

15 August 2023



Response to the Institute of Business Ethics consultation: Board guidance for developing an ethical business culture



1. Introduction

ICAS is a professional body for more than 23,600 world class businesspeople who work in the UK and in more than 80 countries around the world. Our members have all achieved the internationally recognised and respected CA qualification (Chartered Accountant). We are an educator, examiner, regulator, and thought leader.

Over half of our working membership work in business; the others work in accountancy practices ranging from the Big Four in the City to the small practitioner in rural areas of the country.

We currently have over 4,400 students striving to become the next generation of CAs under the tutelage of our expert staff and members. We regulate our members and their firms. We represent our members on a wide range of issues in accountancy, finance and business and seek to influence policy in the UK and globally, always acting in the public interest.

ICAS was created by Royal Charter in 1854. 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.

The ICAS Ethics Board has considered the Institute of Business Ethics' (IBE's) consultation on 'Board guidance for developing an ethical business culture' and I am pleased to forward its comments.

Any enquiries should be addressed to Ann Buttery, ICAS Head of Ethics.

2. Summary

We very much welcome the IBE's consultation on its draft 'Board guidance for developing an ethical business culture'.

Overall, we are very supportive of the guidance. We agree with the IBE's aim of providing in this guidance pragmatic broad principles for Board members to consider and believe the conciseness of the document is useful.

As a general remark, we wonder if the scope of this guidance is confined to companies? Could the word 'company' be replaced by 'organisation' throughout the guidance and thereby cover a broader range of entities, such as charities?

We note a number of specific comments on individual Guidelines below for your consideration.

3. Specific comments

Guideline 1

Guideline 1 states in the last sentence: "The Board should be alert to any mismatch between words and deeds, particularly when things go wrong."

We agree that it is essential to establish an appropriate 'tone at the top' of organisations and it is imperative that those in charge of organisations, regardless of size, not only set the appropriate tone, but also lead by example and 'walk the talk'. All members of the Board, and

management (the tone in the middle), must take every opportunity to behave in a manner which reflects that tone and the company's values – they must take responsibility for setting the tone in the first place, and for living and breathing the values in all their actions.

However, we believe the use of the term 'particularly when things go wrong' in this last sentence of Guideline 1 places the wrong emphasis – it could be too late by then - damage to the organisation could already have been done. We therefore suggest 'particularly when things go wrong' should be deleted from this sentence.

Guideline 2

Guideline 2 states in the first sentence: "When recruiting board members and senior managers, the Board and management should seek evidence that successful candidates understand the importance of being role models for the desired values and behaviours and should act decisively when senior leaders fail to uphold the standards of behaviour expected of them."

We wonder if this is in addition to undertaking appropriate due diligence in relation to the individual? We suggest the following wording (in red) could be added to the sentence for completeness:

"When recruiting board members and senior managers, **in addition to undertaking appropriate due diligence on the individual**, the Board and management should seek evidence that successful candidates understand the importance of being role models for the desired values and behaviours and should act decisively when senior leaders fail to uphold the standards of behaviour expected of them."

In addition, Guideline 2 states in the second sentence: "Management may choose to adopt ethical behaviour as a specific criterion when evaluating performance and considering promotions."

We question whether the use of the word "may" in the last sentence of Guideline 2 is weak. Boards must "walk the talk" but there is a huge tension between commercial pressures and ethical behaviour. Too many in a business will decide to prioritise the commercial on the basis ethics are perceived as less important. Staff are promoted for commercial success but examples of promotion for ethical behaviour are very rare.

The alignment of the objectives and remuneration of individuals with an organisation's values, long-term purpose and strategy, is a key component to improving behaviour. If individuals are incentivised only to reach a particular short-term financial target, there is a danger that they will work towards that, regardless of the long-term implications of their actions. Individuals therefore need to be motivated to help safeguard their organisation's sustained growth over the long-term, and not be remunerated by schemes that only meet short-term goals.

In addition, we note there is no mention of bullying / harassment / EDI, yet many staff would see Board's / management's behaviours in these areas as the most obvious example of poor ethical behaviour. It is difficult to believe an organisation has a real ethical purpose when staff feel they are under extreme pressure to perform.

Guideline 3

Guideline 3 states in the last sentence: "The Board should ensure that the purpose and values are reflected in the strategy of the company and use multiple touch points to check that they are understood and embraced by employees, and consistent with the experience of stakeholders."

We believe that a culture of 'doing the right thing' needs to be prevalent at all levels within the organisation. It is important for the 'tone at the top' to be cascaded down through the rest of

the organisation, and embraced by all those who work in it. We would therefore suggest changing the wording in Guideline 3 as follows (in red):

“The Board should ensure that the purpose and values are reflected in the strategy of the company and use multiple touch points to check that they are understood and embraced by **employees everyone in the organisation, from the Board down through the rest of the organisation**, and consistent with the experience of stakeholders”.

