



Professional Behaviour

POTENTIAL CHANGES TO THE CODE OF ETHICS

Existing ICAEW Code of Ethics

ICAEW's Code of Ethics, effective from 1 January 2020 has the following provisions in relation to professional behaviour:

SUBSECTION 115 – PROFESSIONAL BEHAVIOUR

R115.1 A professional accountant shall comply with the principle of professional behaviour, which requires an accountant to comply with relevant laws and regulations and 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.

115.1 A1 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.

115.1 A2 The concept of professional behaviour implies that it is appropriate for professional accountants to conduct themselves with courtesy and consideration towards all with whom they come into contact when performing their work.

R115.2 When undertaking marketing or promotional activities, a professional accountant shall not bring the profession into disrepute. A professional accountant shall be honest and truthful and shall not make:

- (a) Exaggerated claims for the services offered by, or the qualifications or experience of, the accountant; or
- (b) Disparaging references or unsubstantiated comparisons to the work of others.

115.2 A1 If a professional accountant is in doubt about whether a form of advertising or marketing is appropriate, the accountant is encouraged to consult with the relevant professional body.

R115.3 Professional accountants shall never promote or seek to promote their services, or the services of other professional accountants, in such a way, or to such an extent, as to amount to harassment of a potential client or employer.

The italicised text is ICAEW specific add-on material that is in addition to the text of the IESBA international Code of Ethics. Paragraph 115.1 A2 (highlighted) contains the current application material detailing what is expected of members in terms of how they conduct themselves. This sets

out explicitly that a member must behave with courtesy and consideration in a professional context – so only when performing their work. However, the principle of professional behaviour is not limited to a member’s professional life due to the requirement in R115.1 to avoid any conduct that the accountant knows or should know might discredit the profession. 115.1 A1 goes on to say that 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.

When taking disciplinary action against a member for poor conduct, these complaints are often brought under the fundamental principle of professional behaviour.

Relevance of IESBA Code

As an IFAC member, ICAEW is obliged to adopt the IESBA Code of Ethics in full. This means that while we can decide to add additional material to the provisions of the IESBA Code, we cannot change or remove any of its content from our own Code of Ethics. Therefore, if we decide to make changes to our existing Code of Ethics, we will have to ensure that we remain consistent with the IESBA Code.

Our extant paragraph 115.1 A2 is in addition to the IESBA Code, so can be amended as we see fit, subject to our desire to be consistent with CAI and ICAS (see below).

Consistency with other Chartered bodies – CAI and ICAS

Historically we have sought to be aligned with the Irish and Scottish chartered accountancy bodies in terms of the content of our Codes of Ethics. This means that in addition to adopting the provisions of the IESBA Code in full, we also aim to have consistent add-on material. In the latest version of the Code of Ethics, which came into force on 1 January 2020, we have maintained that consistency with CAI, however in some areas ICAS chose to diverge in some of their specific add on material for their code.

IESBA projects to review the Code

The IESBA board have a rolling work plan of projects to review and change parts of the International Code of Ethics for a number of topical issues which have included technology, tax, sustainability, and auditor independence issues.

There was also a project looking at the Role and Mindset of Professional Accountants which resulted in some recent changes to the international Code (these are yet to be brought into the ICAEW Code). One change was to the fundamental principle of professional behaviour, adding a part into subsection R115.1 to include:

“(b) Behave in a manner consistent with the profession’s responsibility to act in the public interest in all professional activities and business relationships.”

This is in addition to (a) comply with all relevant laws and regulations and (c) avoid any conduct that the accountant knows or should know might discredit the profession.

We can reflect on what we think the impact of this additional requirement should be on a member’s conduct and the extent to which it affects a member’s conduct in their private life.

Council discussion on professional behaviour

In July 2022, ICAEW Council discussed the professional behaviour requirements in the Code of Ethics and debated whether changes were needed to the code. The feedback from the Council discussion groups was as follows:

- Some groups supported the enhancement of the existing principle to bring it closer to the proposed SRA proposal [guidance has now been issued on this - see below]
- Other groups consider that it would be stronger for new 'respect' requirement to be a new separate fundamental principle
- Current language is dated and vague – needs to call out bullying / discriminatory behaviour specifically – not just 'act with courtesy'
- Suggestion to remove limiter of 'when performing their work'
- Concerns of some groups as to how easy this would be to monitor / enforce

SRA consultation on wellbeing at work

In March 2022, the SRA issued a consultation on wellbeing at work that proposed introducing explicit obligations into their Codes of Conduct for individuals and firms to treat colleagues fairly and with respect, and not to bully, harass or unfairly discriminate against them. They also proposed introducing a requirement for firms and individuals to challenge behaviour that does not meet this standard, with the aim of fostering a collegiate approach and a culture in which poor behaviours are not tolerated.

These proposed new requirements appear to be inwardly focussed – so concern the culture and behaviours within a law firm, and apply to how a solicitor acts towards their colleagues, and how a firm treats employees.

SRA guidance on sexual misconduct

In September 2022 the SRA published **guidance** on sexual misconduct and the factors they would take into account when assessing the gravity of the conduct by one of their members. These factors include: - proximity to practice, seriousness of the conduct, criminality of the conduct, consent, vulnerability and intoxication.

There are some parallels to the **CCAB guidance** published in July 2021 (of which ICAEW was a contributing author) on the boundaries between a member's personal and professional life. This guidance set out the principles that each professional body would take into account in determining whether a member's conduct would be relevant for potential disciplinary proceedings.

Internal consultation

Views have been sought from a number of internal parties and groups. This has included the following:

- Senior case managers in the Professional Conduct Department
- Legal advisers in the Professional Conduct Department – the individuals who present the disciplinary cases on behalf of ICAEW in disciplinary proceedings
- The Ethics Standards Committee

- A working group made up of a sub-set of the Ethics Standards Committee
- Julia Penny, ICAEW President

Feedback from internal consultation

[REDACTED]

The discussions with the Ethics Standards Committee and the working group of some of the committee members, raised many interesting points to consider, such as:

- Anything we write needs to be internationally applicable
- We cannot include content that could impinge on a member's religious or cultural beliefs, for example in certain societies where a man would not shake hands with a woman in a business context, and that is a cultural norm.
- There is a delicate balance between capturing the types of behaviour of a member that could affect their standing as a member of our profession, and straying too far into a member's private life.
- There are dangers in being too precise when listing the types of behaviour we prohibit. If types of behaviour are codified in this way then anything that is not explicitly listed could arguably not be in scope for disciplinary purposes.
- Some of the more detailed commentary on behaviours etc may sit more appropriately in guidance provided to disciplinary committees who are considering sanctions for misconduct.

OPTIONS TO CONSIDER

Following the reflection on council's discussion, and consultation with a range of expert parties, we have provisionally concluded that there are four main options to consider in relation to the Code of Ethics content on professional behaviour:

1. Leave the current content of Section 115 unchanged, including the sentence on treating those you come into contact with when performing work with courtesy and consideration. However, implement the changes from the IESBA project on the Role and Mindset of Professional Accountants, which add a part into R115.1

“(b) Behave in a manner consistent with the profession’s responsibility to act in the public interest in all professional activities and business relationships.”

2. In addition to updating the Code for the sentence from the Role and Mindset project, remove the sentence from 115.1 A2, so that there is no longer any mention of treating others with courtesy and consideration, or the limiting context of this applying to those you come into contact with when performing your work.
3. In addition to updating the Code for the sentence from the Role and Mindset project, redraft the sentence in 115.1 A2 to say:

“115.1 A2 The concept of professional behaviour implies that professional accountants should act in accordance with the standards that society expects in all professional and business relationships.”

4. In addition to updating the Code for the sentence from the Role and Mindset project, redraft the sentence in 115.1 A2 to say:

“115.1 A2 The concept of professional behaviour implies that it is appropriate for professional accountants in all professional and business relationships to treat others fairly, and with respect, and to not harass, bully, or unfairly discriminate against them.”

Pros and cons of alternative options

Option	Pros	Cons
1 – Add in public interest responsibility sentence, no other changes	<p>Simple solution as we would be introducing this sentence as part of next tranche of updates to comply with IESBA code.</p> <p>Minimal changes for members to get up to date with.</p> <p>Some explanation remains of what is expected for professional behaviour.</p>	<p>Does not clarify to members what “behaving in a manner consistent with the profession’s responsibility to act in the public interest” means.</p> <p>Existing problems with the ‘courtesy and consideration’ sentence would remain.</p>
2 – Add in public responsibility sentence, delete ‘courtesy and consideration’ sentence	<p>Removes potential limitations of ‘courtesy and consideration’ and ‘when performing work’</p>	<p>Does not explain what we expect in terms of professional behaviour.</p> <p>Does not clarify to members what “behaving in a manner consistent with the profession’s responsibility to act in the public interest” means.</p>
3 – Add in public responsibility sentence; amend ‘courtesy and consideration’ sentence to refer to acting in accordance with society’s standards in professional and business relationships.	<p>Allows for prevailing societal attitudes to be taken into account, both in time and location (so could apply internationally in that society’s context).</p> <p>The broad concept means that any type of behaviour that we think is of concern could be included.</p>	<p>“..standards that society expects” is somewhat subjective so is open to interpretation and argument.</p>

	<p>'Professional and business relationships' should capture conduct that is related to work life in some way (and could therefore damage the reputation of the profession), but not stray too far into a member's private life.</p>	
<p>4 – Add in public responsibility sentence; amend 'courtesy and consideration' sentence to refer to treating people fairly, with respect and not bullying harassing or unfairly discriminating, in professional and business relationships.</p>	<p>Listing types of behaviour we consider are unprofessional provides clarification for members and for ICAEW professional standards.</p> <p>'Professional and business relationships' should capture conduct that is related to work life in some way (and could therefore damage the reputation of the profession), but not stray too far into a member's private life.</p>	<p>Listing the types of behaviour could imply that any other poor behaviour not of the types listed is outside of ICAEW's jurisdiction.</p> <p>Some of the types of behaviour listed may conflict with rules, laws and cultural norms in international jurisdictions.</p>

Next steps

- To update ESC working group of latest thinking.
- To brief Ethics Advisory Committee at next meeting.
- Present update to wider Ethics Standards Committee in early March 2023.
- Update the IRB in March 2023.
- Discuss with ICAS and CAI to see if they would look to incorporate the changes to their versions of the Code of Ethics.
- Seek feedback from ICAEW committees and boards, plus student council.
- Produce draft guidance on the proposed changes to provide context of new provisions, and allay concerns about potential encroachment of members' personal lives.
- To seek feedback from Council in June 2023 on the proposed options to see if there is support for going to public consultation on these options, or whether additional options

should be included. Briefing session with Council to take place in advance of the June meeting.

- If Council are supportive, issue a public consultation in late Summer/early Autumn 2023.
- Subject to results of consultation, present updated options to Council for approval.