

9 February 2024



**Response to The Institute of
Chartered Accountants in
England and Wales:
Proposed changes to
'Professional Behaviour'
provisions in ICAEW Code of
Ethics**



1. Introduction

The Institute of Chartered Accountants of Scotland (ICAS) is a global, professional membership organisation and business network for Chartered Accountants. It's also an educator, regulator, examiner and a professional awarding body.

ICAS' diverse membership is made up of over 23,000 world class business professionals who work in the UK and in more than 80 countries around the globe. Members of ICAS are also known by the letters CA, an exclusive professional designation in the UK.

ICAS members operate at the forefront of ethical and sustainable business. Educated, regulated, and led by the highest standards of ethical leadership since 1854, they are at the top of their game. They are trusted professionals, that transform business and support one another for the greater good.

Acting in the public interest is the guiding principle of all that ICAS does and we continually work to maintain trust in the finance profession. That ethos is enshrined in the ICAS Code of Ethics – which applies to all members, students and member firms, and is underpinned by our Royal Charter commitment.

ICAS is a member of the Chartered Accountants Worldwide Network, a global family that brings together the members of 15 leading institutes to create a community of over 1.8 million Chartered Accountants and students in more than 190 countries.

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

We have considered The Institute of Chartered Accountants in England and Wales' (ICAEW): 'Proposed changes to 'Professional behaviour' provisions in ICAEW Code of Ethics'.

2. Key Points

We appreciate the ICAEW consulting on this proposed change to the ICAEW Code of Ethics and welcome this opportunity to respond.

We are supportive of the aim to make the expectations around professional behaviour clearer, and the ICAEW's hope that this will also help others to raise concerns about unethical behaviour or identify inappropriate practices.

However, we do have some concerns around the proposed new wording for sub-section 115.1 A2, specifically in relation to the first sentence.

We believe the substance of the proposed wording will have already been met once the ICAEW adopts the International Ethics Standards Board for Accountants (IESBA) 'Role and Mindset' revisions to the fundamental principle of professional behaviour.

We also believe that the proposed wording might not be consistent with the 'reasonable and informed third party' test, and also public interest considerations.

3. Responses to the specific questions

Q1. Do you agree with the proposed amendment to sub-section 115.1 A2? Please explain the reasons for your answer.

We believe the substance of the proposed new sub-section will have already been met once the ICAEW adopts the International Ethics Standards Board for Accountants (IESBA) 'Role and Mindset' revisions to the fundamental principle of professional behaviour.

The revised IESBA Code states that professional accountants must 'behave in a manner consistent with the profession's responsibility to act in the public interest in all professional activities and business relationships.'

Whilst we are supportive of the second sentence of the proposed new sub-section 115.1 A2, we have concerns with the first sentence, particularly the wording 'professional accountants should act in accordance with the standards that society expects' because we believe this phrase gives the impression that professional accountants are to be judged by the court of public opinion, which could encroach on matters that are 'of interest to the public' rather than 'in the public interest'.

Q2. Do you agree with the inclusion of the concept 'the standards that society expects'? Please provide any additional comments or details of concerns.

As noted in our response to Q1, we do not agree with the inclusion of the concept 'the standards that society expects.' We believe this to be too generic a term.

The breadth of society's expectations is wide ranging and society is ever more polarised into various groups. We do not have a unified world view in society or indeed a UK perspective that the proposed wording suggests exists. What UK society expects might be different to what society expects elsewhere and so the international aspect is a concern. Different expectations in different locations could lead to members of the ICAEW working outside the UK being held to a different, and potentially lower, standard than those working in the UK, but inappropriate behaviour by an ICAEW member outside the UK still has the potential to damage the reputation of the profession in the UK and the wider accountancy profession.

What society expects is also at a moment in time and evolves over time, and at times more quickly than others.

Currently, disciplinary cases arise because there is a departure from the profession's expectations of behaviour. The profession loses its ability to judge from its own perspective with this proposed wording and instead would have to take the perspective of a diffuse external party. The proposed wording is starting to stray from the perspective of public interest to public curiosity.

The IESBA Code of Ethics refers to the 'reasonable and informed third party' test and the FRC's Ethical Standard refers to the 'objective, reasonable and informed third party' test. If the ICAEW does wish to include a 'society' reference, we suggest there should also be a qualification like the 'reasonable and informed third party' test or a 'reasonably informed business person' to benchmark the behaviour against what is reasonable for someone with experience in the business/professional accounting world.

We note that you appear to have alluded to this in your consultation with the following wording:

"Defining standards of ethical behaviour with reference to the shared social norms that members of a society understand and accept, provides increased flexibility and clarity. It emphasises that professional behaviour must meet the objective expectations of a

professional member of society. This also allows for prevailing societal attitudes to be considered, both over time and with reference to the location an individual lives and works in.”

We therefore suggest the following options for consideration (change in red):

“The concept of professional behaviour implies that professional accountants should act in accordance with **what a reasonable and informed third party would consider to be** the standards that society expects in all professional and business relationships. For example, professional accountants should treat others fairly, and with respect, and not harass, bully, or unfairly discriminate against them.”

“The concept of professional behaviour implies that professional accountants should act in accordance with the standards that society expects, **from the perspective of a reasonable and informed third party**, in all professional and business relationships. For example, professional accountants should treat others fairly, and with respect, and not harass, bully, or unfairly discriminate against them.”

In relation to the assessment of behaviour being that of a reasonable and informed third party, it might also be argued that one could go further and suggest that the assessment has to consider explicitly the circumstances in which the behaviour happened. Under stress, individuals may behave differently and, whilst no circumstance can justify certain types of behaviour, whether a particular behaviour is unprofessional arguably should also take account of the circumstances in which it occurred.

