



# Shades of Grey

Ethical dilemmas

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This guidance document is published by the ICAS Ethics Board to provide assistance to members in acting ethically and with integrity, and to help in fulfilling their responsibilities towards the profession and in the public interest.

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# 1. Introduction

In 2008, we published the late David Molyneaux's research report entitled *What do you do now? Ethical Issues Encountered by Chartered Accountants* which featured a series of 28 ethical dilemmas faced by chartered accountants. The success of that document led to a demand for additional case studies particularly from chartered accountants working in industry. In 2009, we published *Shades of Grey*, a series of 19 dilemmas largely based on real-life ethical issues encountered by chartered accountants.

This latest publication provides an update to the case studies published in *Shades of Grey* and offers a number of new case study scenarios.

The commentaries which follow each scenario should not be viewed as solutions but rather as a means of drawing out the main issues and identifying ways in which these might be addressed.

The same style used in David's original publication has been adopted. Each scenario is focused on you and at the end of each scenario the requirement is for you the reader, to make a decision and do something – although a valid option may be for you to decide consciously to do nothing. The purpose of this approach is to deliberately push readers to engage. Your opinions matter; the problem has been made yours, not someone else's. This approach is adopted to try and reinforce the importance of such issues and the need for the respective individual to carefully analyse the dilemma that they are faced with. <sup>1</sup>

## Regulations <sup>1</sup>

Emphasis throughout this report is given to principles and significantly less to citing regulations. This is not to diminish the importance of specific requirements, such as the Terrorism Act 2000, the Terrorism Act 2006, the Proceeds of Crime Act 2002, the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 and subsequent, or the Serious Organised Crime and Police Act 2005 that might impact our readers working in the UK<sup>2</sup>. Clearly, in considering the relationship of law and ethics a significant feature is the fact that the principle of confidentiality is not always sacrosanct but subject to modification in some statutorily-determined circumstances. Hence the legislation has specific obligations such as the need to send 'suspicious activity reports' to a national criminal intelligence service (currently for the UK the National Crime Agency), while taking care to avoid tipping off. Members need to be aware of any statutory or other respective reporting responsibilities that they are subject to.

## Fundamental principles <sup>1</sup>

In analysing each of the scenarios, core consideration has been given to the five fundamental principles set out in the ICAS Code of Ethics, applicable from 1 January 2022, which is substantively based on the International Ethics Standards Board for Accountants (IESBA) Code of Ethics that serves as the model on which national ethical guidance is based. Reference has not been made to the ethical pronouncements of other specific bodies such as, for example, the Ethical Standard issued by the Financial Reporting Council. By adopting a highest level, principles-only, approach the emphasis is on the global and enduring nature of the issues that arise for individuals' experiences.

The five fundamental principles in the ICAS Code of Ethics are:

- (a) Integrity - to be straightforward and honest in all professional and business relationships.
- (b) Objectivity – to exercise professional or business judgment without being compromised by:
  - (i) Bias;
  - (ii) Conflict of interest; or
  - (iii) Undue influence of, or undue reliance on, individuals, organisations, technology or other factors

- (c) Professional competence and due care – to:
- (i) Attain and maintain professional knowledge and skill at the level required to ensure that a client or employing organisation receives competent professional service, based on current technical and professional standards and relevant legislation; and
  - (ii) Act diligently and in accordance with applicable technical and professional standards.
- (d) Confidentiality - to respect the confidentiality of information acquired as a result of professional and business relationships.
- (e) Professional Behaviour – to:
- (i) Comply with relevant laws and regulations;
  - (ii) Behave in a manner consistent with the profession's responsibility to act in the public interest in all professional activities and business relationships; and
  - (iii) Avoid any conduct that the professional accountant knows or should know might discredit the profession.

### Other sources for ethics case studies

#### IESBA

The IESBA has issued two publications of technology-related case studies:

- [Ethical leadership in a digital era: Applying the IESBA Code to selected technology-related scenarios \(September 2022\)](#)
- [Practical guidance for auditors in technology-related scenarios \(July 2023\)](#)

#### CCAB

ICAS is one of the five members of the Consultative Committee of Accountancy Bodies (CCAB) along with the Institute of Chartered Accountants in England and Wales (ICAEW), the Association of Chartered Certified Accountants (ACCA), the Chartered Institute of Public Finance and Accountancy (CIPFA) and Chartered Accountants Ireland. The CCAB provides a forum for the five member bodies to work together collectively in the public interest on matters affecting the profession and the wider economy.

The CCAB has published a series of [ethical dilemmas case studies](#) (February 2022), updated from previous editions, which illustrate how the Codes of Ethics of the CCAB bodies can be applied by:

- [Professional Accountants in Business](#)
- [Professional Accountants working in the Not-for-Profit Sector](#)
- [Professional Accountants in the Public Sector](#)
- [Professional Accountants in Public Practice](#)
- [Professional Accountants working as Non-Executive Directors](#)

### ICAS assistance

Although not referred to in any of the scenarios, one option that is always available when a member is faced with an ethical dilemma is to contact ICAS to discuss the matter on a confidential basis. Members who are in doubt as to their ethical position may seek guidance from the following sources:

- ICAS Technical Helpdesk - <https://www.icas.com/regulation-technical-resources/support>
- Alternatively, members with a query on the Code of Ethics which is not audit/assurance related can also contact ICAS at [ethicalenquiries@icas.com](mailto:ethicalenquiries@icas.com) or by telephone on + (44) 0131 347 0271.
- For ICAS' anti-money laundering helpline, telephone +44 (0)131 347 0271 or submit a query via the ICAS Technical Helpdesk. We provide guidance on general issues concerning the regulations for example, the extent of identification procedures required, plus guidance for specific instances.

We also offer the [ICAS Ethics Buddy Service](#) which enables members with an ethical dilemma, where deemed appropriate, to have confidential, informal, discussions with an experienced member in order to explore their issue and assist them in considering how they might approach their dilemma.

We have also partnered with whistleblowing charity Protect to provide members and students with access to an independent, confidential [helpline](#). This service offers free advice regarding whistleblowing and speaking up. ICAS Protect helpline number: 0800 055 7215.

1 As with the original 2009 *Shades of Grey* publication, to follow the style and re-emphasise the key messages of David Molyneaux's research publication, *What do you do now? Ethical Issues Encountered by Chartered Accountants* published by ICAS in 2008, the wording in the above sections has largely been reproduced from this 2008 report.

2 Please see the CCAB's [Anti-Money Laundering, Counter-Terrorist and Counter-Proliferation Financing Guidance for the Accountancy Sector](#) (June 2023) for the full list of the legislation and relevant amending statutory instruments which comprise the law in relation to the UK money laundering, terrorist and proliferation financing (MLTPF) regime valid as at the date of the CCAB guidance.

## 2. Scenarios at a glance

**Brief summaries of each scenario's context, intended audience and principal ethical issues**

<b>Ethical Dilemma No.</b>	<b>Title</b>	<b>Intended audience</b>	<b>Principal ethical issues</b>
1	The creeping FD	Members in business	Potential earnings management.
2	To be, or not to be a NED?	Members in business/members in practice	Matters to be considered before accepting a non-executive director appointment?
3	A bridge too far	Members in business	After effects of rushed acquisition.
4	Keep it in the family	Members in business	Possible undisclosed conflict of interests.
5	A deal too far?	Members in business	Possible acquisition not subject to sufficient due diligence.
6	Research and development	Members in business	Potential inappropriate treatment of project costs.
7	Build them anyway!	Members in business	Potential weakness in business payments system.
8	Seeing the wood for the trees	Members in business	Potential transfer of raw material supplies to an overseas supplier in a politically unstable environment.
9	Heroic efficiency target	Members in business	Implications of dramatic cost savings on compliance issues.
10	We're all in this together	Members in business	Unknown receipt of personal benefits.
11	Sale or no sale?	Members in business	Possible fraudulent accounting.
12	Silence is golden	Members in business	Potential non-provision of all relevant information to the auditor.
13	Judge and jury	Members in practice	Is the client telling the full story - going concern considerations.
14	Deal or no deal?	Members in practice	Potential conflict between contingent fee and professional judgement.
15	Everyone's a winner	Members in practice	Can the tender process be distorted for financial gain?
16	Should you go there?	Members in practice	Contract won related to a new client's IT but then discover the IT may be capable of being used by the client for questionable purposes.
17	Who do you believe?	Members in business	Potential misstatement of performance of a contract.
18	Who do you think they are?	Members in practice	Was the due diligence prior to acceptance of a client sufficient?
19	Too good to be true	Members in business	Company procedures not followed in acceptance of a contract.

## 3. The case study scenarios

### Scenario one: The creeping FD

You are the Financial Controller in a manufacturing business, Sundance & Cassidy Ltd. The business is a large private company with 270 employees and has a turnover of £50m. You prepare the quarterly management accounts and provide these to the Financial Director (FD) for comment. A few months ago, you had noted that the balance sheet position was slightly below that required by the covenant over the company's long-term bank loan and you made the FD aware of this. The FD thanked you for your vigilance and for raising the issue but told you not to worry.

A few days later, a set of quarterly management accounts were sent to the bank. The FD provided you with a set of accounts for the file. You noted that the stock figure on the balance sheet had been increased by £1,850,000. Without this adjustment the banking covenant would have been breached that particular quarter. Although you trust the FD, and you have a good working relationship with them, you found the stock adjustment surprising as you had made all the usual checks to ensure that the cut-off and valuation procedures were properly adhered to. Such an adjustment had never been made in previous quarters. You thought about questioning the FD on this issue, but you decided not to say anything.

At the end of the next quarter, the same thing happened again, although the adjustment on this occasion had risen to £2,770,000. This time you asked the FD why the stock adjustment was necessary. The FD advised you that, at the quarter-end the company held stock at external premises, which was not included in the stock count. You found this strange as the FD has never mentioned this to you before and it would have been helpful if you had been informed of any stock held externally before you finalised the quarterly stock figures for the management accounts. However, you decided not to pursue this matter any further.

At the end of the next quarter, things are even worse and you highlight to the FD that the company is failing to comply with the terms of the bank covenant. The FD tells you not to worry and a few days later you note that the set of accounts sent to the bank has again been altered to include a higher stock figure: this time an additional £5,500,000 has been added to the figure that you supplied which ensures that the company meets its banking covenant. You ask the FD to properly explain the stock adjustments which have been made in recent months, but you are told:

*"Mind your own business and get on with your own job. Do not raise this issue again, or you won't have a job to go to!"*

**What do you do now?**

## Scenario one: Analysis

### What are the readily-identifiable ethical issues for your decision?

#### *For you personally*

The ICAS Code of Ethics states the following in relation to the fundamental ethics principle of Integrity:

“111.1 A1 Integrity involves fair dealing, truthfulness and having the strength of character to act appropriately, even when facing pressure to do otherwise or when doing so might create potential adverse personal or organisational consequences.

*Fair dealing includes respecting values of equality, diversity and inclusion.*

111.1 A2 Acting appropriately involves:

- (a) Standing one’s ground when confronted by dilemmas and difficult situations; or
- (b) Challenging others as and when circumstances warrant,

in a manner appropriate to the circumstances.

*111.1 A3 It follows that a professional accountant’s advice and work must be uncorrupted by self-interest and not be influenced by the interests of other parties.*

R111.2 A professional accountant shall not knowingly be associated with reports, returns, communications or other information where the accountant believes that the information:

- (a) Contains a materially false or misleading statement;
- (b) Contains statements or information provided recklessly; or
- (c) Omits or obscures required information where such omission or obscurity would be misleading.”

Can you allow this situation to continue without seeking a full explanation from the FD? If you do not believe that you can raise the matter with the FD again, then who else can you discuss it with within the organisation? Does the company have speak up policies and procedures for such matters? Is there another director who you could approach?

#### *For the company*

Do the culture and leadership of the organisation emphasise the importance of ethical behaviour and the expectation that employees will act ethically?

Is there a supportive environment to encourage open discussion of ethical dilemmas without a recriminatory, or blame, culture? Is there a whistleblowing/speak up mechanism? If so, do employees feel safe and able to trust in the authenticity of the speak up mechanism? Does the organisation listen to its employees when they speak up and then act on what has been heard by investigating the issue?

Is the FD putting through these adjustments on their own or is someone else exerting pressure on the FD to do so?

Has the potential reputational damage to the company been considered if unethical behaviour is uncovered?

### Who are the key parties who can influence, or will be affected by, your decision?

You; the FD; the other directors; the shareholders; the employees; customers and suppliers; the bank; and other creditors.

**What fundamental ethical principles for accountants are most applicable and is there an apparent conflict between them?**

<b>Integrity</b>	<p>A professional accountant cannot be associated with misleading information. There is a need to display ethical leadership and moral courage by standing one's ground and getting to the bottom of the matter even when doing so might create adverse personal consequences.</p> <p>Can you retain your integrity by ignoring this issue? Have you already done enough by raising the issue with the FD? (Who has warned you not to raise the issue again.) What will happen if the external auditors start to ask questions about the stock adjustments?</p>
<b>Objectivity</b>	<p>The ability for your judgement not to be influenced by your relationship with the FD, or by concerns over the possible loss of your job, and to speak up and be able to question senior personnel when there is something which does not appear right.</p>
<b>Professional competence and due care</b>	<p>Assumed.</p>
<b>Confidentiality</b>	<p>Assumed.</p>
<b>Professional behaviour</b>	<p>If you do nothing, you could be deemed complicit in the accounting adjustments as well as viewed as condoning any unethical behaviour. There is a need to avoid any conduct that you know might discredit your own reputation and that of the profession.</p>

**Is there any further information (including legal obligations) or discussion that might be relevant?**

The possibility exists that the FD is telling the truth and that Sundance & Cassidy Ltd does have stock located at another company's premises. However, if this is the case then why is the FD not providing evidence to justify the stock adjustments?

**Is there a conflict between the guardian and commercial strands of an accountant's responsibilities?**

If the FD is falsifying the quarterly management accounts, then the FD is bowing to the commercial pressure to ensure that Sundance & Cassidy Ltd is satisfying the funding conditions placed on it by the bank. If the bank covenant terms were breached, the bank could of course take action and the risk would be that Sundance and Cassidy Ltd might be put out of business if the funding package was withdrawn or not renewed. The requirements of the guardian role are for the accountant to ensure that the monthly management accounts are a fair representation of the company's financial performance and position.

**Based on the information available, is there scope for an imaginative solution?**

No.

**Are there any other comments?**

In deciding on a course of action, you should apply the reasonable and informed third party test and consider if a reasonable and informed third party would likely conclude that your actions were appropriate. Conduct that might discredit the profession includes conduct that a reasonable and informed third party would be likely to conclude adversely affects the good reputation of the profession. Documentation is encouraged so that there is a record of the issue, the details of any discussions, and the matters taken into consideration in reaching your judgement and action.

## Scenario two: To be, or not to be, a NED?

You have recently retired from your position as the Financial Director of Lovahotel plc, a listed company. Lovahotel plc operates in the hospitality industry and you worked there for over 12 years. Prior to this, you had spent 10 years as an audit partner in a large accountancy firm.

Subsequent to leaving your position at Lovahotel plc, you receive a phone call from a head-hunter with an executive recruitment agency acting on behalf of a company's nominations committee. You had approached the head-hunter some months before you had finished up at Lovahotel plc, with a view to positioning yourself should any suitable roles become available. After the usual small talk, they cut to the chase:

*"You have been recommended to me as a suitable candidate for a very prominent non-executive role that is available at the moment. The company, which is in the financial services sector is seeking a non-executive director who will also serve as the Chair of its audit committee. Does this role interest you and if so, can we meet to discuss it in more detail?"*

You advise the head-hunter that you will consider the proposal and get back to them. You hang up the phone and then consider the matter in greater detail. Your first instinct was just to say yes, however, you were somewhat surprised that the role in question was at a financial services company and your prudent nature decided that it would be wise to give yourself some time to properly consider the issues before making your mind up.

You are not struggling financially, and you have a reasonable pension, but the extra cash from this role would come in handy. Additionally, you are finding it difficult to fully unwind after years working to tight deadlines and coping with difficult challenges on a daily basis. This is why you had approached the head-hunter in the first place as you knew even before you finished up at Lovahotel plc that you would miss the buzz, the excitement and the challenge.

You are therefore keen to put yourself forward for this role but you have a nagging doubt at the back of your mind – you have no work experience in the financial services sector. You are caught between two stools: On one hand, there is little doubt that your financial acumen will be of benefit to the company concerned; on the other hand, you have concerns that your lack of expertise in this sector may impact on your performance. What should you do in the circumstances?

**What do you do now?**

## Scenario two: Analysis

### What are the readily-identifiable ethical issues for your decision?

#### *For you personally*

As per the ICAS Code of Ethics, the fundamental ethics principle of Professional competence and due care states that:

“A professional accountant shall comply with the principle of professional competence and due care, which requires an accountant to:

- (a) Attain and maintain professional knowledge and skill at the level required to ensure that a client or employing organisation receives competent professional service, based on current technical and professional standards and relevant legislation; and
- (b) Act diligently and in accordance with applicable technical and professional standards.”

You therefore have to assess your position very carefully. The issues which you have to consider are:

- (i) If you decide to be put forward for the role then you must be open and transparent in your discussions with the head-hunter. The client may well be looking for someone not familiar with the financial services industry in order to bring a fresh perspective to the workings of its audit committee. You should also ask the head-hunter for a detailed role specification which should be available.
- (ii) You have to satisfy yourself that you can meet the requirements of the above principle if you are ultimately successful in getting the position, in this respect it would be helpful to find out whether the company provides a comprehensive induction programme for its new non-executive directors as this might help to alleviate your concerns.

Ultimately, you have to exercise professional judgement in this matter. If you do not feel comfortable being put forward for this role then you should inform the head-hunter accordingly. You may of course decide to be put forward for the role and if your concerns are not adequately addressed, then, even if you are offered the role, you should decline the appointment at that stage.

### Who are the key parties who can influence, or will be affected by, your decision?

You; the head-hunter; the company and its directors; the shareholders; and potentially other stakeholders of the company.

### What fundamental ethical principles for accountants are most applicable and is there an apparent conflict between them?

<b>Integrity</b>	You must ensure that your integrity is safeguarded by being open and honest with yourself and only allowing your name to be put forward for positions where you believe that you have (or can readily attain) the technical skill set (and other skill sets, if required), or where you can serve effectively as a member of the board, where the board is balanced by the presence of other technical experts.
<b>Objectivity</b>	The ability to make an informed impartial decision. The potential financial rewards are obviously a threat to your objectivity but ultimately you should not let these factors cloud your judgement in considering the interest of shareholders and other stakeholders. Be wary of the 'kudos' of assuming the role swaying your decision or impacting your professional integrity or behaviour.

<b>Professional competence and due care</b>	Can you quickly acquire adequate knowledge of the commercial, strategic, technical and regulatory requirements of the proposed role?
<b>Confidentiality</b>	Assumed.
<b>Professional behaviour</b>	Your decision should be based on whether, after having considered all available information, you do believe that you would be a suitable candidate for the position.

**Is there any further information (including legal obligations) or discussion that might be relevant?**

It would be helpful to obtain details of the various regulatory requirements which will have an impact on the proposed role at the company concerned. If you advise the head-hunter that you are interested they will ask to meet with you and inform you of the name of the company concerned at that stage. At this meeting you will be able to enquire as to what form of induction programme/ongoing training does the company provide. You also need to establish exactly what the company is looking for. The company should have produced a detailed specification of the role and the skill set of the person that they are looking for. Ask the head-hunter why you were recommended as a suitable candidate. You also need to ensure that you are aware of the responsibilities involved in being a non-executive director of a financial services company including, for example, the UK Senior Managers and Certification Regime (SMCR)<sup>1</sup>, and there may be additional considerations if the company carries out regulated activity in other international jurisdictions.

It would also be appropriate for you to undertake your own due diligence on the company and on your prospective fellow directors if you decide to express your interest in the position, for example, what is its financial position, what is the culture of the organisation? Some information will be publicly available but other information may require referring to business contacts etc. Do you believe that even if you have, or can acquire, the necessary skill sets, that this is a company on whose board you would wish to serve and do you believe that the board would have the correct composition and balance? What is the tone at the top? Can you find out if ethics, values, and culture are regularly discussed at board level? Does the company live and breathe its published values? Is the board focused on its stewardship role to ensure the long-term success and reputation of the organisation?

**Is there a conflict between the guardian and commercial strands of an accountant's responsibilities?**

Care must be taken to ensure that the potential commercial gains from taking up this appointment do not cloud your judgement as to whether you could meet the guardian aspects of this role.

**Based on the information available, is there scope for an imaginative solution?**

No.

**Are there any other comments?**

In making your decision, you should apply the reasonable and informed third party test and consider if a reasonable and informed third party would likely conclude that your decision was appropriate.

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<sup>1</sup>For more information on the UK Senior Managers and Certification Regime see the [FCA website](#)

## Scenario three: A bridge too far

Over a number of years, Seancon Ltd, of which you are now Finance Director, has adopted an aggressive growth strategy via targeted acquisitions together with an organic growth plan. This has significantly enhanced earnings per share through fully integrating the businesses, creating economies of scale and paying close attention to cost control.

Seancon Ltd and its numerous subsidiaries are fully owned by Cainmich plc, a listed company, and as such your half-year and year-end reporting are governed by the listing rules and the timetable laid down by your parent.

The opportunity recently arose for Seancon Ltd to make an acquisition which would transform your business in regard to geographic exposure, revenues and profits and move you into the position of being a top five player. The target company was Caanja Ltd and its various subsidiaries. When the proposed acquisition was presented to your parent company, it received a very warm response and your parent agreed to provide the necessary financial support to make the acquisition happen.

During the negotiation process, issues arose surrounding management structure, value and due diligence. While you had concerns, there was nothing tangible that you could point to (partially through lack of due diligence data and lack of access to management).

While your concerns were noted by the board and minuted, your parent and other board members were keen to proceed with the acquisition. A deal was concluded with adequate warranties and indemnities, however, the new board and management is heavily weighted towards the acquired business – a cost your parent was willing to pay for the prize of concluding what, on the face of it, looked a very attractive acquisition.

Post completion, the problems started to emerge – and the lack of data provided in due diligence reflected the fact that it either didn't exist or was at best incomplete.

The timing of the acquisition meant that the preparation of the year-end group accounts for Seancon Ltd included the last few weeks of your new acquisition. It became clear that you would need to disclose your findings to your auditors as, for some of the acquired companies, there were incomplete accounting records and incorrect exchange rates had been used historically for converting foreign exchange transactions and year-end balances.

In short, the preparation of audited, unqualified year-end accounts was a significant challenge. You and your team achieved this through re-creation of complete financial records, full reconciliations and seven days working for a period of some four months. To summarise: Your auditors' sign off, the audit committee is satisfied and your parent is grateful for your efforts.

Your parent's results are due to be approved in three days' time and all is well, until you discover a branch of an overseas subsidiary, Hackgene, which hasn't been disclosed in due diligence, and for which no accounting records exist. You investigate the limited available information on this branch and tentatively conclude that it is not material. What do you do on the basis that disclosure of this to your auditors may delay your parent company's results announcement to the market?

**What do you do now?**

## Scenario three: Analysis

### What are the readily-identifiable ethical issues for your decision?

#### *For you personally*

The ICAS Code of Ethics states the following in relation to the fundamental ethics principle of Integrity:

“111.1 A1 Integrity involves fair dealing, truthfulness and having the strength of character to act appropriately, even when facing pressure to do otherwise or when doing so might create potential adverse personal or organisational consequences.

*Fair dealing includes respecting values of equality, diversity and inclusion.*

111.1 A2 Acting appropriately involves:

- (a) Standing one’s ground when confronted by dilemmas and difficult situations; or
- (b) Challenging others as and when circumstances warrant,

in a manner appropriate to the circumstances.

*111.1 A3 It follows that a professional accountant’s advice and work must be uncorrupted by self-interest and not be influenced by the interests of other parties.*

R111.2 A professional accountant shall not knowingly be associated with reports, returns, communications or other information where the accountant believes that the information:

- (a) Contains a materially false or misleading statement;
- (b) Contains statements or information provided recklessly; or
- (c) Omits or obscures required information where such omission or obscurity would be misleading.”

The need to consider whether disclosure of your findings must be made known immediately to your fellow directors, the board of the parent company and the auditors.

What is the likely impact on your company’s (Seancon Ltd) accounts which have already been finalised? Do you have any confidence in the integrity of the management of the branch? Is there a possibility that the results are in fact material, or there are other issues at the branch which may be a cause for concern and should be disclosed? There is a need to establish more information on the branch but also to assess the risk of existence of other undisclosed entities.

There is a need to consider the reputational damage to you personally, and the company, if this is not disclosed but then has to be made public at a later date.

Is there someone within the group with whom you can discuss this dilemma?

#### *For the company and group*

Tone from the top is critical. Does the company have values and standards which serve as a means of guiding decision making within the organisation?

Do the culture and leadership of the organisation emphasise the importance of ethical behaviour and the expectation that everyone will act ethically?

Does your company have a code of conduct, or speak up policies and procedures, that provide guidance on such matters?

Is there a supportive environment for open discussion of practical dilemmas without a recriminatory, or blame, culture? Is there a whistleblowing/speak up mechanism? If so, do employees feel safe and

able to trust in the authenticity of the speak up mechanism? Does the organisation listen to its employees when they speak up and then act on what has been heard by investigating the issue?

Was sufficient due diligence undertaken on this acquisition and will this issue impact on potential future acquisitions?

**Who are the key parties who can influence, or will be affected by, your decision?**

You; your fellow directors in Seancon Ltd; the directors of Cainmich plc; the directors of Caanja Ltd; the directors or equivalent of Hackgene; the shareholders of Cainmich plc; the auditors of Cainmich plc (assumed same auditors as Seancon Ltd and Caanja); financial analysts; HMRC; and possibly foreign tax authorities.

**What fundamental ethical principles for accountants are most applicable and is there an apparent conflict between them?**

<p><b>Integrity</b></p>	<p>Can you retain your integrity by doing anything other than immediately informing your fellow board members and the Board of your parent company?</p> <p>Or, as your initial brief review indicates that the recently uncovered branch's results are likely to be immaterial to the overall group can you possibly delay releasing the information until after the auditors have signed off on your parent company's accounts? Does the possibility exist that there are other components of the acquired subsidiary which have not yet been discovered?</p> <p>Tone from the top is critical. It is imperative that Board members not only set the organisation's values and standards, but also lead by example and walk the talk. If you withhold this information, are you fulfilling your responsibilities in this regard? A culture of doing the right thing needs to exist at all levels within the organisation. If this information is withheld by you, a member of the board, what does this message send to others within the organisation? One rule for them and one rule for us?</p> <p>In the UK, under Section 172 of the Companies Act 2006, as a director of a company you must act in the way which would be most likely to promote the success of the company and, in so doing, have regard to other matters impacting stakeholders, including maintaining a reputation for high standards of business conduct.</p> <p>There is a need to demonstrate moral courage.</p>
<p><b>Objectivity</b></p>	<p>The likely adverse consequences of delaying your parent company's results announcement should not interfere with the decision which you have to make.</p>
<p><b>Professional competence and due care</b></p>	<p>Assumed.</p>
<p><b>Confidentiality</b></p>	<p>Assumed.</p>
<p><b>Professional behaviour</b></p>	<p>There is a need to ensure that the board of the parent company and then subsequently the auditors have all the information required to allow them to perform their respective duties in relation to the group's annual financial statements. The directors of the parent company are responsible for ensuring the truth and fairness of the group's financial statements and the auditors are responsible for issuing an opinion on this.</p> <p>You also have to consider the consequences of this discovery on Seancon Ltd's accounts which have already been finalised.</p>

	There is a need to avoid any conduct that you know might discredit your own personal reputation, and ultimately the profession, and also that of your company.
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**Is there any further information (including legal obligations) or discussion that might be relevant?**

More detailed information on the newly discovered branch would be required to allow a proper assessment, both in qualitative and quantitative terms of its materiality. Does the possibility exist that there are further components of the group that have not yet been discovered?

**Is there a conflict between the guardian and commercial strands of an accountant's responsibilities?**

In this case, in the short-term there is the potential for conflict. If the parent fails to meet its reporting deadline this is likely to have a negative impact on its short-term share price. However, how would the market react if the parent company reported as planned and then concluded that it had to disclose a newly discovered branch at a later date?

**Based on the information available, is there scope for an imaginative solution?**

No.

**Are there any other comments?**

In deciding on a course of action, you should apply the reasonable and informed third party test and consider if a reasonable and informed third party would likely conclude that your actions were appropriate. Conduct that might discredit the profession includes conduct that a reasonable and informed third party would be likely to conclude adversely affects the good reputation of the profession.

Documentation is encouraged so that there is a record of the issue, the details of any discussions, and the matters taken into consideration in reaching your judgement and action.

## Scenario four: Keep it in the family

You are a non-executive director and Audit Committee Chair at Darklightning plc, a major listed company. The company has recently been visited by a firm of consultants, Identifyandresolve LLP, at the request of Darklightning's Chair who has been reviewing the company's IT systems and procedures with a view to trying to make them more efficient and effective. It is planned that after Identifyandresolve LLP's review, a contract will be awarded to another organisation to take forward the recommendations included in their report. The Chair does not believe it would be a good idea to allow the same organisation to undertake the work on which they had reported as this would possibly provide an incentive for them to overstate the level of work required.

You had been instrumental in getting the Chair to take this project forward based on recent reports given by the external auditors to the Audit Committee. You were surprised that the Chair had readily agreed to the need for such a review without a detailed discussion on the likely cost, and, not only that, had then volunteered to deal with it personally. The Chair had certainly not hung about and Identifyandresolve LLP had been appointed within a few days of your conversation.

While visiting one of the company's factories you bump into the company's Head of IT, who is not a board member. You get round to discussing the current IT project and are surprised to find out that the Head of IT is a bit annoyed by the whole process. You would have thought that they would have been pleased with this review because, if anything, their life will become easier and hopefully their extensive workload will be reduced. You ask why?

The Head of IT advises you that it is a dead cert that a company called Extravagant Solutions Ltd will be awarded the contract by Identifyandresolve LLP. The Chair is very friendly with the senior consultant at Identifyandresolve LLP, and a close relative of the Chair's is a director of Extravagant Solutions Ltd. They are always very expensive, but they do not necessarily represent the best solution. You say thank you for the information and remember to take a mental note to see what develops in the future. It is only natural after all that management do not like consultants breathing down their necks and this might explain these unusually sharp comments.

At the next meeting of the board, the senior consultant of Identifyandresolve LLP is asked to present the findings of their review of Darklightning's IT systems and procedures. It is an excellent presentation and provides a very informative overview of what has been discovered by their staff. Ultimately, they come to the recommendations section. They advise that normally their firm would not recommend a specific contractor to undertake the work, but merely a list of the work which requires to be undertaken. However, on this occasion they had been specifically asked by the Chair to recommend the most suitable supplier. They then advise that Extravagant Solutions Ltd would appear to be the most suitable choice to undertake work of this nature, although add the usual legal caveats to their recommendation.

The Chair thanks Identifyandresolve LLP for their insightful work and then asks for comments around the table. You remember the Head of IT's comments and decide to probe as to whether there are any conflicts of interest /related parties with respect to Extravagant Solutions Ltd. No-one declares an interest. You think to yourself that maybe the Head of IT was misinformed, but the predicted outcome has been right so far. Should you raise this issue at a board meeting with only hearsay as evidence as to the Chair's link to Extravagant Solutions Ltd?

The Chair advises that unless anyone says anything to the contrary a motion to award the contract to Extravagant Solutions Ltd will be approved.

**What do you do now?**

## Scenario four: Analysis

### What are the readily-identifiable ethical issues for your decision?

#### *For you personally*

Can you raise the issue based on what was said to you by the company's Head of IT? The Head of IT was feeling aggrieved and possibly was merely speculating to whom the contract would be awarded. The Chair never admitted to any conflict when you broached the issue – haven't you done enough already?

Is there a need to ask for a postponement of the decision to allow you to have a chat with the Chair and/or the senior independent director? Is there a need to consult with the auditors/legal advisors re the alleged conflict of interests? If the decision is postponed, you could undertake a search at Companies House to determine whether the Chair's relative is a director of Extravagant Solutions Ltd.

#### *For the company*

Does the company have a policy of undertaking a competitive tender for any such contracts?

Does the company maintain a register of related parties?

Are conflicts of interest a standing board agenda item?

Is there a need to consider the potential reputational damage to the company if this becomes public at a later date.

### Who are the key parties who can influence, or will be affected by, your decision?

You; the Chair; the other directors; shareholders; employees; the partners in Identifyandresolve LLP; and the directors and shareholders of Extravagant Solutions Ltd.

### What fundamental ethical principles for accountants are most applicable and is there an apparent conflict between them?

<b>Integrity</b>	<p>Is there a need for you to pursue this matter by asking the Chair directly if he has any connections with Extravagant Solutions Ltd? Could the decision on the contract be postponed to allow you to discuss this matter privately with the Chair/senior independent director?</p> <p>Tone from the top is critical. In the UK, under Section 172 of the Companies Act 2006, you are aware that as a director of a company you must act in the way which would be most likely to promote the success of the company, and, in so doing, have regard to other matters impacting stakeholders, including considering the likely consequences of any decision in the long term and maintaining a reputation for high standards of business conduct.</p> <p>If you do not investigate the Chair's possible conflict of interest, which could result in the company selecting a more expensive and less suitable contractor, are you fulfilling your responsibilities as a non-executive director?</p> <p>There is a need to demonstrate moral courage by getting to the bottom of the matter.</p>
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<b>Objectivity</b>	Assumed, but one needs to remain objective and challenge fellow board members as and when appropriate.
<b>Professional competence and due care</b>	Assumed.
<b>Confidentiality</b>	Did you receive the information in confidence from the Head of IT? If so, there is a potential conflict between integrity/professional behaviour and confidentiality.
<b>Professional behaviour</b>	As per above, the need to ensure that you satisfy yourself that the process for awarding the IT contract has not been distorted.  There is a need to avoid any conduct that you know might discredit your own personal reputation, and ultimately that of the profession, and also your company's reputation.

**Is there any further information (including legal obligations) or discussion that might be relevant?**

As mentioned above, it would be useful to know whether the board has a standing agenda item which requires any conflicts of interest to be disclosed and whether it has a competitive tendering policy. Additionally, seeking feedback from previous customers of Extravagant Solutions Ltd in relation to the quality of their work would be useful.

**Is there a conflict between the guardian and commercial strands of an accountant's responsibilities?**

No.

**Based on the information available, is there scope for an imaginative solution?**

No.

**Are there any other comments?**

In deciding on a course of action, you should apply the reasonable and informed third party test and consider if a reasonable and informed third party would likely conclude that your actions were appropriate. Conduct that might discredit the profession includes conduct that a reasonable and informed third party would be likely to conclude adversely affects the good reputation of the profession.