Guideline 4

Guideline 4 states: “When reviewing the business model or making strategic or operational decisions, Board members and management should seek to identify, mitigate and monitor ethical risks that have the potential to cause harm or offence to others, undermine trust, damage the reputation or otherwise impair the ability of the company to achieve its objectives.”

Given the increasing risk of the rapid spread of misinformation, we wonder if this is encapsulated within the general wording of this Guideline?

We also suggest that wording could be added to the end of the Guideline to highlight that “harm” would include harm to the environment and nature (biodiversity).

Guideline 5

Guideline 5 states: “The Board should monitor both leading and lagging indicators of ethical risks. Lagging indicators might track actual or potential ethical breaches. Leading indicators might measure stakeholder satisfaction, including complaints and grievances; weak signals or proxies, such as staff turnover or absenteeism, that may indicate a heightened risk of misconduct; or the implementation of mitigation measures. Where possible, both internal and external benchmarking should be used to recognise best practice and identify areas of remediation.”

In addition to the above, we also believe that speak up reporting should be regularly reviewed. It is not necessarily a good sign if there are no speak up reports within an organisation. Boards need to be asking questions if this is the case. A lack of speak up reports could suggest there is an issue with the speak up mechanism, or indeed the organisational culture itself, rather than being an indication that things are not going wrong.

We therefore suggest the following additional wording (in red) to this Guideline:

“The Board should monitor both leading and lagging indicators of ethical risks. Lagging indicators might track actual or potential ethical breaches. Leading indicators might measure stakeholder satisfaction, including complaints and grievances; **‘speak-up’ reporting, recognising that a lack of speak-up reports is not necessarily a good sign and may indicate an issue with the speak-up mechanism or the organisation’s culture**; weak signals or proxies, such as staff turnover or absenteeism, that may indicate a heightened risk of misconduct; or the implementation of mitigation measures. Where possible, both internal and external benchmarking should be used to recognise best practice and identify areas of remediation.”

Guideline 6

Guideline 6 states in the first sentence: “Companies may choose to adopt a formal code of conduct/ethics that defines how the purpose and values of the company are put into effect and the standards of behaviour expected of employees and leaders.”

We believe that the use of the word “may” in this sentence is weak.

Organisational values, once determined, should serve as a means of guiding decision making within an organisation. We believe that a code of ethics and values can be helpful as part of a framework for embedding the importance of trust and integrity across an organisation. A

code can assist in communicating expectations on standards of behaviour - individuals can refer to it for guidance and can also be held accountable against it. Codes of ethics need to be achievable, enforceable, and enforced.

The transparency of a published code can also be an effective means of informing an organisation's internal and external stakeholders of its ethics and values, as well as being a useful catalyst for change.

Guideline 7

Guideline 7 states: "Openness and effective communication are essential to identify, monitor and mitigate ethical risks. The Board should promote an inclusive culture that empowers employees and other stakeholders, including customers, suppliers, local communities and civil society, to raise questions or concerns without fear of retaliation. The Board should ensure that appropriate easily-accessible 'speak-up' channels exist for stakeholders to raise and, if necessary, escalate concerns or grievances, and that such reports are investigated, remedial action taken as required, and feedback provided to the complainant."

We support that the promotion of a 'speak up culture' within organisations is important, but, in addition, so too is the promotion of a 'listening culture'. 'Speaking up' puts the responsibility on an organisation's employees if they discover ethical issues, however, in return, organisations also have a responsibility to their employees to listen and then act on what they have heard by investigating the concerns raised. It is just as important for organisations to 'listen up' when employees raise concerns as it is for individuals to 'speak up' in the first place. Speaking up will be ineffective if nobody listens, and crucially, 'listening' also needs to lead to action with leaders investigating the issues raised. We therefore believe the importance of 'listening' should be highlighted in this Guideline.

In addition, we caution against using the word 'complainant' in the last sentence of this Guideline as we would suggest this word has negative connotations, particularly in relation to employees speaking up. Speak up mechanisms are vitally important for the long-term success of organisations. Speaking up should be viewed as beneficial, rather than being regarded as troublesome. Robust challenge must be seen as healthy and positive in relation to organisational culture. A speak up culture allows issues to be dealt with at the earliest opportunity before they escalate. Employees need to be able to speak their mind for the good of the organisation. 'Challenge' should not be resented.

We would therefore suggest the following amendments (in red) to Guideline 7:

"Openness and effective communication are essential to identify, monitor and mitigate ethical risks. The Board should promote an inclusive culture that empowers employees to raise questions or concerns without fear of retaliation, ~~and for other stakeholders, including customers, suppliers, local communities and civil society, to raise questions or concerns without fear of retaliation.~~ The Board should ensure that appropriate easily-accessible 'speak-up' channels exist for employees, internally and/or externally such as in partnership with whistleblowing charities, ~~stakeholders~~ to raise and, if necessary, escalate concerns or grievances, ~~and that~~ Employees should be 'listened to' by leaders with such reports being ~~are~~ investigated, remedial action taken as required, and feedback provided to the employee on how the matter has been dealt with. ~~complainant.~~ Similar processes should also exist for other stakeholders, including customers, suppliers, local communities and civil society."

