



Professional Behaviour in the Code of Ethics

STATUS

1. Confidential
2. Relates to policy under development.

EXECUTIVE SUMMARY

1. IRB members will recall that a recent consultation has been held on potential changes to the ICAEW content in the fundamental principle of Professional Behaviour in the ICAEW Code of Ethics.
2. This paper provides a summary of the feedback from respondents which raised a number of challenges to the proposed new wording. This has prompted a number of discussions regarding a refinement of the proposed wording with a number of experts within ICAEW including members of the Ethics Standards Committee and the PSD legal team who prosecute breaches of the Code of Ethics.

PROGRESS UPDATE

Reminder of extant Professional Behaviour provisions

3. ICAEW's Code of Ethics, effective from 1 January 2020, includes Requirements which are those paragraphs starting with 'R' and Application Material which are those paragraphs starting with an 'A' within the number. The Code contains the following provisions in relation to professional behaviour which include in italics the two elements which have been added in addition by ICAEW:

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.

Paragraph 115.1 A2 contains the current application material detailing what is expected of members in terms of how they conduct themselves. [REDACTED]

IESBA changes

4. ICAEW is committed to adherence to the IESBA Code of Ethics given the international make-up of its membership. As such, ICAEW is expected to incorporate all revisions to the Code issued by IESBA and this will include in 2024 the following change to R115.1 (change in bold):

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.

5. While the new specific reference to acting in the public interest may be welcomed, it does not appear to assist with the interpretation of what are appropriate/inappropriate behaviours of members either within the workplace or outside of the workplace and it inserts another very general statement without referencing any specific types of behaviour

Reminder of the consultation proposals

6. The consultation that was held between 1 December 2023 and 9 February 2024 sought views on replacing the text in paragraph 115.1 A2 with the following:

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

7. The intention of including the broad concept of “the standards that society expects” was to allow for any type of seriously poor conduct to be dealt with and the non-exhaustive list of examples provides some clarity to members on what we would consider unacceptable behaviour and also goes some way to mirroring the approach taken by the SRA in relation to the regulation of solicitors by making clear areas where the regulator will act if complaints are made. The intention of the proposed wording was to encourage members to use their professional judgement to reflect on how they should be behaving. This wording also allows for prevailing societal attitudes to be taken into account, both in time and location, so the text could apply internationally in a local society’s context.
8. The consultation text also proposed replacing the limiter “all those they come into contact with while performing their work” with “in all professional and business relationships” to address the concern that the current text is too narrow and fails to capture the type of conduct at work social events or conduct out of hours on social media where it is clear to the reader that the author of an offending message is an ICAEW chartered accountant and where such conduct could be damaging to the profession and ICAEW.

Summary of consultation feedback

9. A total of 71 consultation responses were received from a range of individual members, firms and other interested parties including ICAS. [REDACTED]
10. **41%** of respondents approved the proposals overall. Respondents who were strongly in favour welcomed the clarity the proposed wording provides and the fact that it modernises the current provisions.
11. Although the majority of respondents did not, therefore, approve the proposed amendment, most of those objecting were concerned only, or in the main, with the phrase ‘standards that society expects’.
12. There was also concern that the proposed provisions potentially conflict with our guidance on Duty to Report misconduct and CCAB guidance on the boundaries between a member’s personal and professional life. A [REDACTED] firm suggested that ICAEW’s guidance on the Duty to Report misconduct should be expanded instead of changing the Code of Ethics to highlight the standards of behaviour expected of members. While we do not agree that the proposed provisions are in conflict with other guidance issued by ICAEW or the CCAB, this feedback does show that greater clarity is needed on what is expected of members in their professional and personal lives, and where ICAEW’s disciplinary interest is in point. We believe now from the consultation responses that, whatever summary wording is changed in

the Code, there is a need to issue more comprehensive guidance as to what we would consider to be a breach of this important fundamental principle.

13. Common themes in responses were as follows:

The standards that society expects

- As noted above, most respondents did not approve of the concept ‘the standards that society expects’ and considered it was too vague and subjective. In particular, there were concerns that accountants are to be judged by the court of public opinion.
- There were also comments that different parts of society have different standards, and some parts of society think it is perfectly acceptable to under-declare taxable income but this is not the standard we would expect members to be judged by.
- Some [REDACTED] questioned the need for the new text given the forthcoming IESBA material that requires members to act in the public interest in all professional activities and business relationships – comments were that this is largely the same thing as acting in accordance with the standards that society expects in all professional and business relationships.
- References were made to a preference for a test involving the ‘Reasonable and Informed Third Party’ which already features in the Code. There was a comment that the RITP test would be able to take into account the extent to which an accountant should be expected to keep up with the mood and expectations of society.
- Some respondents thought we should be referencing the public interest, and others also asked for an explanation of what the new IESBA reference to public interest meant in the context of professional behaviour.

Professional and business relationships

- Many respondents welcomed the inclusion of this language as it makes clear to members that they are required to behave with professionalism in all professional contexts and not just during the course of client-facing engagements.
- There was some misunderstanding among respondents about the scope of ICAEW disciplinary remit and that the proposed provision would exclude a disciplinary interest from conduct that was entirely in a member’s private life. This is not the intention of the new provisions; proposed 115.1 A2 sets out what is expected of a member in their professional life, it does not touch on the conduct in a member’s private life that could be of disciplinary interest to ICAEW. