



## **Consultation on guidance on aspects of the ICAEW Code of Ethics**

Public interest responsibility of accountants, identifying  
and managing conflicts and determining the basis of charging fees

23 March 2016

## INTRODUCTION

The ICAS Charter requires its boards to act primarily in the public interest, and our responses to consultations are therefore intended to place the public interest first. Our Charter also requires us to represent our members' views and to protect their interests, but in the rare cases where these are at odds with the public interest, it is the public interest which must be paramount.

ICAS welcomes the opportunity to comment on the ICAEW's 'Consultation on guidance on aspects of the ICAEW Code of Ethics'. The ICAS Ethics Board has considered the consultation document and I am pleased to forward its comments.

Any enquiries should be addressed to James Barbour, Director, Technical Policy.

### Key Points

We welcome the ICAEW's draft guidance. We acknowledge that producing guidance on the public interest responsibilities of professional accountants is a very complex issue.

We note the ICAEW's interpretation of the requirements in the Code that the individual member's public interest responsibility as regards ethical behaviour is to comply with the spirit as well as the letter of the Code. We fully support the premise that professional accountants should comply with the spirit as well as the letter of the Code. In relation to the professional accountant's public interest responsibility we accept that this is a possible interpretation. However, we do question whether this approach is sufficient in the modern day environment, and indeed, whether there is anything further that the professional accountant needs to consider? In this regard we believe that there is a need for professional accountants to consider the potential consequences of their decisions/actions before accepting a particular appointment/deciding on a particular course of action and that there would be benefit in designing a framework to help them to undertake an assessment of their responsibilities.

We would also highlight that we have undertaken a review of the fundamental ethics principles. The result of that review is that we believe there is a need for a new fundamental principle, namely 'moral courage', as well as proposed revisions to three of the existing principles. These proposals can be found in our discussion paper which is available at: <https://www.icas.com/ethics/discussion-paper-ethics-principles>.

## Responses to the Specific Questions

### Public interest responsibility of accountants

***1. Do you agree with the interpretation given of the requirements in the Code that the individual member's public interest responsibility as regards ethical behaviour is to comply with the spirit as well as the letter of the Code? If not, what do you consider the public interest responsibility of an individual member to be and how should this be defined?***

We note the ICAEW's interpretation of the requirements in the Code that the individual member's public interest responsibility as regards ethical behaviour is to comply with the spirit as well as the letter of the Code. We fully support the premise that professional accountants should comply with the spirit as well as the letter of the Code. In relation to the professional accountant's public interest responsibility we accept that this is a possible interpretation. However, we do question whether this approach is sufficient in the modern day environment, and indeed, whether there is anything further that the professional accountant needs to consider? In this regard we believe that there is a need for professional accountants to consider the potential consequences of their decisions/actions before accepting a particular appointment/deciding on a particular course of action and that there would be benefit in designing a framework to help them to undertake an assessment of their responsibilities.

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With the inclusion of our revisions to the existing fundamental ethics principles, we believe the ICAEW's premise would be stronger; but, we still believe that, ultimately, satisfaction of an individual professional accountant's public interest responsibility cannot necessarily be met by simply complying with the fundamental ethics principles.

**2. What, if any, additional safeguards or other actions should members practically take, over and above those suggested in the draft guidance:**

- a) ***When in doubt as to whether an action would discredit the profession?***
- b) ***To avoid association with activities that are likely to bring the profession into disrepute?***
- c) ***When the public would be likely to be interested in the outcome of the service or activity?***

- a) We believe the suggested safeguards are sufficient in this context as the guidance appears to specifically relate to professional accountants in practice as opposed to all professional accountants. Consideration should, however, be given to what guidance and safeguards should be available to members in business. We would agree however that seeking to consult with other appropriate parties as highlighted in the guidance is absolutely key to seeking to mitigate the risk.
- b) As we note in our response to 1) above, we do believe that there is a need for professional accountants to consider the potential consequences of their decisions/actions before accepting a particular appointment/deciding on a particular course of action. We would therefore prefer a framework approach to seek to help professional accountants exercise their judgement.
- c) Additionally, we believe that more content is required in relation to "*Members will frequently prepare reports which may be attached to documents in which, for instance the client makes optimistic, but difficult to verify, statements about the prospects of the company.*" Professional accountants should seek to have some powers over the use of their particular reports and should use caveats as necessary to ensure that their responsibilities in respect of the information are clear to users of such information.

