imposition of fines.

In closing, I would note that the public often foists the mantle of “role model” on individuals who gain prominence in sport, arts, entertainment, media and business and expects their past, current and future behaviour (both private and public) to reflect a certain

level of integrity. When the public views certain behaviour as lacking integrity, the individual's public persona and commercial reputation may suffer. Not as a defence to inappropriate (or even criminal) behaviour, it may be worth noting that this public expectation is without regard to the environment to which the individual was exposed during various stages of his or her development which may have shaped his or her attributes of integrity (or lack thereof).

Politicians, on the contrary, should be held to higher levels of integrity because they actively seek voters' trust to govern. Should they attain a position in government, exhibiting a lack of integrity undermines the public's trust in the fairness, impartiality and authority of government institutions. Sadly, a litany of events in recent history has raised this as a major concern in both the UK and the USA.

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Notes

1. SEC Regulation Best Interest, 17 CFR 240.15l-1 and FINRA Rule 2111.
2. *SEC v. Capital Gains Research Bureau*, 375 US 180 (1963).
3. www.met.police.uk/police-forces/metropolitan-police/areas/about-us/about-the-met/bcr/baroness-casey-review/
4. www.sec.gov/news/press-release/2022-174
5. www.sec.gov/news/press-release/2022-114
6. <https://finance.yahoo.com/news/exclusive-sec-collects-wall-streets-100358606.html>
7. 17 CFR 201.102(e)(ii).
8. www.ey.com/en_gl/news/2022/09
9. In the USA, certified public accountants are licensed at the state level by state boards of accountancy. No research was undertaken as to whether any such board took any licensing action with respect to any individual.
10. www.finra.org/media-center/statistics