Documentation is encouraged so that there is a record of the issue, the details of any discussions, and the matters taken into consideration in reaching your judgement and action.

## Scenario five: A deal too far?

You are a non-executive director of GIGUS plc, a listed company. You joined the company eight months ago and viewed yourself as very fortunate to obtain a role with this rapidly growing biotech company. The company has been performing well and the most recent trading update statement was met with much approval by market analysts and the company's share price rose accordingly. On the face of it, everything appears rosy. The Chief Executive was recruited by the current Chair two years ago and by all accounts is a big favourite with the analysts. The two of them had previously worked together at a smaller listed company.

However, the more time you spend at the company, the more you become concerned over the way it is run. The Chair appears to be the Chief Executive's "poodle" and the board is actually run by the Chief Executive. The roles of chair and chief executive, although held by separate individuals and hence in accordance with the principles of the Corporate Governance Code, are effectively held by the same individual. Furthermore, there is a lack of debate at board meetings, which in your eyes appear to be more of a rubber-stamping exercise rather than a forum to have some serious strategic discussions. You have heard rumours that your predecessor "resigned" because he was one of the few individuals to have challenged the Chief Executive. However, the official line is that he was a trouble-maker and did not fit into the balance of the board. You also have concerns that the board papers are only sent out five days before the meeting which, in your opinion, is not sufficient time to allow yourself and the other non-executives to thoroughly review them.

At the next meeting of the board, you are very surprised to find out that the company is in discussions to purchase a major competitor based overseas. In the board papers this was only briefly mentioned and it appeared as though GIGUS plc was merely looking at a number of possible acquisition targets based primarily in the UK. You are surprised - both by the location of the target company - but even more by what it is likely to cost.

The Chief Executive proceeds to give a powerful presentation on the pros and cons of the proposed deal. The talk consists of an overview of the target company, the likely cost of acquisition and strongly highlights the benefits of doing the deal. Although mentioned briefly, the risks attached to the deal are significantly downplayed. The price mentioned is in the region of £250m, although the price will be paid in US dollars which is a very significant sum for GIGUS plc and which confirms your earlier fears. Although GIGUS plc has performed very well in recent years, in order to finance this type of deal, considerable debt capital will be required and the company's level of gearing will be significantly increased. It has always been clear that the Chief Executive wants to be in charge of a much larger entity and is clearly very enthusiastic about the proposed deal. It would take a brave person to question it.

The problem though, as explained by the Chief Executive, is that there will not be time to do a great deal of due diligence, because:

*"The value of the pound is falling against the US dollar by the day."*

A fact repeated to give added impetus:

*"By the day, and the longer we as a board spend thinking about this, the higher the price will become".*

The Chief Executive then issues a rallying call to the board:

*"This is the time for this board to deliver true shareholder value!"*

The Chair applauds loudly, followed by the rest of the board...that is everyone except you – and this is noticed by all of the other board members.

It should be the Chair who addresses you, but you are not surprised to find that the first person to question your apparent lack of enthusiasm for the proposed deal is the Chief Executive:

*“You appear rather quiet. At this moment in time there is no room for non-believers on this board. We stand at the most crucial point in this organisation’s history and time is of the essence.”*

The Chief Executive then adds ominously:

*“Are you with us?”*

**What do you do now?**

## Scenario five: Analysis

### **What are the readily-identifiable ethical issues for your decision?**

#### *For you personally*

The ICAS Code of Ethics states the following in relation to the fundamental ethics principle of Integrity:

“111.1 A1 Integrity involves fair dealing, truthfulness and having the strength of character to act appropriately, even when facing pressure to do otherwise or when doing so might create potential adverse personal or organisational consequences.

*Fair dealing includes respecting values of equality, diversity and inclusion.*

111.1 A2 Acting appropriately involves:

- (a) Standing one’s ground when confronted by dilemmas and difficult situations; or
- (b) Challenging others as and when circumstances warrant,

in a manner appropriate to the circumstances.”

Can you allow this proposed acquisition to go ahead without raising your concerns? Everything is happening very fast, and it appears as though the board has not had sufficient time to analyse the proposed costs and benefits of this deal in detail. Could the company not purchase a currency option or similar type instrument which would remove the risk of the price increasing due to currency fluctuations? This would then allow time for the deal to be considered in greater detail and further due diligence to be undertaken if required. Obviously, there would be a cost attached to purchasing such an option. However, the costs of an ill thought through acquisition would be significantly higher.

You appear unhappy with the performance of the Chair. Have you considered raising your reservations with the senior independent director? Additionally, have you raised your concerns at the late delivery of the board papers?

The annual board appraisal process will also provide you with the opportunity to raise any reservations you may have with the manner in which the board is run.

If the board decides to go ahead with this acquisition without further due diligence etc should you ensure that your reservations are minuted? Where would this leave you if the board does decide to go ahead?

#### *For the company*

Do the culture and leadership of the organisation emphasise the importance of ethical behaviour and the expectation that everyone will act ethically? Are the decisions being made, and the way in which they are being made, in line with the organisation’s values?

The need to consider the reputational damage to the company if sufficient due diligence is not carried out on the target company and something goes wrong at a future date.

### **Who are the key parties who can influence, or will be affected by, your decision?**

You; the other board members; the shareholders; the employees; and potentially other stakeholders.

**What fundamental ethical principles for accountants are most applicable and is there an apparent conflict between them?**

<b>Integrity</b>	<p>Can you allow this proposed acquisition to go ahead without demonstrating moral courage by raising your concerns and asking for additional time for the board to consider this proposed acquisition in more detail?</p> <p>You are aware that in the UK, under Section 172 of the Companies Act 2006, as a director of a company you must act in the way that would be most likely to promote the success of the company, and, in so doing, have regard to other matters impacting stakeholders, including considering the likely consequences of any decision in the long-term and maintaining a reputation for high standards of business conduct. You had already harboured concerns that board papers arrive too late for due consideration. If you allow this deal to go ahead without the proper due diligence, are you fulfilling your duties?</p>
<b>Objectivity</b>	<p>Assumed – you are fairly new to the company. Whilst you were obviously pleased to get this role you must ensure that you properly challenge the board as and when necessary.</p>
<b>Professional competence and due care</b>	<p>Assumed.</p>
<b>Confidentiality</b>	<p>Assumed.</p>
<b>Professional behaviour</b>	<p>This is a major strategic decision for the board. Can you satisfy the criteria as to why you were appointed to this role if you do not voice your concerns and encourage the board to have a full and proper debate and advocate that all board members are given sufficient time to properly assess the available information on the target company?</p> <p>There is a need to avoid any conduct that you know might discredit your own personal reputation, and ultimately that of the profession, and also your company's reputation.</p>

**Is there any further information (including legal obligations) or discussion that might be relevant?**

What due diligence has been performed on this proposed acquisition?

**Is there a conflict between the guardian and commercial strands of an accountant's responsibilities?**

No.

**Based on the information available, is there scope for an imaginative solution?**

No.

**Are there any other comments?**

In deciding on a course of action, you should apply the reasonable and informed third party test and consider if a reasonable and informed third party would likely conclude that your actions were appropriate.

Documentation is encouraged so that there is a record of the issue, the details of any discussions, and the matters taken into consideration in reaching your judgement and action.

## Scenario six: Research and development

You are the Finance Director of Kaka Radiators Limited, a large private company. Kaka Radiators Ltd has an established accounting policy for the treatment of any expenditure on research and development, on which it spends £1m to £2m each year. The company's policy effectively splits expenditure on research and development into one of two categories.

- (i) Long-term research funding - undertaken for the general strategic benefit of the organisation (which may develop into ideas for specific products, although this cannot be assumed); and
- (ii) Specific development funding - undertaken in order to develop new products or enhance existing products which will probably result in material revenue streams in the short-term.

In the former case, this is budgeted as revenue expenditure each year. In the latter case, the process has been successful in recent years and the auditors have been content with the company's accounting - to capitalise the relevant expenditure and include it as an asset on the balance sheet and to then subsequently amortise it (usually over a period of two to three years) against the associated revenue stream. For audit purposes, the auditors would want to see hard evidence that all the requirements of the applicable accounting standard have been met to demonstrate that there is an asset that will generate probable future economic benefits and can therefore be recognised as such in the financial statements.

Recently, you have become aware that an investment of £0.5m made in each of the last two years in relation to a new research and development programme has not been properly assessed. Although in aggregate £1m has been committed and spent, your enquiries are leading you to conclude that there is little or no success criteria against the investment, that the project management of the research has not really been thought through and that there will be little to show for this investment. When you challenge, the director of the relevant team says:

*"Don't worry. We'll knock up some numbers to keep the auditors happy."*

Deep down, you are aware that it is most unlikely that there will be any future economic benefits in practice and that any business case which was concocted for the purposes of satisfying the auditors would be wildly optimistic at best. However, the financial year-end is only two months away and a £1m write-off at this late stage in the financial year would cause you real difficulties with your chief executive and the board. It would also compromise severely your professional relationship with your fellow director who would then be put in a very exposed position with the board.

You come to the conclusion that you have two options:

- (a) You can probably convince the auditors that the costs are an asset and leave them on the balance sheet to buy yourself 12 months to write them off over the next financial year.
- (b) You can sit down with your other directors to explain your reading of the situation and work through together how this is to be handled.

**What do you do now?**

## Scenario six: Analysis

### What are the readily-identifiable ethical issues for your decision?

#### *For you personally*

The ICAS Code of Ethics states the following in relation to the fundamental ethics principle of Integrity:

“111.1 A1 Integrity involves fair dealing, truthfulness and having the strength of character to act appropriately, even when facing pressure to do otherwise or when doing so might create potential adverse personal or organisational consequences.

*Fair dealing includes respecting values of equality, diversity and inclusion.*

111.1 A2 Acting appropriately involves:

- (a) Standing one’s ground when confronted by dilemmas and difficult situations; or
- (b) Challenging others as and when circumstances warrant,

in a manner appropriate to the circumstances.

*111.1 A3 It follows that a professional accountant’s advice and work must be uncorrupted by self-interest and not be influenced by the interests of other parties.*

R111.2 A professional accountant shall not knowingly be associated with reports, returns, communications or other information where the accountant believes that the information:

- (a) Contains a materially false or misleading statement;
- (b) Contains statements or information provided recklessly; or
- (c) Omits or obscures required information where such omission or obscurity would be misleading.”

Can you retain your integrity by not bringing this matter to the board’s attention?

Should you discuss the matter with the director prior to taking the matter to the board?

Under Section 499 of the Companies Act 2006, the auditor has a general right to information and explanations from directors as necessary for the performance of their duty. What information will you disclose to the auditors?

You will also have to sign a management representation letter for the auditors confirming that you have provided them with all relevant information.

#### *For the company*

Is there a supportive environment for open discussion of practical dilemmas without a recriminatory, or blame, culture? Is there a whistleblowing/speak up mechanism? If so, do employees feel safe and able to trust in the authenticity of the speak up mechanism? Does the organisation listen to its employees when they speak up and act on what has been heard by investigating the issue?

Is this matter evidence of a wider breakdown in company internal controls in relation to the correct treatment of expenditure on research and development? Is this an isolated incident?

Has there been any commercial pressure put on the director to capitalise costs rather than expense them?

### Who are the key parties who can influence, or will be affected by, your decision?

You; the director; the other directors; the company’s employees; and the shareholders, if different from the directors.

**What fundamental ethical principles for accountants are most applicable and is there an apparent conflict between them?**

<p><b>Integrity</b></p>	<p>You have a responsibility to adhere to the fundamental ethics principles within the ICAS Code of Ethics and demonstrate moral courage. You cannot be associated with misleading information, which includes omitting information where the omission would be misleading. There is a need to be honest, not just with yourself, but with the rest of your Board and the auditors.</p> <p>There is a need to demonstrate tone from the top. In the UK, under Section 172 of the Companies Act 2006, as a director of a company you must act in the way which would be most likely to promote the success of the company, and, in so doing, have regard to other matters impacting stakeholders, including maintaining a reputation for high standards of business conduct. Also under Company Law, the directors of a company must not approve accounts unless they are satisfied that they give a true and fair view.</p> <p>If you allow this to be swept under the carpet when you have misgivings, are you becoming complicit in the inappropriate action thus impacting your ability to adhere to your professional ethical standards and fulfilling your legal duties as a director?</p>
<p><b>Objectivity</b></p>	<p>The need to remain objective as to the true nature of the costs and their proper accounting treatment, and to not allow the potential compromise of your professional relationship with the other director to distract you from doing the right thing.</p>
<p><b>Professional competence and due care</b></p>	<p>Assumed.</p>
<p><b>Confidentiality</b></p>	<p>Assumed.</p>
<p><b>Professional behaviour</b></p>	<p>The need to ensure that your behaviour befits that of a Chartered Accountant. The company should only recognise assets on the balance sheet which satisfy the requirements of applicable accounting standards.</p> <p>There is a need to avoid any conduct that you know might discredit your own personal reputation, and ultimately that of the profession, and also your company's reputation.</p>

**Is there any further information (including legal obligations) or discussion that might be relevant?**

No.

**Is there a conflict between the guardian and commercial strands of an accountant's responsibilities?**

In this scenario there may well be a conflict. There may be commercial pressures on you to capitalise this expenditure, but the guardian responsibility would require transparent reporting of the economic substance of the transactions.

**Based on the information available, is there scope for an imaginative solution?**

No.

**Are there any other comments?**

In deciding on a course of action, you should apply the reasonable and informed third party test and consider if a reasonable and informed third party would likely conclude that your actions were appropriate.

Documentation is encouraged so that there is a record of the issue, the details of any discussions, and the matters taken into consideration in reaching your judgement and action.

## Scenario seven: Build them anyway!

You arrive in the office for another day's hard work at Bildem Eneeway Ltd. Since you arrived here three years ago you have found it hectic every day, but it has been fun too. You like the people you work with and, as Financial Controller, you have access to what is going on across the whole business. You hadn't worked in a construction business before, although you did the audit of one or two while training, but you feel that you have been really getting to grips with things over the last eighteen months. Even now with the year-end looming and both internal and external audit visits due next week, you are upbeat.

It wasn't always like this. For the first year or so you had thought you wouldn't be able to cope. Your boss - the Financial Director (FD) – has been in the business ten years and knows it inside out but, whilst undoubtedly brilliant, is also pedantic and inflexible. You have often wondered if this attitude comes from fear of being held to account for a mistake or whether it is genuinely an expectation of perfection 24/7. The FD's approach to dealing with anyone who makes a mistake, or even a commercial misjudgement, is draconian. You have witnessed many tears and a good few dismissals in those three years. However, your boss seems to have accepted you as being someone who will maintain standards, and life has grown more pleasant at work as a result.

You were recently able to back up your boss when the board were putting on pressure regarding the security and controls around the business' payment systems following an Internal Audit of this area. Your boss was particularly pleased when you refused to weaken under great pressure from the Chair, who wanted you to admit that the measures in place were inadequate and the systems were weak. This has been a bee in the bonnet of the Chair for many years, without any specific reason, making your boss's life miserable on the topic at least once a year. Being able to back him up so strongly has greatly improved your relationship with your boss, and even the Chair complimented you on your performance at the meeting.

Your door opens and your cashier enters along with one of the quantity surveyors. Both are well known to you, but they are clearly troubled. The cashier explains that a bank transfer has been received for £12,500 from a plumbing contractor which regularly does work for your company. The cashier did not understand the accompanying paperwork so phoned the contractor. The cashier was told that, while reconciling their books in preparation for their year-end, they had discovered that they had been overpaid on a recent job. They had done some investigation and found that they had been paid twice for one of the stages of the work and the amount was a repayment.

You ask how this could happen, and just as importantly, how it could go undiscovered. The quantity surveyor explains that the duplicate payment was down to simple human error. The work for the original stage payment had been checked and certified but, being under pressure, the quantity surveyor had not adequately recorded the fact. When, by coincidence, a reminder had come from the contractor some 48 hours later they thought they had forgotten to make the payment, had done the certification again, and because they thought the payment was now overdue, had taken it directly to their boss, the Commercial Director, whose signature was obtained for an urgent payment – thus bypassing one of the controls. This procedure is permissible in urgent cases.

The quantity surveyor also explains that the double payment would have been picked up in the job reconciliation, which is carried out when each job closes, but that it has not been done yet. As you are aware, this is not unusual as the workload has been very heavy for some months now.

The cashier and the quantity surveyor reason that no harm has been done. The money has been refunded; the controls have not been compromised – the urgent payment route is, after all, an accepted variation; and the job reconciliation would have picked it up in a week or two anyway. They just wanted to be completely open and let you know, even though no damage has been done.

After they leave, you reflect. Internal Audit won't visit this area for at least two years; the mistake wasn't any kind of attempt to defraud; and the cash position is unaffected. This was a high-profile issue with the board which would cause all sorts of damage (including to your reputation) if it were to be raised. And you can already think of an additional control which would prevent it ever occurring again. The company has not suffered any loss and this control will ensure that it never does.

**What do you do now?**

## Scenario seven: Analysis

### What are the readily-identifiable ethical issues for your decision?

#### *For you personally*

The ICAS Code of Ethics states the following in relation to the fundamental ethics principle of Integrity:

“111.1 A1 Integrity involves fair dealing, truthfulness and having the strength of character to act appropriately, even when facing pressure to do otherwise or when doing so might create potential adverse personal or organisational consequences.

*Fair dealing includes respecting values of equality, diversity and inclusion.*

111.1 A2 Acting appropriately involves:

- (a) Standing one’s ground when confronted by dilemmas and difficult situations; or
- (b) Challenging others as and when circumstances warrant,

in a manner appropriate to the circumstances.”