**3. A number of illustrative examples of considerations that might apply are given in the draft guidance. Are these helpful? Are there additional examples that could be usefully included to illustrate the issues discussed, or other aspects of the draft guidance note in section 3.1 where additional discussion would be helpful?**

We believe that the examples are helpful. We do not believe that there is a need for additional examples but believe that a decision making framework would be of benefit to professional accountants.

**4. Notwithstanding its intention, do you think that the draft guidance note in section 3.1 is inconsistent with the Code's requirements for members? If so, in what way?**

We do not believe that the draft guidance note is inconsistent with the Code's requirements for professional accountants. However, we do we question whether this approach is sufficient in the modern day environment, and indeed, whether there is anything further that the professional accountant needs to consider. We do believe that there is a need for professional accountants to consider the potential consequences of their decisions/actions before accepting a particular appointment/deciding on a particular course of action and there would be benefit in designing a framework to allow an assessment of their responsibilities.

**5. No change in the wording of the current Code itself is envisaged as necessary to clarify the issues discussed in the draft guidance. Do you believe there should be amendments to clarify the current position, and if so, what changes would you propose?**

We believe that changes are required to the Code to better reflect the fundamental ethics principles which we believe are now necessary. We have sought to highlight in our proposed revisions what we believe to be the key points that require to be amplified. In addition to the need for moral courage to be included as a fundamental principle, we believe there is a need to highlight the importance of personal responsibility and ethical leadership. However, if the ICAEW continues with its proposed approach then, following that logic, we accept that no change to the wording of the current Code is required.

**6. Looking forward to future evolution of the Code, do you think that there are issues in respect of the matters addressed by the draft guidance note in section 3.1 that the accountancy profession should consider when evaluating potential future changes? If so, what?**

We would reiterate that we believe that there is a need for professional accountants to not only comply with the fundamental principles but also to consider the potential impact of their actions.

**7. Do you have any comments on the draft guidance in section 3.2?**

We are generally supportive of the proposed guidance.

We believe there is merit in reminding members that: *“However, on occasion, the threats to objectivity due to conflicts of interest may be of such significance that adequate safeguards cannot be established. In such cases the member will not be able to act for one or more of the parties.”*

It is also good to remind members in business that similar principles apply when they are faced with a conflict situation.

We believe the content in paragraphs 7 and 8 in relation to “Who is the client?” is very pertinent.

We agree with the content of the last sentence of paragraph 11 but consideration should be given to whether reference should be included in relation to in whose eyes the test of *“whether the member can give and be reasonably seen to give objective advice or service”* is to be applied i.e. a reasonable and informed third party test.

Paragraph 27 c) Acting for competing parties – *“..and consent is likely to be needed.”* We would prefer that this wording is strengthened i.e. *“... and consent would normally be needed.”*

Paragraph 27 e) Is there something further that could be added here? It does not appear to provide any guidance in relation to pre-packs.

**8. Do you have any comments on the draft guidance in section 3.3?**

Generally, we are happy with the draft guidance in this section.

We have slight concerns with regards to the content of paragraph 16:

*“In other areas, contingent fee arrangements may reflect general market practice and can be advantageous to clients: for example where a high risk transaction might not be contemplated by a client without a sharing of the risk.”*

We believe there is a need to include additional text to explain that “high risk” transactions would ceteris paribus lead to greater threats to the professional accountant’s objectivity and this needs to be considered when considering whether appropriate safeguards could be put in place, prior to undertaking the assignment.