Guideline 8

Guideline 8 states: "The Board should ensure that management have put in place appropriate induction programmes for new employees and training for existing employees to ensure familiarity with the purpose, values and code of conduct. Employees performing roles with a high exposure to particular ethical risks might require bespoke training on the identification and management of risk and the appropriate channel to report and, if necessary, escalate concerns about potential misconduct."

In addition to ensuring familiarity with the organisation's purpose, values and code of conduct, we would suggest that all employees also need to understand what speaking up is and why it is important to the organisation. Employees should receive induction sessions and ongoing training to understand what the organisation considers to be misconduct. They should be aware of how they can raise concerns, what happens to reports once they have been made, and where they can find both internal and external sources of help. Organisations should also help their managers by training them on how to respond appropriately to reports.

We also note that whilst Boards are generally well-aware of reputational and ethical risks, the importance of this often doesn't permeate through an organisation, which is why training and reinforcement of messages are so important.

We also suggest there should also be a specific reference to the Board and senior management in the last sentence of this Guideline.

We therefore propose the following amendments (in red) to Guideline 8:

"The Board should ensure that management have put in place appropriate induction programmes for new employees and training for existing employees to ensure familiarity with the purpose, values, ~~and~~ code of conduct, **and ethical and reputational risks. The importance of speaking up should be explained, what the organisation considers to be misconduct and how they can raise concerns. Organisations should also help their managers by training them on how to respond appropriately to speak-up reports.** The Board, senior management **and** employees performing roles with a high exposure to particular ethical risks might require bespoke training on the identification and management of risk and the appropriate channel to report and, if necessary, escalate concerns about potential misconduct."

Guideline 9

Guideline 9 states: "The Board should satisfy itself that the company's remuneration policies and practices, including performance related pay, are consistent with its purpose and values and do not inadvertently create incentives for unethical behaviour. Similar considerations may apply to the incentivisation of contractors, vendors and other business partners."

We suggest there should also be a specific reference to senior management in the first sentence of this Guideline as follows (in red):

"The Board **and senior management** should satisfy itself that the company's remuneration policies and practices, including performance related pay, are consistent with its purpose and values and do not inadvertently create incentives for unethical behaviour."

Guideline 10

Guideline 10 states: "All human organisations are fallible. When material ethical lapses occur, the Board should ensure they are investigated, the root causes are identified, and measures are put in place to prevent a recurrence. Failures should be treated as learning opportunities, to strengthen systems, processes and training."

We wonder what definition of "material" in the second sentence of this Guideline would apply? Most major ethical breaches start small. Ethical breaches need to be addressed at the earliest possible opportunity and hence the importance of speak-up mechanisms. If a problem is left to fester, the potential harm that could be caused increases.

However, speaking up is not always easy and is stressful. People have an in-built reluctance to it. It takes a courageous person to stand up and raise concerns. People may fear retaliation, negative consequences on their career or their remuneration, and they worry about what people might think of them. They also fear inaction - why should they take personal risks for the good of the organisation, if nothing is going to be done? If people feel that speaking up would be futile, they will not put themselves at risk.

Organisations need their people to speak up, but people need to know that the raising of concerns is appreciated and will be given appropriate consideration. Concerns raised should be investigated promptly, and feedback provided to the employee on how the matter has been dealt with. Sometimes an investigation will conclude that there are no issues, and sometimes people who speak up will be mistaken, but they need to know that their organisation does care and has respect for what they have to say. They need to know that matters will be acted on, so that issues of concern do come to light.

We therefore believe that wording should be added to this paragraph to indicate that all concerns raised need to be investigated, and even if the investigation concludes that there are no issues, employees need to know matters will be acted on, so that issues of concern do come to light.

We would therefore suggest the following amendments (in red) to Guideline 10:

“All human organisations are fallible. **Organisations need their people to speak up if they become aware of an issue, but employees need to know that the raising of concerns is appreciated and will be given appropriate consideration. All concerns raised by employees should be investigated by the appropriate level of personnel, and even if the investigation concludes that there are no issues, employees need to know matters raised will be acted on, so that issues of concern do come to light at the earliest possible opportunity.** When material ethical lapses occur, the Board should ensure they are investigated, the root causes are identified, and measures are put in place to prevent a recurrence. Failures should be treated as learning opportunities, to strengthen systems, processes and training.”

Guideline 11

Guideline 11 states in its first sentence: “All misconduct should result in appropriate consequence management.”

We believe that it should also be highlighted in this sentence that this would include taking action against senior people who do not uphold the organisation’s values.

We would therefore suggest the following change (in red) to the first sentence of Guideline 11:

“All misconduct should result in appropriate consequence management, **including taking action against senior people who do not uphold the organisation’s values.**”



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