It could also be argued that the words “courtesy” and in particular “consideration” are not as limited concepts as have been suggested. For example, a google search provides a definition of “consideration” as “thoughtful or sympathetic regard or respect, thoughtfulness for others”.

Taking this into account, we therefore suggest an alternative first sentence for sub-section 115.1A2 as follows:

“The concept of professional behaviour implies that a professional accountant should act in all professional and business relationships in a manner that, in the circumstances, a reasonable and informed third party would consider fair, respectful and considerate.”

However, it is acknowledged that, if this wording were to be used, clarity of understanding should also be arrived at between the Recognised Supervisory Bodies (RSBs) and the FRC that the application of the objective, reasonable and informed third party (ORITP) test should always comprehend not just the subjective perspective of the third party concerned, but also the facts and circumstances of the situation to which the third party’s perspective is being applied; in other words, it should be acknowledged that the ORITP test needs to comprehend the overall context of the event which is being adjudged from the third party’s perspective.

Q3. Do you agree with the proposed scope of 'professional and business relationships'? Please provide any additional comments or details of concerns.

We have some concerns that the proposed scope of ‘professional and business relationships’ is not entirely in line with the CCAB guidance [‘Boundaries of professional and personal life in ethics’](#) (published July 2021) which states that the CCAB bodies consider that the following factor (which was one of four) is relevant in assessing whether a member’s conduct in their personal life could breach their respective professional body’s Code of Ethics, Bye-laws and regulations:

“Is the misbehaviour serious, and even though the member is not identifying their professional qualification, the member’s behaviour could be viewed as conduct that might discredit the profession?”

The context of the member’s behaviour which could be viewed as bringing discredit to the profession may be that:

a) the circumstances are work or workplace related in some way; or

b) the circumstances are entirely in the member's private life, but the behaviour is so poor that it could be discreditable.

Such examples could include:

• a member using seriously offensive or threatening language causing distress, or threatening behaviour, towards a client or a member of the public outside of the work environment; or
• a member posting comments on social media, such as discriminatory (e.g. racist, sexist, homophobic or ableist) comments that are seriously offensive or threatening to the extent that it calls into question the member's professional judgement and fitness to be a professional."

The CCAB guidance therefore highlighted that there could be circumstances which are entirely in a member's private life, but where the behaviour is so poor that it could be discreditable to the profession. The proposed scope of the new paragraph only being in relation to 'professional and business relationships' would therefore appear to contradict the important message that the CCAB was trying to convey in its guidance that behaviour in a member's private life cannot be entirely separated from their professional life.

We therefore suggest deleting 'in all professional and business relationships' and inserting 'of a professional accountant' as noted in red below:

"The concept of professional behaviour implies that professional accountants should act in accordance with the standards that society expects ~~of a professional accountant in all professional and business relationships.~~ For example, professional accountants should treat others fairly, and with respect, and not harass, bully, or unfairly discriminate against them."

Q4. Do you have any comments on the wording or any suggested amendments? Please provide any additional comments or details of concerns.

We have suggested amendments in our responses to Q2 and Q3 in relation to the first sentence of the proposed new sub-section.

As noted in our response to Q1, we are supportive of the second sentence, however we have concerns around the term 'unfairly discriminate' as we believe that any discrimination is inherently unfair and not to be tolerated. No shades of discrimination are acceptable. We would therefore suggest removing the word 'unfairly' from the sentence as below:

"For example, professional accountants should treat others fairly, and with respect, and not harass, bully, or ~~unfairly~~ discriminate against them."

Q5. Do you think the examples sufficiently capture the types of behaviour and concerns relevant to a modern profession? Please explain why.

We would also suggest adding the word 'exclude' to the second sentence of the proposed sub-section (as below in red) on the basis that if anyone excludes another at the outset, there is no-one to harass, bully or discriminate against:

"For example, professional accountants should treat others fairly, and with respect, and not ~~exclude~~, harass, bully, or ~~unfairly~~ discriminate against them."

Q6. Do you have any suggested changes to the list of proposed examples?

It could also be argued that listing different concepts could give the impression that it is an exhaustive list, we therefore suggest the following alternative wording (in red) for your consideration:

“For example, professional accountants should treat others fairly, and with respect, and not exclude, harass, bully, or use any other means of inappropriately hindering another person's wellbeing.”

Q7. Do you feel that the proposed changes outlined in this consultation could have an impact on matters relating to equality, diversity or inclusion? If so, please provide any additional comments or details of concerns.

We agree with the wording in your consultation that ‘stating our expectations about treating others fairly and with respect provides a clear message about our shared values as a profession.’ We have made observations in our responses to Q4 to Q6 in respect of matters relating to equality, diversity or inclusion.

We also note for your information that the wording in italics was incorporated into the ICAS Code of Ethics in 2021 to emphasise the responsibilities of CAs in relation to values of equality, diversity and inclusion.

“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.

A professional accountant shall not knowingly engage in any business, occupation or activity that impairs or might impair the integrity, objectivity or good reputation of the profession, and as a result would be incompatible with the fundamental principles. *This includes avoiding any conduct that would be counter to values of equality, diversity and inclusion.*”

Q8. Do you have any other general comments on the proposed changes to the ICAEW Code of Ethics provisions on professional behaviour?

We have no other general comments on the proposed changes.



CA House, 21 Haymarket Yards, Edinburgh, UK, EH12 5BH

+44 (0) 131 347 0100

connect@icas.com

icas.com

 @ICASaccounting

 ICAS – The Professional Body of CAS

 ICAS_accounting

 ICAS_accounting