If you install a new control which mitigates the risk that has been exposed, can you keep this matter to yourself? Do you need to raise the matter with the Financial Director? If you do, what happens if your boss advises you to say nothing and to merely ensure that such an occurrence does not happen again?

But, if a similar incident happens another time, and you have said nothing, how would that affect your reputation with the board members, and as a Chartered Accountant? Could they trust your views again if you have not been completely transparent with them in the past?

#### *For the company*

Do the culture and leadership of the organisation emphasise the importance of ethical behaviour and the expectation that everyone will act ethically? Is there a supportive environment for open discussion of practical dilemmas without a recriminatory, or blame, culture?

Organisations need their people to speak up if they have concerns – a speak up culture allows issues to be dealt with at the earliest opportunity before they escalate – but employees need to feel safe and be able to trust in the authenticity of the speak up mechanism to be encouraged to speak up. Is there a whistleblowing/speak up mechanism? Does the organisation listen to its employees when they speak up and act on what has been heard by investigating the issue?

### Who are the key parties who can influence, or will be affected by, your decision?

You; the financial director; the Chair; the other directors; the shareholders; and employees.

### What fundamental ethical principles for accountants are most applicable and is there an apparent conflict between them?

<b>Integrity</b>	The need to be truthful and honest and demonstrate moral courage. Who do you need to raise this matter with? Does the board need to know about this incident if a new control can remove the risk of it ever happening again?
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<b>Objectivity</b>	Are you now too close to your Financial Director to be objective about this matter? You supported his defence of the company's business' payment systems.
<b>Professional competence and due care</b>	Assumed.
<b>Confidentiality</b>	Assumed.
<b>Professional behaviour</b>	<p>The need to consider the implications of what this incident has revealed. Do you need to raise this matter with someone else within the company and if so, whom?</p> <p>There is a need to avoid any conduct that you know might discredit your own reputation, and also that of the profession.</p> <p>You know this was a high-profile issue for the board. What does it say about you as a Chartered Accountant if you deliberately withhold relevant information from the board?</p>

**Is there any further information (including legal obligations) or discussion that might be relevant?**

This came to light as a result of the integrity of an honest supplier, others may be less honest or not have the same controls to identify such an error, hence is this an isolated incident or do such incidents occur regularly? Although the quantity surveyor says that this double payment would have been discovered at a later date (bill reconciliation stage), is this the case? Are job reconciliations regularly, and timeously, carried out as a matter of course and if not, then should they be? Is your boss and the rest of the board of directors aware of this urgent payments system? Is the Internal Audit department aware of this system and have they commented on it in the past? Should you raise the issue of a controls review in this area despite giving previous assurances?

**Is there a conflict between the guardian and commercial strands of an accountant's responsibilities?**

No.

**Based on the information available, is there scope for an imaginative solution?**

No.

**Are there any other comments?**

In deciding on a course of action, you should apply the reasonable and informed third party test and consider if a reasonable and informed third party would likely conclude that your actions were appropriate. Conduct that might discredit the profession includes conduct that a reasonable and informed third party would be likely to conclude adversely affects the good reputation of the profession.

Documentation is encouraged so that there is a record of the issue, the details of any discussions, and the matters taken into consideration in reaching your judgement and action.

## Scenario eight: Seeing the wood for the trees

You are the Chair of Rusppay plc, a long established specialist paper-making company. The company's next board meeting is due to be held next month. Top of the agenda for the meeting is the possibility of changing the company's source of raw materials.

This has come about because, for some time now, the company has experienced falling profit margins. All of the directors had been tasked with identifying ways of reducing the cost base. One obvious means would be to reduce the workforce but you only want to revert to this option as a last resort – the workforce has been loyal and hard working.

The production director responsible for buying wood pulp, the primary raw material used in the production of paper, has recommended that the board considers shifting contracts away from existing Scottish suppliers in favour of lower-cost overseas suppliers. Supporting this view, the Chief Executive (CEO) has specifically identified Comy, a company based in Sangala, a developing country. It is known that the CEO's family have an involvement in this company and that, personally, the CEO has a 10% equity stake. Despite the obvious conflict of interest, there is no doubt that this direct link to the supplier would be of benefit to Rusppay plc if it decided to take up this option. It would reduce the risks of dealing with a new supplier, particularly one which is based overseas too.

In conversations you have had with some of the other directors, they have expressed concern that the image of Rusppay plc in the home market will be damaged by withdrawing business from domestic suppliers. At present, most of the pulp is purchased from one of the Scottish suppliers, Doowy Ltd, with the contract making up over 70% of that supplier's business. The expected cost reductions for Rusppay plc are undeniable, but there is a fear that moving the contract will put the existing supplier out of business – and there would be the associated knock-on effects in the local community – Doowy Ltd is based in a small town only a few miles from where Rusppay plc is based.

It is also well known that Sangala, the country from which it is proposed that the pulp be sourced in future, adopts indiscriminate policies towards deforestation (clearing forest areas), causing irreparable damage to the eco-system. Sangala's government has consistently argued that the improvement in the quality of life of its people in rural areas must take priority over natural resources. Additionally, the political environment is fragile and the possibility of a coup is ever-present.

Another factor is that only just under three years ago Rusppay plc received a local enterprise agency grant for £3.5m which was used towards the cost of renewing some of the company's outdated equipment. This grant was partly awarded on the basis of retaining jobs in the local area. The qualifying period will expire in three months' time and the grant will not thereafter be repayable – however, you are trying to balance the logic of Rusppay plc retaining the grant, which was partly awarded to support local employment, with terminating its contract with Doowy Ltd which would undoubtedly damage employment in a nearby town.

Having read all the board papers in readiness for the meeting, and having spoken to the other directors, you are contemplating what recommendations you will make.

**What do you do now?**

## Scenario eight: Analysis

### What are the readily-identifiable ethical issues for your decision?

#### *For you personally*

The ICAS Code of Ethics states the following in relation to the fundamental ethics principle of Integrity:

“111.1 A1 Integrity involves fair dealing, truthfulness and having the strength of character to act appropriately, even when facing pressure to do otherwise or when doing so might create potential adverse personal or organisational consequences.

*Fair dealing includes respecting values of equality, diversity and inclusion.*

111.1 A2 Acting appropriately involves:

- (a) Standing one’s ground when confronted by dilemmas and difficult situations; or
- (b) Challenging others as and when circumstances warrant,

in a manner appropriate to the circumstances.”

In addition, the fundamental ethics principle of Professional behaviour states:

“R115.1 A professional accountant shall comply with the principle of professional behaviour, which requires an accountant to:

- (a) Comply with relevant laws and regulations;
- (b) Behave in a manner consistent with the profession’s responsibility to act in the public interest in all professional activities and business relationships; and
- (c) Avoid any conduct that the accountant knows or should know might discredit the profession.”

What are the ethical considerations in relation to the proposal to switch from a domestic supplier to an alternative supplier in a developing country which has an unstable political environment?

Can the CEO be objective in this decision when there is a clear conflict of interest due to their personal 10% equity stake as well as their family’s involvement in Comy?

As Chair, what will you advise the Board to do?

How will this impact your personal reputation as a Chartered Accountant?

#### *For the company*

Does the company have a set of ethical values, including sustainability values, which it can refer to when faced with difficult dilemmas such as this? Are the decisions being made, and the way in which they are being made, in line with the organisation’s values?

The company will have technically complied with the legal terms of the grant it received but is there a wider duty to be considered to the local community? Although the legal terms might not require clawback after three years have elapsed, the spirit and underlying intention of the awarding of the grant is likely to have been for the wider local community to benefit for a considerably longer period of time. Putting an employer out of business only a few miles away just as the claw back period has elapsed is likely not to be viewed favourably.

Is the company willing to accept the supply chain risks associated with dealing with a supplier which is located in a country with an unstable political environment? Have the modern slavery risks been considered?

Is the company willing to accept the negative media coverage, and damage to its reputation, that might result if it terminates the contract with a local supplier - which could put the supplier out of business - in favour of a company in which the CEO has an ownership interest?

Is the company willing to be associated with a company situated in a country where there is no regard for the preservation of the environment?

**Who are the key parties who can influence, or will be affected by, your decision?**

You; the Chief Executive; the other directors of Rusppay plc; the employees of the various companies; the shareholders of Rusppay; the directors and shareholders of Doowy Ltd; the directors and shareholders of Comy; the local enterprise agency; and the local community.

**What fundamental ethical principles for accountants are most applicable and is there an apparent conflict between them?**

<b>Integrity</b>	<p>Tone from the top is critical. In the UK, under Section 172 of the Companies Act 2006, you are aware that as the chair you must act in the way which would be most likely to promote the success of the company, and, in so doing, have regard to other matters impacting stakeholders, including considering the likely consequences of any decision in the long term and maintaining a reputation for high standards of business conduct.</p> <p>Does your company have a clearly defined set of corporate values? If so, where do the sustainability related issues fit into these?</p> <p>How do you deal with the CEO's financial interest in the potential supplier?</p> <p>Integrity involves fair dealing. There is a need for you to give balanced consideration to the likely impact on Rusppay plc of changing/not changing suppliers. What are the technical aspects - the laws and standards? Who will be affected? What are the anticipated consequences – quantifiable and non-quantifiable? What are the threats to reputation? What feels appropriate?</p>
<b>Objectivity</b>	<p>There is a need to objectively balance all the pros and cons of the decision, taking account of the longer-term and not just the shorter-term issues. Are the other members of the board able to be objective on this matter?</p>
<b>Professional competence and Due care</b>	<p>Assumed.</p>
<b>Confidentiality</b>	<p>Assumed.</p>
<b>Professional behaviour</b>	<p>You need to ensure your recommendation to the Board is consistent with the accounting profession's responsibility to act in the public interest.</p> <p>There is a need to explain your recommendation and allow the other board members to fully understand the ramifications of their decision.</p>

**Is there any further information (including legal obligations) or discussion that might be relevant?**

Does your company have a set of values/code of conduct which may have a bearing on your decision?

Are there any other options open to the company in relation to potential cost savings?

If the contract was awarded to Comy, would Rusppay plc have a back-up plan if any future political unrest hindered the supply of raw materials?

Are there any international embargos on trading with companies in Sangala? There would need to be clarity regarding the legal aspects of trading with a supplier in this country.

Would transacting with a company in Sangala expose the company to foreign currency risk that could not easily be mitigated?

What other suggestions for reducing the company's cost base have been received from board members?

**Is there a conflict between the guardian and commercial strands of an accountant's responsibilities?**

No.

**Based on the information available, is there scope for an imaginative solution?**

Is there any scope for negotiating a price reduction with your existing supplier, Doowy Ltd? Could some, but not all, of the raw material supplies be switched to a different supplier?

**Are there any other comments?**

In deciding on a course of action, you should apply the reasonable and informed third party test in the ICAS Code of Ethics and consider if a reasonable and informed third party would likely conclude that your actions were appropriate. Conduct that might discredit the profession includes conduct that a reasonable and informed third party would be likely to conclude adversely affects the good reputation of the profession.

Documentation is encouraged so that there is a record of the issue, the detail of any discussions, and the matters taken into consideration in reaching your judgement and action.

## Scenario nine: Heroic efficiency target

You are the finance director of Fortunesareus plc, a large UK subsidiary of an internationally based financial services organisation, which has grown substantially in recent years. You have been in the role for four years and believe that there is a very real chance that you might be in line for promotion to the group finance director position within the next couple of years, as long as you play your cards right and do not rock the boat. You believe that such a promotion is merited. You have committed yourself to the organisation and your work-life balance is heavily weighted towards the former. Your work is your life, at least at the moment.

The Fortunesareus group has had a bad couple of years worldwide, partly to do with the economic downturn in most areas, but also to do with poor management in some key areas of operations (but not in the UK). In response to these poor results, the overseas parent has insisted on 5% cost cutting efficiencies in the current year in all subsidiaries: for you in the UK subsidiary, this was a very tough target and you have just about achieved it, but at the cost of a dispirited workforce and a range of economies which could not be sustained in the long-term. The need to ensure that the company satisfies all of its regulatory requirements is a major issue and a consequence of these cuts has been to leave your organisation vulnerable. For example, there is the UK Senior Managers and Certification Regime (SMCR)<sup>2</sup>.

On a recent call, the Group FD informed you that all subsidiaries must achieve a further 10% efficiency saving in the subsequent year (for which you are currently preparing the budgets), but that all operational and sales targets must still be met. This news is greeted with a degree of incredulity by you and your colleagues but it is made very clear that the demand is not negotiable.

You know that this is going to be almost impossible to achieve in practice and so, the next day, you call the Group FD and share these views. The Group FD tells you in no uncertain terms that your views are unhelpful and that if you are not prepared to implement these cuts then someone else will be found who can. You point out that the cuts will severely impact on the business's ability to satisfy its legal and regulatory responsibilities:

*"We are struggling as it is to satisfy our compliance requirements."*

The Group FD replies ominously:

*"That is your responsibility, not mine."*

By the end of the call, it is crystal clear: Either cuts will be made or you will be fired.

Once again you think to yourself, can further costs be trimmed without impacting on the company's compliance needs? You come to the same conclusion that it does not appear possible unless the company is willing to live with the significant risk that it will not comply with the regulatory requirements.

### **What do you do now?**

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<sup>2</sup> For more information on the UK Senior Managers and Certification Regime see the [FCA website](#)

## Scenario nine: Analysis

### What are the readily-identifiable ethical issues for your decision?

#### *For you personally*

The fundamental ethics principle of Professional behaviour states:

“R115.1 A professional accountant shall comply with the principle of professional behaviour, which requires an accountant to:

- (a) Comply with relevant laws and regulations;
- (b) Behave in a manner consistent with the profession’s responsibility to act in the public interest in all professional activities and business relationships; and
- (c) Avoid any conduct that the accountant knows or should know might discredit the profession.”

Is there someone else in the organisation that you can discuss this issue with? Others in the organisation must be aware of the need for the company to comply with its regulatory requirements.

Can you elevate this matter for full discussion at a future meeting of the group board?

If, after proper debate, the proposals are still to be enacted, then you will need to consider your position if you still believe that their impact will put the company in a position whereby it is no longer able to satisfy its regulatory requirements.

Is there a need to consider whistleblowing? There are requirements in the Responding to Non-compliance with Laws and Regulations (NOCLAR) provisions in the ICAS Code of Ethics. Is the matter you are considering disclosing one which you believe you would either be under a legal duty to disclose, or alternatively have a legal entitlement to disclose?

#### *For the company*

Has the impact of these proposed cuts on the company’s ability to meet its compliance requirements been thought through properly, including the financial penalties and reputational damage that could be caused if the company fails to adhere to legal and regulatory requirements?

Do the culture and leadership of the organisation emphasise the importance of ethical behaviour and the expectation that everyone will act ethically? Are the decisions being made by the Group FD, and the way in which they are being made, in line with the organisation’s values?

Is there a supportive environment to encourage open discussion of ethical dilemmas without a recriminatory, or blame, culture? Is there a whistleblowing/speak up mechanism? Does the company listen to its employees when they speak up and then act on what has been heard by investigating the issue?

### Who are the key parties who can influence, or will be affected by, your decision?

You; your fellow directors; the group FD and fellow directors; the shareholders; the employees; the financial regulatory body; and customers and suppliers of the company.

**What fundamental ethical principles for accountants are most applicable and is there an apparent conflict between them?**

<p><b>Integrity</b></p>	<p>The need to ensure your fellow board members and those of the parent company are aware of the company's obligation to meet its compliance requirements.</p> <p>You need to ensure that the company, and you personally, are in compliance with all obligations in relation to legal and regulatory requirements.</p> <p>Tone from the top is critical. In the UK, under Section 172 of the Companies Act 2006, as a director of the company, you must act in the way which would be most likely to promote the success of the company, and, in so doing, have regard to other matters impacting stakeholders, including considering the likely consequences of any decision in the long term and maintaining a reputation for high standards of business conduct.</p> <p>There is a need to demonstrate moral courage.</p>
<p><b>Objectivity</b></p>	<p>The need to be able to assess the impact of these proposed cuts without personal bias.</p>
<p><b>Professional competence and due care</b></p>	<p>Assumed.</p>
<p><b>Confidentiality</b></p>	<p>If the company decides to go ahead with this level of cuts, is there any need to consider any possible whistleblowing requirements or entitlements?</p>
<p><b>Professional behaviour</b></p>	<p>The need to effectively communicate the compliance risks of this proposed cost-cutting exercise to your fellow board members and those of the group.</p> <p>There is a need to avoid any conduct that you know might discredit your own personal reputation, and ultimately the profession, and also that of your company.</p>

**Is there any further information (including legal obligations) or discussion that might be relevant?**

What whistleblowing requirements exist within your organisation and within your regulated sector?

**Is there a conflict between the guardian and commercial strands of an accountant's responsibilities?**

In the shorter term possibly, but for the longer-term sustainability of the company it would appear as though these competing strands are aligned.

**Based on the information available, is there scope for an imaginative solution?**

No.

**Are there any other comments?**

In deciding on a course of action, you should apply the reasonable and informed third party test and consider if a reasonable and informed third party would likely conclude that your actions were appropriate. Conduct that might discredit the profession includes conduct that a reasonable and informed third party would be likely to conclude adversely affects the good reputation of the profession.

Documentation is encouraged so that there is a record of the issue, the detail of any discussions, and the matters taken into consideration in reaching your judgement and action.

## Scenario 10: We're all in this together

You enjoy your role as Financial Controller of Little Boxes plc – a public company and a large national house developer for whom you have worked for five years now. You have worked your way up through the organisation and are hopeful of a board appointment in the future. You certainly have been accepted as one of the team and the board members turn to you for advice on financial and commercial matters on a regular basis, as your boss, the Financial Director, spends a lot of time out the office with the Chief Executive. This has led to the development of close relationships with most of the senior team.

