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# NEC People 2024: Contract vs. Ethics? Old rules for new times

by Sarah Schütte  
of Schutte Consulting Limited  
For NEC People  
18 June 2024

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## Introduction to SCL: What we do




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- SCL's client base = mainly contractors, subcontractors & consultants
- Sectors = across the built environment esp. infrastructure
- Public and private projects in UK and internationally
- Sustainable/ net zero experience
- We are "whole-life advisors", supporting you through contract vision, strategy, procurement, delivery, handover and legacy
- Sarah volunteers:
  - APM (Contract & Procurement Committee) and PMI-UK
  - School governor 2015-2023
  - University / careers mentoring

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## The PM, the Law and Ethics

- How does a PM encounter ethics?
- Is this the same as law? What about contract?
- What should a PM do?


**Ethics** is the discipline concerned with what is morally good and bad, and morally right and wrong. The term is also applied to any system or theory of moral values or principles.

Definition provided by the Britannica dictionary, Jan. 2024

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Warm up!

## Perceptions

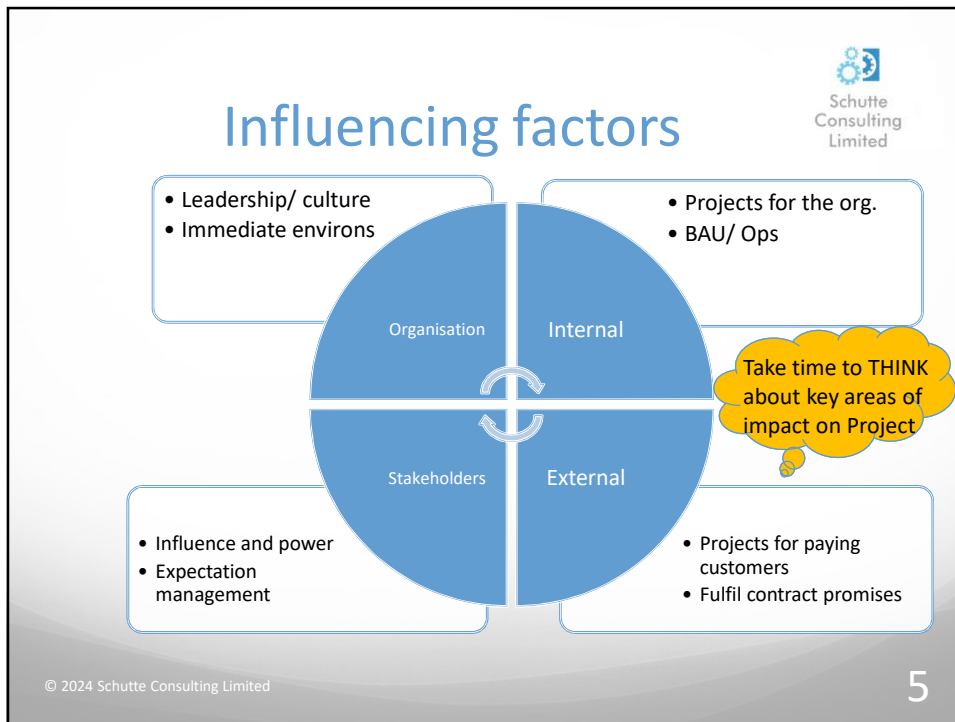
Source: SCL Research

- Costly bells and whistles*
- complicated*
- People who make my job difficult*
- I do internal projects, so I don't need to worry*
- Not my problem*
- I don't understand, and I don't want to*
- I'm sure they are well-meaning but...*
- Collaboration solves problems*

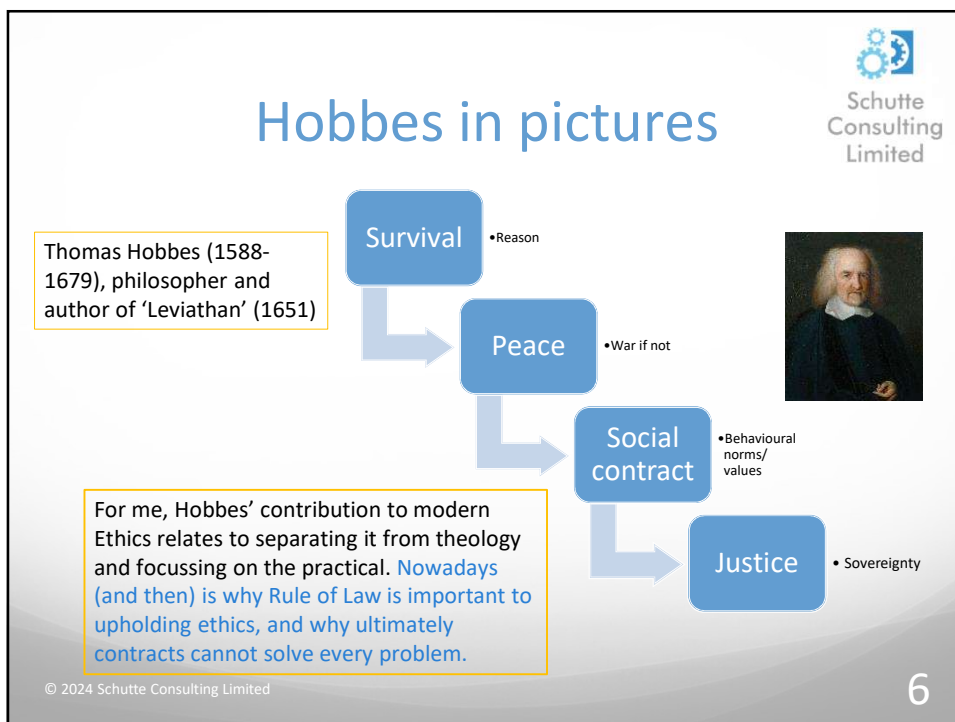
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## Ethics around the world Modern times