The Chair of Little Boxes plc, with whom you enjoy a good relationship, formerly held high profile roles in the City and has been a very good appointment for Little Boxes. One of the Chair's interests is corporate governance, in turn setting very high standards for Little Boxes.

Today you are signing-off a payments run and settle down to do some sample checking. You spot a payment to Plumbong Ltd – a company which does a lot of Little Boxes' work on their new-build houses - and decide to examine the back-up paperwork. The invoices making up the payment to Plumbong appear to be for a piece of private work for the Construction Director. With the papers is a copy of the recharge by Little Boxes to your colleague together with evidence of the Construction Director's payment. However, you are slightly puzzled as the Plumbong invoices contain no mention of several items that you know were included from your last visit to the Construction Director's house – such as a jacuzzi, high-tech shower fittings and a digital music system.

Worried, you ask for the other Plumbong invoices for this job, only to be told there are none. Shortly thereafter you are also told that a call has been made to Plumbong who confirm that there is nothing further outstanding.

While you are pondering this, the Construction Director arrives in your office, asking what your query is on their extension as they have heard from the contact at Plumbong that questions have been asked. You explain your concerns. The Construction Director looks embarrassed and explains to you that they have known the owner of Plumbong for many years and that the jacuzzi, shower attachments and the music system are a gift. It was also made clear that as the Construction Director has no part in the tendering procedures (which take place every twelve months), no undue influence is involved.

You gently explain the ethical issues involved, and the conflict with the company's statement on standards of behaviour in business.

The Construction Director looks even more embarrassed and points out that you had deliberately not been told so that you would not be compromised because you manage and supervise the annual tender process. In fact, the Construction Director added that several of your colleagues have, over the years, knowingly benefited from a similar arrangement, including the Chair. However, the tendering process appears to have been unaffected to date given your involvement.

The Construction Director leaves you to think this over. Personally, this is an embarrassment - it may be difficult for others to accept you were ignorant of the position when you were involved with the previous tendering process. It also potentially threatens your relationships with your colleagues. With the Chair, it will be a particularly difficult matter to raise, given their stance on business behaviour. You ponder the implications.

**What do you do now?**

## Scenario 10: Analysis

### **What are the readily-identifiable ethical issues for your decision?**

#### *For you personally*

You are aware of the provisions within the ICAS Code of Ethics in relation to Inducements, including Gifts And Hospitality.

Can you retain your integrity by putting in place additional internal controls and ignoring the transactions which have taken place to date?

What does it say about you as a Chartered Accountant if you deliberately withhold this information from the board? How does this affect your personal reputation?

If you decide that you need to inform the board of what has been happening – what are the likely implications for you? Have other members of the board benefited from such transactions? Is there a need for you to undertake a detailed review to determine the extent of these transactions or can you rely on what the Construction Director has told you?

Given the Chair's possible involvement, is there someone else in the organisation that you can discuss this issue with, such as the Senior Independent Director?

#### *For the company*

Do the culture and leadership of the company emphasise the importance of ethical behaviour and the expectation that employees will act ethically?

Is there a supportive environment for open discussion of practical dilemmas without a recriminatory, or blame, culture? Is there a whistleblowing/speak up mechanism? If so, do employees feel safe and able to trust in the authenticity of the speak up mechanism? Does the firm listen to its employees when they speak up and then act on what has been heard by investigating the issue?

Does the company's statement on standards of behaviour in business deal with how any breaches will be dealt with?

How can the company ensure that the risk of any future such transactions being entered into is minimised?

You know the importance of tone from the top, and that directors need to walk the talk with the company's stated values and standards being lived by them. Has the company considered the reputational damage that could be caused if this practice became public?

Are there any tax implications for the company?

### **Who are the key parties who can influence, or will be affected by, your decision?**

You; the Construction Director; the Chair; the other directors; the shareholders; the directors of Plumbroong Ltd; and potentially HMRC.

**What fundamental ethical principles for accountants are most applicable and is there an apparent conflict between them?**

<b>Integrity</b>	<p>How can you retain your integrity in this situation? Several board members have allegedly received similar benefits. Although no-one appears to have suffered as a result of these alleged benefits having been received – the tender process has not been distorted – can you merely keep quiet about what the Construction Director has told you and install further internal controls to reduce the risk of such transactions being entered into in the future?</p> <p>There is a need to demonstrate moral courage.</p>
<b>Objectivity</b>	<p>To what extent are you balancing your own (albeit unwitting) involvement and the need for the board to be made aware of these transactions? You cannot be influenced by your close relationship with some of the board members.</p>
<b>Professional competence and due care</b>	<p>Assumed.</p>
<b>Confidentiality</b>	<p>Assumed.</p>
<b>Professional behaviour</b>	<p>Certain directors appear to have personally benefited from the close relationship with one of your major suppliers. You were obviously unaware of this issue but now that you are, is there any alternative course of action other than full disclosure to the board of directors?</p> <p>There is a need to avoid any conduct that you know might discredit your own personal reputation, and ultimately the profession, and also that of your company.</p>

**Is there any further information (including legal obligations) or discussion that might be relevant?**

Is this an isolated case or have transactions of a similar type taken place with other suppliers? Does your company provide similar benefits to directors of customers/suppliers?

**Is there a conflict between the guardian and commercial strands of an accountant's responsibilities?**

It would appear not in this scenario. In this scenario the issue is that directors appear to have been receiving personal benefits from a major supplier.

**Based on the information available, is there scope for an imaginative solution?**

No.

**Are there any other comments?**

Has any thought been given to whether there are any potential tax consequences of such transactions for both the company and the individuals?

In deciding on a course of action, you should apply the reasonable and informed third party test and consider if a reasonable and informed third party would likely conclude that your actions were appropriate. Conduct that might discredit the profession includes conduct that a reasonable and informed third party would be likely to conclude adversely affects the good reputation of the profession. Documentation is encouraged so that there is a record of the issue, the detail of any discussions, and the matters taken into consideration in reaching your judgement and action.

## Scenario 11: Sale or no sale?

You are the recently appointed interim Financial Director (FD) in a small listed company abroad. You have only recently arrived in the country and were looking forward to spending more time sightseeing. You had registered with a local recruitment agency prior to leaving the UK and were most surprised to receive this offer of temporary employment so soon after arriving. Although you had initially thought of turning it down, you had come round to the idea of working the six months required and then rewarding yourself by spending the following six months travelling.

The company produces parts for machines which are used in the mining industry, but the company has been struggling of late. The previous FD had left the post last month due to ill health. The company's year-end had just passed and the company urgently needed someone to come in and fill the post on a temporary basis until the directors had the time to search for and appoint someone on a full-time basis.

So here you are, happy at gaining employment but still wishing that you had allowed yourself more time beforehand to enjoy the local area. However, it doesn't take long to get back into the swing of things. Unfortunately, it would appear that the previous FD was not the most organised and you are having difficulty tracking down a set of working papers to support the draft year-end accounts. After much searching, you finally find them and begin your review of the breakdown of the figures featured in the draft accounts.

During your review you discover reference to a small number of journals which have minimal supporting back-up. These journals, posted eight months ago, increase the sales figure significantly, and represent 23% of the company's reported turnover. The journals refer to the Lucan project, of which you have never heard, but you remind yourself that you are new to the company and decide to raise this issue with the Chief Executive.

The Chief Executive explains that the Lucan project relates to a one-off shipment of specialised parts to a company based overseas, adding that only a few people knew about this contract as apparently a number of countries have placed an embargo on supplying goods of this nature to businesses within this country. That is also why the normal sales process was not followed. Those in the know included the former FD. You thank the Chief Executive for enlightening you but then ask why payment has never been received for this order. The Chief Executive advises that no payment has been received so far, but that payment will be received in due course – the customers may be slow payers but they are very wealthy, and it is not in our interests to chase payment as this might impact on our healthy relationship and future orders. However, you must not mention this to anyone else.

You leave the room but are somewhat mystified. Sales appear to have been inflated by transactions out-with the company's normal customer base but for which payment has not yet been received. Have these sales actually taken place and, if so, has the company sold goods to an entity in another country which may be blacklisted by this country? Furthermore, will it ever get paid for the goods - if they have indeed been supplied? You are also aware that the Chief Executive has a very generous share options package which will be able to be exercised in a few months' time – does this have any impact on the situation?

**What do you do now?**

## Scenario 11: Analysis

### What are the readily-identifiable ethical issues for your decision?

#### *For you personally*

The ICAS Code of Ethics, which is substantively based on the International Ethics Standards Board for Accountants (IESBA) Code of Ethics, applies to members regardless of where they are working.

The fundamental ethics principle of Integrity states the following:

“111.1 A1 Integrity involves fair dealing, truthfulness and having the strength of character to act appropriately, even when facing pressure to do otherwise or when doing so might create potential adverse personal or organisational consequences.

*Fair dealing includes respecting values of equality, diversity and inclusion.*

111.1 A2 Acting appropriately involves:

- (a) Standing one's ground when confronted by dilemmas and difficult situations; or
- (b) Challenging others as and when circumstances warrant,

in a manner appropriate to the circumstances.”

And:

“R111.2 A professional accountant shall not knowingly be associated with reports, returns, communications or other information where the accountant believes that the information:

- (a) Contains a materially false or misleading statement;
- (b) Contains statements or information provided recklessly; or
- (c) Omits or obscures required information where such omission or obscurity would be misleading.”

How do you maintain your integrity in this scenario? The Chief Executive has informed you of sales in relation to a project for which there is a lack of supporting documentation and for which payment has not been received. Are you being told the truth? If you are, then how do you get the Chief Executive to face up to the need to chase payment from the customer? You have concerns that, even supposing the sales were indeed genuine, if the amount requires to be provided for then it will have a serious negative impact on the results for the year and hence the resulting share price.

In addition, the fundamental ethics principle of Professional behaviour states:

“R115.1 A professional accountant shall comply with the principle of professional behaviour, which requires an accountant to:

- (a) Comply with relevant laws and regulations;
- (b) Behave in a manner consistent with the profession's responsibility to act in the public interest in all professional activities and business relationships; and
- (c) Avoid any conduct that the accountant knows or should know might discredit the profession.”

Even if the sales were genuine is there still any requirement for you to report the sale of goods to a potentially blacklisted country? You need to understand your legal responsibilities in this regard, and there are also Responding to Non-compliance with Laws and Regulations (NOCLAR) provisions in the ICAS Code of Ethics.

You also need to remind the Chief Executive that the auditors will undoubtedly question these transactions.

The company's normal sales process was not followed in order to progress the Lucan project. Does your company have a code of conduct, or speak up policies and procedures, that provide guidance on such matters?

Is there someone else in the organisation that you can discuss this issue with, such as the Chair of the Board?

How will this impact your personal reputation as a Chartered Accountant if the transaction is not accounted for properly, or turns out to be illegal, and you did not deal with it appropriately?

**For the company**

Do the culture and leadership of the company emphasise the importance of ethical behaviour and the expectation that employees will act ethically?

Is there a supportive speak up environment to encourage open discussion of ethical dilemmas without a recriminatory, or blame, culture? Is there a whistleblowing/speak up mechanism? If so, do employees feel safe and able to trust in the authenticity of the speak up mechanism? Does the company listen to its employees when they speak up and then act on what has been heard by investigating the issue?

Has the company considered the reputational damage that could potentially be caused by this transaction?

**Who are the key parties who can influence, or will be affected by, your decision?**

You; the Chief Executive; the other directors; the former FD; shareholders; potential investors; the auditors; customers; suppliers; employees; and the government.

**What fundamental ethical principles for accountants are most applicable and is there an apparent conflict between them?**

<p><b>Integrity</b></p>	<p>How can you maintain your integrity without investigating this matter further?</p> <p>You cannot be associated with misleading information, or illegal transactions. There is a need to display ethical leadership and moral courage by standing one's ground and getting to the bottom of the matter even when doing so might create adverse personal consequences.</p> <p>You need to understand your legal responsibilities and legal entitlements in this regard, and there are also Responding to Non-compliance with Laws and Regulations (NOCLAR) provisions in the ICAS Code of Ethics.</p>
<p><b>Objectivity</b></p>	<p>Assumed, as you are new to the company. However, you must satisfy yourself that you are objective.</p>
<p><b>Professional competence and due care</b></p>	<p>Assumed.</p>
<p><b>Confidentiality</b></p>	<p>Assumed.</p>
<p><b>Professional behaviour</b></p>	<p>The need for you to investigate this matter further to arrive at the true position. Did the company make sales to an entity overseas? If so, there is a need to convince your Chief Executive that payment has to be chased or ultimately the debt may need to be provided for.</p> <p>Was there an embargo on trading goods with a business in this country? You need to confirm if you have any whistleblowing responsibilities.</p>

	<p>If you do nothing, you could be deemed complicit as well as being viewed as condoning any unethical behaviour. There is a need to avoid any conduct that you know might discredit your own personal reputation, and ultimately the profession, and also that of your company.</p> <p>The auditors will undoubtedly question these transactions.</p>
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**Is there any further information (including legal obligations) or discussion that might be relevant?**

Is any further information available about the customer concerned? Is there an embargo on exports to that country? What, if any, other paperwork exists to substantiate the sales made in relation to the Lucan project? Did the former FD have any share options or other financial incentives? Have similar transactions been posted in previous years?

**Is there a conflict between the guardian and commercial strands of an accountant's responsibilities?**

The guardian role is to report fairly the company's financial performance and position. Have the Chief Executive and former FD attempted to massage the company's financial statements for short-term commercial benefit?

**Based on the information available, is there scope for an imaginative solution?**

No.

**Are there any other comments?**

In deciding on a course of action, you should apply the reasonable and informed third party test and consider if a reasonable and informed third party would likely conclude that your actions were appropriate. Conduct that might discredit the profession includes conduct that a reasonable and informed third party would be likely to conclude adversely affects the good reputation of the profession.

Documentation is encouraged so that there is a record of the issue, the detail of any discussions, and the matters taken into consideration in reaching your judgement and action.

## Scenario 12: Silence is golden

You are the Financial Director of a large private construction company, Highway110 Ltd. The company undertakes major construction projects such as building new roads, motorways etc. Until last year the company had been very profitable but the economic downturn has started to hit it hard. The company's year-end was 31 August and the auditors were in during October to do their fieldwork. It is now December, and the auditors are coming in tomorrow for their closing meeting to discuss their main findings and any adjustments that will be required to the draft accounts.

You are aware of at least one significant issue which requires to be discussed at the meeting. This relates to the fact that a significant debtor as at 31 August, Dudsareus Ltd, has just recently been put into administration. Additionally, Dudsareus Ltd has been disputing the quality of the work and hence the actual amount due. No payments have been received from that customer post year-end. You are unaware as to whether the auditors are aware of this fact or not. If none of the debt is recovered then the balance sheet position at the year-end will move from a net assets position of £2.5m to £700,000.

What makes it worse is that the company has carried out further work for this client post year-end to the sum of £650,000. The consequences of this do not bear thinking about. You have not yet had time to update your projections to take account of the likely impact of this potential bad debt and of the worsening economic environment which has seen many potential road upgrades postponed. The projections which the auditors had reviewed in October in your opinion now appear to be very optimistic. You believe that they will need to be updated internally and a copy given to the auditors too.

Just as you are thinking this over the Chief Executive (CEO) comes into your office and asks whether you have updated the accounts and projections to take account of the new information. You advise that you are just about to do so and the figures will be available later in the day. The CEO says there is no need and that what the auditors already have is sufficient for their purposes (projections are a guesstimate at the best of times) and no adjustments should be made for the debtor which has gone into administration. You highlight that the auditors will demand that the year-end debt is provided for. Additionally, you inform the CEO that the projections will require to be updated as they now look overly optimistic given what has happened in the past few days, with your largest debtor now in administration and road contracts which you had budgeted on winning being postponed.

The CEO replies that:

*"The past year has been very challenging and the bank is putting pressure on me to send them a copy of the audited financial statements at the earliest possible opportunity. If the financial statements do not show the company to be in reasonable health then negotiating our new funding facilities is going to be at best very difficult. Remember, it is not only your job that is on the line – think of all the other 60 or so employees and their families. We will be able to trade through this downturn if we are only given a chance. It is not our fault that we find ourselves in this position - don't let them pull the rug from under our feet."*

**What do you do now?**

## Scenario 12: Analysis

### What are the readily-identifiable ethical issues for your decision?

#### *For you personally*

The fundamental ethics principle of Integrity states the following:

“111.1 A1 Integrity involves fair dealing, truthfulness and having the strength of character to act appropriately, even when facing pressure to do otherwise or when doing so might create potential adverse personal or organisational consequences.

*Fair dealing includes respecting values of equality, diversity and inclusion.*

111.1 A2 Acting appropriately involves:

- (a) Standing one’s ground when confronted by dilemmas and difficult situations; or
- (b) Challenging others as and when circumstances warrant,

in a manner appropriate to the circumstances.

*111.1 A3 It follows that a professional accountant’s advice and work must be uncorrupted by self-interest and not be influenced by the interests of other parties.*

R111.2 A professional accountant shall not knowingly be associated with reports, returns, communications or other information where the accountant believes that the information:

- (a) Contains a materially false or misleading statement;
- (b) Contains statements or information provided recklessly; or
- (c) Omits or obscures required information where such omission or obscurity would be misleading.”

Can you follow the CEO’s orders and not update the accounts and projections? Undoubtedly, the CEO is correct in that projections are a best guess of the future. However, they need to be based on the most up to date and best information available. To fail to take account of current events could be construed as misleading the auditors.

Under Section 499 of the Companies Act 2006, the auditor has a general right to information and explanations from directors as necessary for the performance of their duty. What information will you disclose to the auditors?

You will also have to sign a management representation letter for the auditors confirming that you have provided them with all relevant information.

If you knowingly withhold relevant information from the auditors, how will this impact your reputation as a Chartered Accountant if it is subsequently discovered?

Is there someone else in the organisation that you can discuss this issue with, such as another director or the Chair of the Board?

#### *For the company*

Do the culture and leadership of the company emphasise the importance of ethical behaviour and the expectation that employees will act ethically?

Is there a supportive speak up environment to encourage open discussion of ethical dilemmas without a recriminatory, or blame, culture? Is there a whistleblowing/speak up mechanism? If so, do employees feel safe and able to trust in the authenticity of the speak up mechanism? Does the company listen to its employees when they speak up and then act on what has been heard by investigating the issue?

What will be the impact on the company's reputation if this all comes to light at a later date?

**Who are the key parties who can influence, or will be affected by, your decision?**

You; the Chief Executive; your other fellow directors; the shareholders (if different from the directors); the employees; the auditors; the bank; and any other creditors.

**What fundamental ethical principles for accountants are most applicable and is there an apparent conflict between them?**

<b>Integrity</b>	<p>Can you preserve your integrity if the information presented to the auditors is not up to date and does not reflect recent events?</p> <p>You cannot be associated with misleading information. There is a need to display ethical leadership and moral courage by standing one's ground even when doing so might create adverse personal and organisational consequences.</p> <p>Tone from the top is critical. In the UK, under Section 172 of the Companies Act 2006, you are aware that as a director of a company you must act in the way which would be most likely to promote the success of the company and, in so doing, have regard to other matters impacting stakeholders, including considering the likely consequences of any decision in the long term and maintaining a reputation for high standards of business conduct. If you bow to the CEO's demands, are you fulfilling your duties?</p>
<b>Objectivity</b>	<p>The need to set aside the potential consequences of Dudsareus Ltd's administration (in a worst-case scenario the bank might withdraw/not renew their funding), and the pressure of the potential impact on the company and you personally, to prepare financial information which takes account of the implications.</p>
<b>Professional competence and due care</b>	<p>Assumed.</p>
<b>Confidentiality</b>	<p>Assumed.</p>
<b>Professional behaviour</b>	<p>You need to take into consideration your responsibilities to the public interest. The need to prepare realistic projections based on the most up to date information available plus the need to comply with legal requirements in relation to the provision of information to auditors.</p> <p>There is also a need to avoid any conduct that you know might discredit your own reputation, and also that of the profession. If you carry out the CEO's orders, you could be viewed as condoning unethical behaviour.</p>

**Is there any further information (including legal obligations) or discussion that might be relevant?**

What is the likelihood of getting repayment of any of the amount due from Dudsareus Ltd?

**Is there a conflict between the guardian and commercial strands of an accountant's responsibilities?**

The guardian role would place emphasis on producing the best information possible for decision-making purposes for all parties concerned. In this scenario, the commercial pressure is likely to conflict with this need for transparency.

**Based on the information available, is there scope for an imaginative solution?**

No.

**Are there any other comments?**

In deciding on a course of action, you should apply the reasonable and informed third party test and consider if a reasonable and informed third party would likely conclude that your actions were appropriate. Conduct that might discredit the profession includes conduct that a reasonable and informed third party would be likely to conclude adversely affects the good reputation of the profession.

Documentation is encouraged so that there is a record of the issue, the detail of any discussions, and the matters taken into consideration in reaching your judgement and action.

## Scenario 13: Judge and jury

You are an audit partner in a local office of a large accountancy firm. One of your biggest clients is Highway110 Ltd, a company which undertakes major construction projects such as building new roads, motorways etc. Until last year the company had been very profitable, but the economic downturn has started to hit the company hard. You are preparing for the final audit meeting with the client at which you will discuss your main findings and any adjustments which are required to the accounts. The big issue is clear “Is the company still a going concern?” This issue has caused you many sleepless nights of late – you like the people who run this company and you are well aware of the impact that the closure of this business would have on the local community. You are also aware that it would most likely have a negative impact on your immediate career prospects should you decide to qualify your opinion.

The company’s year-end was 31 August and your firm carried out most of its work during October. At that time everything looked fine, however, recently you noticed that one of the company’s major customers, Dudsareus Ltd had been placed in administration. Although you are not sure of the amount of work carried out post year-end, you do know that further work was carried out for this client. You are also aware that at the company’s year-end Dudsareus Ltd owed Highway110 Ltd £1.8m. You were aware that Dudsareus Ltd were disputing the amount due but such a stalling tactic was commonplace in the industry – you had fully expected the vast majority of the sum due to be paid. This is all now in doubt.

At the meeting with the client, you are surprised to find that the Financial Director is not able to attend the meeting due to ill health. After the usual small talk, you ask whether the client has made any provision in relation to the amount due from Dudsareus Ltd and also whether it has updated its projections to take account of this. The company’s Chief Executive (CEO) advises you that this will not be necessary as the Administrator has advised that Dudsareus Ltd will be able to meet all of its current outstanding debts. You advise that you sincerely hope that this will indeed be the case but that you will need to check with the Administrator directly. The CEO asks why this is necessary as a letter can be provided to that effect. You advise that you have to do your job.

The CEO stands up and starts shouting:

*“You have been our auditor for years, at the first sign of trouble you appear willing to help the bank shut our doors, the effect of which will be a disaster for the local community and also for your firm. Many of your neighbours work for this company, what will they think, what will their children think? This will impact on your own children at school. All we are asking for is time – to let us trade out of this situation. As far as I am concerned, the accounts will not be altered. You can do as you wish – however, remember what I have told you – local communities need businesses like ours. I will let them know who caused the closure of this business, if that is what it comes to!”*

**What do you do now?**

## Scenario 13: Analysis

### What are the readily-identifiable ethical issues for your decision?

#### *For you personally*

Is the Chief Executive serious about the proposed intentions which could affect your family?

The need to be truthful and honest with your client. You have a responsibility to issue an opinion on the truth and fairness of the financial statements on behalf of your firm, and auditing standards require you to gather sufficient evidence to allow you do this.

If the full debt due from Dudsareus Ltd has to be written off, what would the current financial position of the company be?

Are the other directors, and particularly the Financial Director, aware of the position being taken by the Chief Executive, and are they in agreement with his proposals?

Is there someone within your firm with whom you can discuss the issue - another partner or the Ethics Partner?

#### *For your firm*

Even if this particular matter is resolved, given the Chief Executive's questionable integrity, is this a client you would wish to continue to be involved with from the firm's risk and reputational perspective?

### Who are the key parties who can influence, or will be affected by, your decision?

You; your fellow partners; the Chief Executive and other directors of Highway110 Ltd; the shareholders (if different from the directors); the employees; the bank; any other creditors; and possibly customers.

### What fundamental ethical principles for accountants are most applicable and is there an apparent conflict between them?

<b>Integrity</b>	The need to be truthful and honest with your client. You have a responsibility to issue an opinion on the truth and fairness of the financial statements, and auditing standards require you to gather sufficient and appropriate evidence to allow you to do this.
<b>Objectivity</b>	It is imperative that you retain your objectivity in order that you can fulfil your role of auditor.
<b>Professional competence and due care</b>	Assumed.
<b>Confidentiality</b>	Assumed.
<b>Professional behaviour</b>	The need to follow all relevant standards. This will require you to obtain sufficient and appropriate audit evidence on which to base your audit opinion. If the client attempts to prevent you from obtaining the necessary evidence, then the repercussions should be explained to the client.

	There is a need to avoid any conduct that you know might discredit your own personal reputation, your firm's reputation, and ultimately that of the profession.
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**Is there any further information (including legal obligations) or discussion that might be relevant?**

Information publicly available on Companies House in the form of the Administrator's proposals and update reports could be reviewed before approaching the Administrator directly.

Gaining an understanding of the likely dividend prospects that the Administrator expects. Additionally, what other contracts is the client currently working on and how profitable are they? Likewise, what other contracts is the client contracted to commence work on and how profitable are they forecast to be?

Whether the level of financial difficulty being faced by Highway110 Ltd is such that accusations of wrongful trading\* could be made against the directors. The Board of Directors should be encouraged to seek early advice from an insolvency practitioner as well as documenting their consideration and conclusions regarding the company's financial position and viability on a regular basis.

**Is there a conflict between the guardian and commercial strands of an accountant's responsibilities?**

There may be commercial pressures to help the client to maintain its funding package with the bank. However, the guardian role requires that the auditor has to report on whether the financial statements show a true and fair view of the company's financial performance and position.

**Based on the information available, is there scope for an imaginative solution?**

No.

**Are there any other comments?**

In deciding on a course of action, you should apply the reasonable and informed third party test and consider if a reasonable and informed third party would likely conclude that your actions were appropriate. Conduct that might discredit the profession includes conduct that a reasonable and informed third party would be likely to conclude adversely affects the good reputation of the profession.

Given the importance of this matter to the audit, there is a need to document the issue, the details of any discussions, and the matters taken into consideration in reaching your judgement and action.

**\* Wrongful trading**

In trading conditions where the client company's solvency is not in doubt, its directors are acting for the benefit of the company and its shareholders.

However, if it becomes apparent that the company is insolvent or at serious risk of insolvency, the focus of the directors' duties should switch, and their overriding responsibility is to act in the best interests of the creditors of the company.

If the company is insolvent and its directors know (or ought reasonably to conclude) that it cannot avoid insolvent liquidation or administration, they are under a duty to take every step a reasonably diligent person would take to minimise potential loss to the company's creditors. Failing that, they risk personal liability for any worsening of the company's financial position.

Potential for liability arises at the point that the directors know or ought to know that there is no reasonable prospect of avoiding insolvent liquidation or administration based on both the company's current position and its realistic prospects.

Directors of struggling companies must attempt to strike a balance between two courses of action. If they conclude that an insolvency process is required, they must start that process early enough to both protect creditors so far as possible and to avoid the risk of personal liability.

However, they must allow time to explore the options for the company's survival as exhaustively as possible. Directors' responsiveness to events will be important in determining if liability arises, as will whether their assessment of the company's prospects is ultimately considered credible. Directors should take care to gather all relevant information and continually re-evaluate their options considering professional advice and experience.

Highway110 Ltd may not be insolvent or at serious risk of insolvency at this point, however your firm should advise the client company's directors to consider some key points:

- Is the company 'insolvent', whether on:
  - A cash flow basis – i.e. it cannot pay its debts as they fall due; or
  - On a balance sheet basis – i.e. its liabilities exceed its assets.
- If the company is insolvent, is there a reasonable prospect of avoiding an insolvent liquidation or administration?
- Is there funding available or arrangements that have a reasonable prospect of being agreed with stakeholders or other third parties which will prevent insolvency?

Further, your firm should set out some basic practical steps for the directors of the client company to consider:

- Take professional advice – from an insolvency practitioner if necessary. The advice that directors receive at the time will be of significance in assessing whether they could properly take the view that insolvent liquidation or administration could be averted.
- Ensure there is a paper trail evidencing all key business decisions which impact creditors. It is vitally important that all decision-making is fully documented.
- Back up with financial information and forecasts. Cashflow forecasts should focus on the medium to longer term backed up by separate short-term forecasts where the cashflow situation is more critical. Stress test the assumptions made within the financial forecasts to ensure that they are realistically achievable.
- Discuss with stakeholders where this is feasible. There should be a clear understanding of the attitudes of stakeholders and the impact that they might have on the business. It is particularly important to consider, for instance, the attitudes of banks and other finance providers, of key suppliers and of equity shareholders in the business.
- Regular board meetings should be held, and documented, to continually assess the viability of the business.

## Scenario 14: Deal or no deal?

You are a salaried corporate finance partner in a mid-tier accountancy firm, Hip Hop Ska & Co., that also undertakes audits. The current economic climate is such that the number of deals taking place has fallen significantly and both current work and prospects in the pipeline are low – the mergers and acquisitions (M&A) market has all but disappeared – you have never known it to be so inactive. As a result of the economic conditions your firm is currently undertaking a cost review exercise and it is rumoured that the headcount – both staff and salaried partners – will be reduced significantly. The mood in the office is apprehensive, as salaried partners and staff worry about their positions. The Managing Partner has issued an edict encouraging partners and staff to work longer hours and chase all potential business opportunities.

You have been working as an adviser to a significant non-audit, owner-managed business client of the firm, Nice and Easy Ltd. The company is large in size and, although like most businesses they are finding trading conditions difficult, they are managing to keep their head above the turbulent water. However, a number of years ago the company branched into another area in which it set up a subsidiary company, Rhythm Blues & Punk Ltd. The subsidiary has performed steadily but the directors now feel that for this subsidiary to grow further it needs additional capital. The directors have decided that providing additional capital at this point in time does not feature in their current strategic plans and have therefore decided to dispose of Rhythm Blues & Punk Ltd. Although the directors appreciate that economic conditions are difficult and uncertain, they are very keen that the subsidiary is not sold at a “fire sale” price. If push comes to shove, they would rather retain Rhythm Blues and Punk Ltd than sell it for significantly less than it is worth. The subsidiary has now been on the market for several weeks, attracting a fair degree of interest from potential purchasers. In the last fortnight however, a frontrunner, Alternative Country Ltd, has emerged and following appropriate due diligence, the deal is now nearing completion.

Your fees have been agreed in advance on a contingent fee basis, meaning that the fee for the transaction will be based on a percentage of the consideration achieved and you will receive no fee if the deal does not proceed. In your mind, this deal must be completed – you cannot afford to write off the amount of time you have now spent working on this transaction – successful completion and the associated fees attained will provide you with some time to get further prospective transactions in the pipeline and therefore safeguard your position at the firm at least in the short-term – that may be enough for it to ride out the current economic storm.

On the day the deal is due to be completed, you are summoned by your Managing Partner, who is very impressed by the manner in which you have led this assignment – all that is needed now is for both parties, the buyer and seller, to sign on the dotted line. Ominously, however, the Managing Partner adds that this deal is now vital to the survival of the firm’s corporate finance department – the firm has already seen a couple of mooted M & A transactions fall by the wayside in recent days – the firm just could not afford another one – it would not just be your job that would be on the line.

You then leave for the meeting with your client with the words of your Managing Partner ringing in your ears “a deal must be done!” On arrival at the meeting which you had hoped would be a straightforward dotting of the “i’s” and crossing of the “t’s”, you’re aghast to find out that at the eleventh hour, the prospective buyer, Alternative Country Ltd, has substantially lowered its offer for your client’s business, citing the downturn in the economy – they are a bit late, you think to yourself and you wonder whether this has been a carefully orchestrated ploy to try and force your client’s hand – and the other prospective bidders have long since left the table. You appreciate that if your client still wants to go ahead with this transaction then they will have to lower their expectations. However, your experience and skill as a corporate finance adviser tell you that Alternative Country Ltd’s revised offer undervalues the target company. Your first course of action is to try and get the purchaser to restore their offer back to their original intended amount. However, you are unsuccessful at negotiating an increase in the price on behalf of your client. The purchasers are adamant – this is a take it or leave it final offer.

You update your client, at which point the directors ask you whether the prospective purchaser's offer represents a fair value for the subsidiary in the current economic climate, noting that they will go with your recommendation.

**What do you do now?**

## Scenario 14: Analysis

### What are the readily-identifiable ethical issues for your decision?

#### *For you personally*

The fundamental ethics principle of Integrity states the following:

“111.1 A1 Integrity involves fair dealing, truthfulness and having the strength of character to act appropriately, even when facing pressure to do otherwise or when doing so might create potential adverse personal or organisational consequences.

*Fair dealing includes respecting values of equality, diversity and inclusion.*

111.1 A2 Acting appropriately involves:

- (a) Standing one’s ground when confronted by dilemmas and difficult situations; or
- (b) Challenging others as and when circumstances warrant,

in a manner appropriate to the circumstances.”

In addition, the fundamental ethics principle of Objectivity states the following:

“R112.1 A professional accountant shall comply with the principle of objectivity, which requires an accountant to exercise professional or business judgement without being compromised by:

- (a) Bias;
- (b) Conflict of interest; or
- (c) Undue influence of, or undue reliance on, individuals, organisations, technology or other factors.”

The purchaser has made a revised, reduced, offer for your client’s subsidiary business. You don’t believe this to be a reasonable one for the business, however, have you given sufficient consideration to the state of the economy when arriving at your valuation?

There is a significant self-interest threat to objectivity as a result of the contingent fee basis of this engagement. Given the firm’s current financial difficulties, there is considerable pressure on you personally and your firm for this deal to go through. Can you properly manage this without it impacting on your professional judgement?

Is there another partner in the corporate finance department with whom you can discuss the valuation? Is there an Ethics Partner with whom you could discuss the issue? Given the lateness of the revised offer, can you ask the directors of Nice and Easy Ltd for further time to properly consider the reduced offer and approach previously interested parties?

How will it affect your reputation in the long term, if, in the face of pressure from your Managing Partner, you hastily advise your client to accept the reduced offer and it is subsequently found that another previously interested party would have purchased the company for a higher price?

#### *For your firm*

Do the culture and leadership of the firm emphasise the importance of ethical behaviour and the expectation that everyone in the firm will act ethically?

Is there a supportive speak up environment to encourage open discussion of ethical dilemmas without a recriminatory, or blame, culture? Can you discuss the situation with the appointed Ethics Partner?

How will it affect your firm’s reputation in the long-term if the firm is subsequently discovered to have put its own interests before that of its client?