- **Social contract** is **still important**: ‘doing the right thing’
- It is not necessarily driven by Law (but there are overlaps)
  - Law deriving from ‘norms’ = **common law**
  - A system (framework) of civic and criminal duties / penalties = **values**
  - **Balancing** the self / selfish interest vs. community / greater good
- **Justice**: Separation of Powers and Rule of Law
- Can be tricky in business (influencing factors)
  - Contracts > Ethics?
- Can be tricky for an individual (perceptions)
  - Whistle-blowing laws boosting social contract > business contracts
- **Independent** view: Transparency International “Corruption Perceptions” Index 2023 [www.transparency.org](http://www.transparency.org)


*Courageous truth-tellers*

International Bar Association


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## Contracts vs. Ethics? UK case studies




- 3 key public / judicial enquiries of major interest
  - COVID PPE
  - Post Office and Fujitsu
  - Grenfell
- Evidence given:
  - **Contracts at heart, outsourced, public service/ sector**
  - Decision-making not robust/ poor process
  - Lack of accountability, transparency and governance
  - Individuals afraid, corrupt or turning blind eye
  - Opportunities to a narrow class / inequality
  - Unethical conduct tolerated/ the norm



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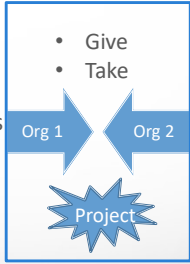
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## What about NEC contract?



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- NEC sets out **rights and obligations** = comply with law
- Incl. ethical matters where Parliament has made a law on behalf of society = like a **baseline for behavioural norms**
  - Anti-corruption, Modern slavery
  - Competition / procurement rules
  - Patient care / vulnerable people
  - Health and safety on construction sites
  - Insider trading / blackout periods for financial deals
- Does NEC go further? Yes, strength in “steering”:
  - Time-bound processes e.g. early warnings
  - Behaviour: not ‘trust’, but cl 10 collaboration
  - By agreement e.g. Z clauses
  - **Contract rules are esp. difficult for 3<sup>rd</sup> Party PM who must act independently notwithstanding payment by Client**



• Give  
• Take


Org 1      Org 2

Project

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## What can NEC PMs do? Before the project



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- Ethics can feel like a dilemma, and isolating
- If applicable, check out TI 2023 index
- Visibility: how much control do you have?
  - Research the organisations (you may be ‘parachuted in’)
  - Consider individuals to consult / communicate with
- Ask for copy of NEC Contract (i.e. what Parties have agreed)
  - PM has contract authority to bind but Client commonly fetters
  - Think about how you will steer the Project to Completion
- Set up pre-start meeting/ get-to-know/ set the tone
- Not about suspicion, rather professional curiosity as to where ethical pinch points could arise



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## What can *NEC* PMs do? On the project




- Friendly, approachable and professional: 'hover' as the ears and eyes to feel what's going on
  - What does your gut say? 'Would I be comfortable to explain to a Court/ Adjudicator'?
- Identify a confidante: within your org./ industry WB helpline/ at home
- Make decisions only in line with contract processes
  - Refer to them to keep you compliant
  - Keep a separate notebook for worries
  - Reasoning on decisions that bind esp. money: AfP and CE
  - Explain and follow pathway e.g. Completion testing
  - Be thoughtful/ respectful to 'referee' when Parties disagree
  - Take competency support e.g. *Supervisor*
  - Money always follows the principle: get that right first
- Do not break the law or take personal / safety risk e.g. original papers, locked rooms etc
- Concentrate on the now
  - Short term future might be difficult e.g. an H&S investigation BUT could be shown to be the right thing e.g. colleagues / public protected from harm

*A problem shared is a problem halved*


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## What can *NEC* PMs do? After the project




- Take time to recover: your energy may be depleted, and your confidence may be shaken
- Reflect: you did your bit (ethics / social contract)
- Know that you acted properly for the Project (law)
- Know that you showed courage in steering (leadership)
- Parties' disputes are theirs, not yours
- Don't be hard on yourself: ethics and law is not just the responsibility of the *PM*!



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## Closing Remarks before Q&A

- Ethics is about behaviour: model it for yourself and your team
- Reconcile 'morality', law and contract with not vs. ethics
- Speak up appropriately & document what you see and hear
- Alert to complicated dynamics created by business contracts
- Stand centrally to the Project as independent certifier

- "Do the right thing" and feel it
- Thank you for listening!



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### Contact:

- ✉ office@schutteconsulting.co.uk
- 🌐 www.schutteconsulting.co.uk
- 🌐 Sarah Schutte and Schutte Consulting Limited
- 🐦 @sarahschutte1 and @schutteconsulting
- 📷 schutteconsulting
- 📘 schutteconsultingSCLGlobal

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