**Who are the key parties who can influence, or will be affected by, your decision?**

You; potentially your family; your fellow partners and staff; your client; and the prospective purchaser.

**What fundamental ethical principles for accountants are most applicable and is there an apparent conflict between them?**

<b>Integrity</b>	<p>You know that the directors of Nice and Easy Limited would rather retain Rhythm Blues and Punk Ltd than sell it for significantly less than it is worth.</p> <p>There is a need to be open and honest with your client. Is the prospective purchaser's offer reasonable in the current economic climate?</p> <p>The late offer has put you under pressure to make a decision quickly without due care.</p> <p>Do you tell your client that your 'gut' feeling is that this late offer undervalues their company? Could your client give you further time to consult with colleagues and give due consideration to the current economic climate?</p> <p>There is a need for moral courage to ensure your client receives a fair price for their business.</p>
<b>Objectivity</b>	<p>The contingent basis of your fee is a significant threat to your objectivity. How do you ignore the commercial pressures which you have been put under?</p>
<b>Professional competence and due care</b>	<p>Assumed.</p>
<b>Confidentiality</b>	<p>Assumed.</p>
<b>Professional behaviour</b>	<p>The need to disregard anything other than the task at hand which is advising your client on the proposed sale of their subsidiary company. Given the economic conditions, is the prospective purchaser's offer reasonable?</p> <p>There is also a need to avoid any conduct that you know might discredit your own reputation, and also that of the profession.</p>

**Is there any further information (including legal obligations) or discussion that might be relevant?**

No.

**Is there a conflict between the guardian and commercial strands of an accountant's responsibilities?**

The commercial pressure which you are under to force through the deal conflicts with the guardian role, which in this case requires you to act in the best interests of your client regardless of whether this may not appear to be in your or your firm's short-term best interests.

**Based on the information available, is there scope for an imaginative solution?**

An approach could potentially be made to the other previously interested parties to see whether they would still be willing to discuss a potential purchase, apprising Alternative Country Ltd accordingly.

**Are there any other comments?**

The case study highlights the dangers from both a firm and client perspective of agreeing to undertake an engagement on a contingent fee basis. There are specific provisions within Section 330 of the ICAS Code of Ethics in relation to contingent fees.

In deciding on a course of action, you should apply the reasonable and informed third party test and consider if a reasonable and informed third party would likely conclude that your actions were appropriate. Conduct that might discredit the profession includes conduct that a reasonable and informed third party would be likely to conclude adversely affects the good reputation of the profession.

Documentation is encouraged so that there is a record of the issue, the detail of any discussions, and the matters taken into consideration in reaching your judgement and action.

## Scenario 15: Everyone's a winner

You are a recently qualified CA, working in the insolvency department of a medium-sized accountancy firm. You are currently working on the sale of a piece of land that belonged to a company that has gone into liquidation. The sale of the land stipulates that bids have to be submitted via email by midday that day. A few bids have been received but not as many as were anticipated. You are sitting drinking a cup of hot chocolate eagerly awaiting the "High Noon" deadline in order that you can collect any further bids and get out for your lunch.

At 11.30am you receive a call from a prospective buyer who wishes to remain anonymous. The caller informs you that they are very interested in the land but do not want to have to pay over the odds to ensure that they get it. Therefore, they make the following proposition to you:

They are willing to pay a premium of 15% above the highest bid received by 11.55am provided they are informed beforehand of the highest bid received.

The caller advises that this way everyone wins explaining succinctly as follows:

*"Your firm and ultimately the bank win because a higher fee is received for the asset in question, I win because I do not have to make an unnecessarily high blind bid and you will also be rewarded by me for your hard work."*

The caller reiterates that this is the most effective outcome for all parties concerned and that your boss will be delighted that a last-minute offer has at least ensured a reasonable return for the asset in question. The bank will also be very pleased as this sale will increase its level of return on the debt outstanding.

You advise the caller that this is not the way that you or your firm do business and that if they want to attempt to purchase the land then they should follow the required procedure of the sale and email their bid prior to the midday deadline.

The caller advises that they respect your integrity but advise that this type of activity is commonplace in the industry and insinuates without naming names that other more senior personnel within your firm have taken advantage of their very generous financial terms in the past. Furthermore, the bank is unlikely to be happy if it was to find out that your firm had rejected a higher bid than what was eventually obtained for the asset. This could have a serious impact on any future work being awarded to your firm and your own career would suffer as a result.

The caller then advises that they will phone you back in five minutes for a decision as to whether you will accept their proposition. You do not get a chance to reply, as the caller then hangs up.

**What do you do now?**

## Scenario 15: Analysis

### What are the readily-identifiable ethical issues for your decision?

#### *For you personally*

The fundamental ethics principle of Integrity states the following:

“111.1 A1 Integrity involves fair dealing, truthfulness and having the strength of character to act appropriately, even when facing pressure to do otherwise or when doing so might create potential adverse personal or organisational consequences.

*Fair dealing includes respecting values of equality, diversity and inclusion.*

111.1 A2 Acting appropriately involves:

- (a) Standing one’s ground when confronted by dilemmas and difficult situations; or
- (b) Challenging others as and when circumstances warrant,

in a manner appropriate to the circumstances.”

In addition, the fundamental ethics principle of Professional behaviour states:

“R115.1 A professional accountant shall comply with the principle of professional behaviour, which requires an accountant to:

- (a) Comply with relevant laws and regulations;
- (b) Behave in a manner consistent with the profession’s responsibility to act in the public interest in all professional activities and business relationships; and
- (c) Avoid any conduct that the accountant knows or should know might discredit the profession.”

The first issue is to determine whether you immediately raise this with someone senior before the caller phones back?

Secondly, when the caller does phone back do you transfer the call to someone more senior, or do you get someone (preferably someone more senior) to listen in to the conversation as a witness, or do you merely deal with the caller yourself?

The third issue is whether you raise sensitively and professionally, the caller’s accusation relating to senior staff internally within your firm. Consideration should be given to discussing the matter with your firm’s Ethics Partner, if there is one, or if not, with a trusted partner within the firm.

Also, by saying “*you will also be rewarded by me for your hard work*” the caller is clearly showing an intent to improperly influence your behaviour and you would not be permitted by the Code of Ethics, and indeed the law, to accept this inducement.

A lapse in integrity is a significant issue. How will it affect your personal reputation if you do not act appropriately in these circumstances?

#### *For your firm*

Do the culture and leadership of the firm emphasise the importance of ethical behaviour and the expectation that employees will act ethically?

Is there a supportive speak up environment to encourage open discussion of ethical dilemmas without a recriminatory, or blame, culture? Is there a whistleblowing/speak up mechanism? If so, do employees feel safe and able to trust in the authenticity of the speak up mechanism? Does the firm listen to its employees when they speak up and then act on what has been heard by investigating the issue?

What will be the impact on the firm's reputation if it comes to light at a later date that individuals within the firm manipulate the tender process, and have possibly been accepting bribes?

**Who are the key parties who can influence, or will be affected by, your decision?**

You; the caller; the partners and staff in your firm; the bank; other creditors; and other prospective buyers.

**What fundamental ethical principles for accountants are most applicable and is there an apparent conflict between them?**

<p><b>Integrity</b></p>	<p>Can you retain your integrity if you distort the tender process? How do you deal with the caller's allegations about more senior personnel within your firm?</p> <p>There is a need to display ethical leadership and moral courage by standing one's ground and ensuring that a fair bidding process, as stipulated within the terms of the sale, takes place; that any 'reward' offered by the caller is not accepted; and by speaking up about the alleged misconduct within the firm in relation to previous tender processes.</p>
<p><b>Objectivity</b></p>	<p>The need to consider the interests of all of the other parties involved in the tender process. You cannot let the suggested 'reward' from the caller influence your judgement.</p>
<p><b>Professional competence and due care</b></p>	<p>Assumed.</p>
<p><b>Confidentiality</b></p>	<p>How could one justify divulging confidential information to the caller in the interests of maximising the selling price of the land?</p>
<p><b>Professional behaviour</b></p>	<p>You must comply with the law. Accepting a bribe would be illegal.</p> <p>You also have to handle the client's allegations sensitively and professionally. You have no knowledge as to the accuracy of the allegations made by the caller.</p> <p>If you do not challenge the firm, by raising these allegations within the firm, and it is subsequently discovered that you were aware of them and did nothing, you could be viewed as deemed complicit in the activity as well as condoning unethical behaviour within the firm.</p> <p>There is a need to avoid any conduct that you know might discredit your own, and your firm's, reputation, and also that of the profession.</p>

**Is there any further information (including legal obligations) or discussion that might be relevant?**

All relevant information appears available, however do you need to confirm that all bids have to be received by email by midday and there is absolutely no flexibility with this process?

In addition, given the buyer wants to be anonymous how can that be dealt with as you have no idea on the source of money, their ability to complete transaction, the need for proof of funds, diligence on buyer etc.

Is it worth trying to ask the caller "how did this work in the past" to see if you can find out anything. If the caller does have a contact in the firm who works like this why is he calling you?

**Is there a conflict between the guardian and commercial strands of an accountant's responsibilities?**

From the information available, the firm and the bank would appear to be better off commercially if the information is divulged, although this is not certain as a late bid from another prospective buyer may yet be received after 11.55am but prior to the noon deadline. The guardian aspect in this scenario is to ensure that a fair tender process is held which appears to be in conflict with the short-term commercial pressure.

**Based on the information available, is there scope for an imaginative solution?**

No.

**Are there any other comments?**

In deciding on a course of action, you should apply the reasonable and informed third party test and consider if a reasonable and informed third party would likely conclude that your actions were appropriate. Conduct that might discredit the profession includes conduct that a reasonable and informed third party would be likely to conclude adversely affects the good reputation of the profession.

Documentation is encouraged so that there is a record of the issue, the details of any discussions, and the matters taken into consideration in reaching your judgement and action.

## Scenario 16: Should you go there?

You are in the middle of your first year as a partner in the accounting firm which specialises in IT related work. You had been brought in as a partner, having trained with another firm, and you still feel you have something to prove to the more experienced partners who have worked in the firm for far longer than you.

Through contacts, you bid for, and win, a contract to work with the health ministry of an overseas country which is a key ally of the UK, but which is not a democracy and has been the subject of allegations.

You are delighted at this substantial win and the possible follow-on opportunities. The Senior Partner congratulates you when you bump into each other in the office the day after you'd heard the good news.

You are sitting in your office still feeling quite happy with yourself when two of your firm's key members of staff walk in. You have worked well with them both before on other projects, and you respect their opinions. Unfortunately, however, you can see from the look on their faces that they are not happy.

They say that they will not work on the contract because the technology, which will be used to monitor health, could also be used for general population surveillance.

You had bid for this contract on the basis that your product would be used to monitor health. You hadn't considered that it had the capability to be used for other purposes. Your Senior Partners had been so keen for you to win this contract and, in your enthusiasm to impress them, you realise you may not have given full consideration to your firm's involvement with a questionable government, and possibly made an error of judgement. You get a sinking feeling in your stomach.

**What do you do now?**

## Scenario 16: Analysis

**What are the readily-identifiable ethical issues for your decision?**

### *For you personally*

The ICAS Code of Ethics states the following in relation to the fundamental ethics principle of Integrity:

“111.1 A1 Integrity involves fair dealing, truthfulness and having the strength of character to act appropriately, even when facing pressure to do otherwise or when doing so might create potential adverse personal or organisational consequences.

*Fair dealing includes respecting values of equality, diversity and inclusion.*

111.1 A2 Acting appropriately involves:

- (a) Standing one’s ground when confronted by dilemmas and difficult situations; or
- (b) Challenging others as and when circumstances warrant,

in a manner appropriate to the circumstances.”

The fundamental ethics principle of Professional behaviour states:

“R115.1 A professional accountant shall comply with the principle of professional behaviour, which requires an accountant to:

- (a) Comply with relevant laws and regulations;
- (b) Behave in a manner consistent with the profession’s responsibility to act in the public interest in all professional activities and business relationships; and
- (c) Avoid any conduct that the accountant knows or should know might discredit the profession.”

You should have performed due diligence on the capabilities of the IT system before agreeing to pursue the appointment.

Were the more senior partners aware that the technology could be used for general population surveillance but kept quiet because they wanted to win the client?

There are no legal reasons you cannot do this work, but should you? Can you engage with a client if you have concerns that they might use your product inappropriately? Can you engage with a client if you suspect that your product might be used for illegal purposes? How can you say now that you do not want to engage with the client?

Can you do anything to monitor the software to restrict its use?

How will this impact your personal reputation?

While you have won the tender, have you actually contracted yet? Is there potential to withdraw - what would the implications be for your reputation if you did this? Will they be worse if you proceed?

Your Senior Partners may be happy with you in the short-term if you continue to go ahead with the engagement, but if it turns out your staff members are correct and you ignored their concerns, your reputation could be irreparably damaged in the long-term. Monitoring would not be illegal in the overseas country as it’s not a democracy but you know if the press get hold of the story there will be a huge amount of adverse publicity for your firm.

Is there someone within your firm with whom you can discuss the issue - another partner or the Ethics Partner?

Organisations need their people to speak up if they have concerns, to ensure that issues are dealt with at the earliest opportunity before they escalate, but people need to feel comfortable that they will be supported, and that they will not suffer any detriment by speaking up. It can often be difficult for people to speak up – it takes courage. Regardless of your concerns around how you will resolve this matter, you have a responsibility to your staff to show your appreciation to them for raising their concerns. You need to listen to them, to investigate their concerns promptly and then provide feedback on how the matter has been addressed. If people feel that speaking up would be futile, they will not put themselves at risk by reporting. You need to ensure that there will be no retaliation against your staff for speaking up - negative consequences on their career or their remuneration.

**For the firm**

Do the culture and leadership of the firm emphasise the importance of ethical behaviour and the expectation that everyone will act ethically? Is there a supportive environment to encourage open discussion of ethical dilemmas without a recriminatory, or blame, culture? Do employees feel safe and able to trust in the authenticity of the speak up mechanism? Does the firm listen to its employees when they speak up and then act on what has been heard by investigating the issue?

Has the potential reputational damage to the firm been considered if your IT is used for unethical purposes by your client? If you provide a government with the IT capabilities to use surveillance on their population, even if your legal contract says otherwise, can you be implicated in the unethical behaviour? Should you withdraw from the engagement now rather than wait until your firm is implicated in a scandal at a later date?

**Who are the key parties who can influence, or will be affected by, your decision?**

You; your fellow partners; your employees; the client; and the UK government.

**What fundamental ethical principles for accountants are most applicable and is there an apparent conflict between them?**

<b>Integrity</b>	<p>There is a need for you to determine the capabilities of the technology and whether the output from the technology can only be used for the purpose intended in your contract.</p> <p>You may have to admit to having made an error of judgement by not carrying out this due diligence before seeking the contract. There is a need to display ethical leadership and moral courage by getting to the bottom of the matter even when doing so might now create adverse personal consequences.</p>
<b>Objectivity</b>	<p>The ability for your judgement not to be influenced by your relationship with the other partners, by concerns over the personal embarrassment, or loss of your employment.</p>
<b>Professional competence and due care</b>	<p>Assumed.</p>
<b>Confidentiality</b>	<p>Assumed.</p>
<b>Professional behaviour</b>	<p>You need to take into consideration your responsibilities to the public interest.</p> <p>If you do nothing, you could be deemed complicit in this activity as well as being viewed as condoning your firm’s IT systems being used by a government to monitor their population.</p> <p>There is a need to avoid any conduct that you know might discredit your own reputation, your firm’s reputation, and also that of the profession.</p>

**Is there any further information (including legal obligations) or discussion that might be relevant?**

You know the importance of speak up mechanisms in organisations, allowing issues to be dealt with at the earliest opportunity before they escalate. You understand it must have been difficult for your staff to speak up about their concerns and that there is therefore a need for you to listen to them, and to investigate and get a better understanding of the capabilities of the IT and the output from it, so that such concerns continue to be raised by employees in the future.

The possibility still exists that your staff are mistaken, but you do need to get to the bottom of it.

**Is there a conflict between the guardian and commercial strands of an accountant's responsibilities?**

The commercial interests of the firm might be served by engaging with this client as the fees for the work, and potential fees from additional work, could be lucrative however, if your firm is providing a product to a government which could potentially misuse it against its population, this does not equate with the accountant's guardian role, legal obligations and the moral obligation to act in the public interest. Even if it turns out the IT could not be used inappropriately by the overseas government, reputationally, does your firm want to be involved with such a client?

What lessons do you need to draw about who you / your firm works with? What effect does the reputation of your clients have on you?

**Based on the information available, is there scope for an imaginative solution?**

No.

**Are there any other comments?**

In deciding on a course of action, you should apply the reasonable and informed third party test in the ICAS Code of Ethics and consider if a reasonable and informed third party would likely conclude that your actions were appropriate. Conduct that might discredit the profession includes conduct that a reasonable and informed third party would be likely to conclude adversely affects the good reputation of the profession.

Documentation is encouraged so that there is a record of the issue, the details of any discussions, and the matters taken into consideration in reaching your judgement and action.

## Scenario 17: Who do you believe?

You are the Financial Director of Contractsforu Ltd, a private company which provides outsourcing services to local authorities.

Your largest contract with Somewhere Council is performing to plan and generating substantial profits and cash flows.

You've had a busy day in the office, and you're thinking about heading home, when a junior member of staff knocks on your door and asks for five minutes of your time.

They tell you that the Somewhere contract has significant problems and that your Managing Director, who is also the majority shareholder of Contractsforu Ltd, and the Contract Director at the local authority have amended some of the KPIs in the monthly reporting to make it look as if the contract is performing.

The member of staff leaves your office. You are disturbed by what you have been told. The member of staff is junior but has been with the company for a while and seems competent, however, could they have misunderstood? You decide there is nothing you can do tonight as everyone has gone home, so you will approach the Managing Director in the morning.

You quietly raise the matter with the Managing Director first thing, highlighting that the company has a moral obligation to the local community as they are ultimately paying for the work.

The MD is angry and says there is no problem as the Contract Director is happy with the contract performance and is signing off on it monthly adding:

*'By the way, the company is being sold and you will receive a substantial bonus when the sale completes'.*

**What do you do now?**

## Scenario 17: Analysis

### What are the readily-identifiable ethical issues for your decision?

#### *For you personally*

The ICAS Code of Ethics states the following in relation to the fundamental ethics principle of Integrity:

“111.1 A1 Integrity involves fair dealing, truthfulness and having the strength of character to act appropriately, even when facing pressure to do otherwise or when doing so might create potential adverse personal or organisational consequences.

*Fair dealing includes respecting values of equality, diversity and inclusion.*

111.1 A2 Acting appropriately involves:

- (a) Standing one’s ground when confronted by dilemmas and difficult situations; or
- (b) Challenging others as and when circumstances warrant,

in a manner appropriate to the circumstances.

R111.2 A professional accountant shall not knowingly be associated with reports, returns, communications or other information where the accountant believes that the information:

- (a) Contains a materially false or misleading statement;
- (b) Contains statements or information provided recklessly; or
- (c) Omits or obscures required information where such omission or obscurity would be misleading.”

Can you ignore this matter without investigating it further? If it turns out to be true that the MD and Contract Manager at the Council are misstating the performance of this contract, this would have implications for the company’s monthly management accounts and the financial statements at the end of the financial year.

It sounds like the financial information will be inaccurate as it is based on the potentially incorrect KPIs. How much can you review yourself? Do you have the ability or information to allow you to assess the KPIs? You cannot be associated with misleading information.

Are there internal auditors or do you raise with the external auditors? The auditors will inevitably have questions because this is your company’s largest contract, and any due diligence in relation to the sale of the company is also likely to uncover anything improper.

If you ignore this issue having been told you will benefit from the sale of the company (potentially inflated by falsifying the performance of this contract) where does that leave you legally and ethically? How can you sign any of the representations that will be required of you during a sale process?

What are your obligations to protect the junior member of staff? Is there anyone else in the company that you could discuss this matter with, such as another director?

#### *For the company*

Do the culture and leadership of the organisation emphasise the importance of ethical behaviour and the expectation that everyone will act ethically? Does the organisation listen to its employees when they speak up and then act on what has been heard by investigating the issue?

As the customer is a local authority, it is public money which is being spent. Has the potential reputational damage to the company been considered, and the impact this could have on being awarded any future work from local authorities, if wrongdoing is discovered? If sold, this will inevitably

come to light afterwards resulting in litigation and claims against the directors personally for misrepresentation.

There might be commercial gains in the short-term, but there could be real commercial issues at a later date if the company is to be sold and the due diligence discovers issues.

**Who are the key parties who can influence, or will be affected by, your decision?**

You; the MD; the other directors; the employees; the other shareholders; Somewhere Council; the bank; and the general public.

**What fundamental ethical principles for accountants are most applicable and is there an apparent conflict between them?**

<p><b>Integrity</b></p>	<p>There is a need to display ethical leadership and moral courage by standing one's ground and getting to the bottom of the matter even when doing so might create adverse personal consequences.</p> <p>You need to listen to your employees when they speak up and then act on what has been heard by investigating the issue. Is the member of staff correct? What is the basis for their concerns?</p> <p>You know that tone from the top is critical. In the UK, under Section 172 of the Companies Act 2006, as a director of a company you must act in the way which would be most likely to promote the success of the company, and, in so doing, have regard to other matters impacting stakeholders, including maintaining a reputation for high standards of business conduct. If you do not investigate, are you fulfilling these duties?</p>
<p><b>Objectivity</b></p>	<p>The ability for your judgement not to be influenced by your relationship with the MD, and by the potential large bonus which you might be paid if the company is sold.</p>
<p><b>Professional competence and due care</b></p>	<p>Assumed.</p>
<p><b>Confidentiality</b></p>	<p>Assumed.</p>
<p><b>Professional behaviour</b></p>	<p>If you do nothing, you could be deemed complicit in this activity as well as being viewed as condoning any unethical behaviour.</p> <p>You need to take into consideration your responsibilities to the public interest. The customer is a local authority, and it is therefore public money which is being spent on the contract.</p> <p>There is a need to avoid any conduct that you know might discredit your own reputation, your company's reputation, and also that of the profession.</p>

**Is there any further information (including legal obligations) or discussion that might be relevant?**

You know the importance of speak up mechanisms in organisations, allowing issues to be dealt with at the earliest opportunity before they escalate. You understand it must have been difficult for a junior employee to speak up about their concerns and that there is therefore a need for you to listen to them, and to investigate and get a better understanding of the performance of the Somewhere Council contract, so that such concerns continue to be raised by employees in the future.

The possibility still exists that the MD is telling the truth and that the contract is performing well, but you do need to get to the bottom of it.

**Is there a conflict between the guardian and commercial strands of an accountant's responsibilities?**

It is in the directors' interests for this contract to be recorded as performing well but how does that equate with the accountant's guardian role to ensure that information is not misleading? In terms of the company's reputation, is this type of corporate behaviour acceptable? The FD has a duty to ensure that the rest of the board are aware of this situation. The business is a private company and consideration would need to be given as to whether the matter should be reported to the other shareholders, if these are not the same people as the directors.

**Based on the information available, is there scope for an imaginative solution?**

Could you explain the potential consequences to the MD if there is a problem with the contract and a cover up is subsequently discovered? Could this result in negative publicity for the company? How will any impropriety impact a potential sale?

**Are there any other comments?**

In deciding on a course of action, you should apply the reasonable and informed third party test in the ICAS Code of Ethics and consider if a reasonable and informed third party would likely conclude that your actions were appropriate. Conduct that might discredit the profession includes conduct that a reasonable and informed third party would be likely to conclude adversely affects the good reputation of the profession.

Documentation is encouraged so that there is a record of the issue, the details of any discussions, and the matters taken into consideration in reaching your judgement and action.

## Scenario 18: Who do you think they are?

You are a partner in an accounting firm who has previously performed expert witness work.

You are approached by one of the leading global legal firms to support them with valuations in a substantial contractual dispute in relation to a construction project in the Middle East funded by international aid. Their client is an overseas businessperson with whom they have worked for many years, and they vouch for his reliability. Nevertheless, you carry out your own due diligence on their client but nothing untoward comes to light.

Your work progresses well but the law firm then advise they can no longer act as they have identified a conflict with the provider of the international aid. A new lawyer is appointed but they are based in the country where the client resides, and you do not know them.

However, they appear to be reputable, and you continue working for the client as the court date is approaching.

The court case is only two weeks away when your assistant rushes into your room with a newspaper article describing a coup in an African country and alleging that your client has financed the coup as he is close to the new President and will benefit from substantial reconstruction aid.

Had you known this beforehand, you would have declined the engagement. Was your due diligence prior to acceptance of the client sufficient?

**What do you do now?**

## Scenario 18: Analysis

**What are the readily-identifiable ethical issues for your decision?**

### *For you personally*

The ICAS Code of Ethics states the following in relation to the fundamental ethics principle of Integrity:

“111.1 A1 Integrity involves fair dealing, truthfulness and having the strength of character to act appropriately, even when facing pressure to do otherwise or when doing so might create potential adverse personal or organisational consequences.

*Fair dealing includes respecting values of equality, diversity and inclusion.*

111.1 A2 Acting appropriately involves:

- (a) Standing one’s ground when confronted by dilemmas and difficult situations; or
- (b) Challenging others as and when circumstances warrant,

in a manner appropriate to the circumstances.

R111.2 A professional accountant shall not knowingly be associated with reports, returns, communications or other information where the accountant believes that the information:

- (a) Contains a materially false or misleading statement;
- (b) Contains statements or information provided recklessly; or
- (c) Omits or obscures required information where such omission or obscurity would be misleading.”

In addition, the fundamental ethics principle of Professional behaviour states:

“R115.1 A professional accountant shall comply with the principle of professional behaviour, which requires an accountant to:

- (a) Comply with relevant laws and regulations;
- (b) Behave in a manner consistent with the profession’s responsibility to act in the public interest in all professional activities and business relationships; and
- (c) Avoid any conduct that the accountant knows or should know might discredit the profession.”

Threats to your compliance with the principles of integrity and professional behaviour could be created by the questionable behaviour of the client alleged in the newspaper article if the allegations turn out to be true.

Can you continue to represent this client without investigating further? Did you speak to the law firm to confirm that a conflict with the provider of the international aid was really why they resigned? Could there have been anything else? Did you perform any due diligence on the new lawyer?

You need to understand your legal responsibilities, you may need to consult your lawyer, and there are also the Responding to Non-compliance with Laws and Regulations (NOCLAR) provisions in the ICAS Code of Ethics.

Is there anyone else in the firm that you could discuss this matter with, such as another partner, or an Ethics Partner?

What will be the damage to your professional reputation?

### *For the firm*

What will be the reputational damage to the firm if the allegations about your client turn out to be true?

**Who are the key parties who can influence, or will be affected by, your decision?**

You; the other partners; the employees; the client; the client's lawyer.

**What fundamental ethical principles for accountants are most applicable and is there an apparent conflict between them?**

<b>Integrity</b>	<p>There is a need to display ethical leadership and moral courage by standing one's ground and getting to the bottom of the matter even when doing so might create adverse personal and organisational consequences.</p> <p>Can you retain your integrity if you ignore the newspaper article?</p> <p>Depending on the outcome of your investigations into the allegations, you may have to end the engagement with the client as the threats to your ability to uphold the fundamental ethics principles are too great for you to continue with them.</p>
<b>Objectivity</b>	<p>The ability for your judgement not to be influenced by the potential fee income from the client, and the possible embarrassment that your due diligence on the client prior to acceptance may not have been sufficient.</p>
<b>Professional competence and due care</b>	<p>Assumed.</p>
<b>Confidentiality</b>	<p>Assumed.</p>
<b>Professional behaviour</b>	<p>If you do nothing, you could be deemed complicit in this activity and viewed as condoning any unethical behaviour by your client.</p> <p>There is a need to avoid any conduct that you know might discredit your own reputation, your firm's reputation, and also that of the profession.</p>

**Is there any further information (including legal obligations) or discussion that might be relevant?**

The possibility still exists that the newspaper article is incorrect and the allegations are unfounded, but you do need to get to the bottom of it. You need to seek to corroborate the newspaper allegations by any means at your disposal, and you will also need to approach your client, and their lawyer, to seek an explanation from them. What are your contractual terms with the client? If you end the relationship with the client at such a late stage prior to the court case, what will be the impact on your firm financially?

**Is there a conflict between the guardian and commercial strands of an accountant's responsibilities?**

The commercial interests of the firm might be for you to continue to represent this client but how does that equate with the accountant's guardian role to ensure that information you are providing as an expert witness is not misleading. Given the allegations in the newspaper article about your client, their integrity has now been called into question, and therefore potentially the validity of the information that they are providing to you under the terms of your engagement with them. Your continued involvement with them as a client might now also impact your firm's reputation. What lessons do you need to draw about who you/your firm works with? What effect does the reputation of your clients have on you?

**Based on the information available, is there scope for an imaginative solution?**

No.

**Are there any other comments?**

In deciding on a course of action, you should apply the reasonable and informed third party test in the ICAS Code of Ethics and consider if a reasonable and informed third party would likely conclude that your actions were appropriate. Conduct that might discredit the profession includes conduct that a reasonable and informed third party would be likely to conclude adversely affects the good reputation of the profession.

Documentation is encouraged so that there is a record of the issue, the details of any discussions, and the matters taken into consideration in reaching your judgement and action.

## Scenario 19: Too good to be true

You are the financial director of an insurance broker, Riskibusiness Ltd. Your firm specialises in providing insurance to oil and gas companies. You have been in this role for a couple of years now. You generally have a good working relationship with the Chief Executive and the rest of the board, although you know that the Chief Executive is currently going through a bitter divorce and has been somewhat distracted of late by these personal matters. On top of this, so far the company hasn't been performing so well this year which might impact bonuses at the end of the year.

You are reviewing the paperwork for new contracts and see that your firm has been asked to provide cover for a drilling project in the developing world.

This type of cover is routine business for your firm with the value of such contracts typically being in the region of \$50m. However, in this case, you note that the cover being sought is for \$100m. The contract is between the country's national oil company and a global oilfield services company. On the face of it, all the paperwork looks in order and shows a contract value of \$100m, however, you feel uneasy because normally your company doesn't undertake such high value contracts and you also know the country has a reputation for corruption.

You see that the Chief Executive has been the key contact for this contract and decide to ask more about it. The Chief Executive agreed that it is a far bigger account than normal, but time was of the essence, and although strictly company procedures weren't followed in accepting the contract, they were personally involved in the negotiations and it's all fine. Anyway, this contract will go a long way to helping the company make a profit this year, and that year-end bonus will certainly come in very handy.

**What do you do now?**

## Scenario 19: Analysis

### What are the readily-identifiable ethical issues for your decision?

#### *For you personally*

The fundamental ethics principle of Integrity states the following:

“111.1 A1 Integrity involves fair dealing, truthfulness and having the strength of character to act appropriately, even when facing pressure to do otherwise or when doing so might create potential adverse personal or organisational consequences.

*Fair dealing includes respecting values of equality, diversity and inclusion.*

111.1 A2 Acting appropriately involves:

- (a) Standing one’s ground when confronted by dilemmas and difficult situations; or
- (b) Challenging others as and when circumstances warrant,

in a manner appropriate to the circumstances.”

In addition, the fundamental ethics principle of Professional behaviour states:

“R115.1 A professional accountant shall comply with the principle of professional behaviour, which requires an accountant to:

- (a) Comply with relevant laws and regulations;
- (b) Behave in a manner consistent with the profession’s responsibility to act in the public interest in all professional activities and business relationships; and
- (c) Avoid any conduct that the accountant knows or should know might discredit the profession.”

How do you maintain your integrity in this scenario? The Chief Executive has informed you that they have signed up to a contract with a client in a country which is known for corruption and not followed company procedures. Does your company have a code of conduct, or speak up policies and procedures, that provide guidance on such matters?

Have you reviewed the contract? Is all the paperwork really in order? Are any of the quotes fronted by an agent rather than the company providing the services? Do you understand the cash flows?

You need to remind the Chief Executive that the auditors will undoubtedly question this contract as it is so much larger than any of your other business.

Is there someone else in the organisation that you can discuss this issue with, such as the Chair of the Board?

#### *For the company*

Is there a supportive environment for open discussion of practical dilemmas without a recriminatory, or blame, culture?

Is the company willing to accept the risks associated with dealing with a customer which is located in a country which is known for corruption?

Has the company considered the reputational damage that could potentially be caused by this transaction?

**Who are the key parties who can influence, or will be affected by, your decision?**

You; the Chief Executive; the other directors; the shareholders; potential investors; the auditors; customers; suppliers; and employees

**What fundamental ethical principles for accountants are most applicable and is there an apparent conflict between them?**

<p><b>Integrity</b></p>	<p>There is a need to be straightforward and honest in all your professional and business relationships. This involves fair dealing, truthfulness and having the strength of character to act appropriately, even when facing pressure to do otherwise or when doing so might create potential adverse personal or organisational consequences.</p> <p>How can you maintain your integrity without investigating this matter further?</p> <p>There is a need to display ethical leadership and moral courage by standing one's ground and getting to the bottom of the matter even when doing so might create adverse personal consequences.</p> <p>You know that tone from the top is critical. In the UK, under Section 172 of the Companies Act 2006, as a director of a company you must act in the way which would be most likely to promote the success of the company, and, in so doing, have regard to other matters impacting stakeholders, including maintaining a reputation for high standards of business conduct. If you do not investigate, are you fulfilling this responsibility?</p>
<p><b>Objectivity</b></p>	<p>You must ensure that the prospect of a year-end bonus does not cloud your judgement in relation to this contract.</p>
<p><b>Professional competence and due care</b></p>	<p>Assumed.</p>
<p><b>Confidentiality</b></p>	<p>Assumed.</p>
<p><b>Professional behaviour</b></p>	<p>There is a need to avoid any conduct that you know might discredit your own reputation, your firm's reputation, and also that of the profession.</p> <p>If you do nothing, you could be deemed complicit in this activity as well as being viewed as condoning any unethical behaviour.</p> <p>The auditors will undoubtedly question this transaction.</p>

**Is there any further information (including legal obligations) or discussion that might be relevant?**

Is any further information available about the customer concerned? Would transacting with this country expose the company to risk that could not easily be mitigated?

**Is there a conflict between the guardian and commercial strands of an accountant's responsibilities?**

The guardian role is to report fairly the company's financial performance and position. Has the Chief Executive pushed through this contract for short-term commercial, and personal benefit?

**Based on the information available, is there scope for an imaginative solution?**

No.

**Are there any other comments?**

In deciding on a course of action, you should apply the reasonable and informed third party test in the ICAS Code of Ethics and consider if a reasonable and informed third party would likely conclude that your actions were appropriate. Conduct that might discredit the profession includes conduct that a reasonable and informed third party would be likely to conclude adversely affects the good reputation of the profession.

Documentation is encouraged so that there is a record of the issue, the details of any discussions, and the matters taken into consideration in reaching your judgement and action.





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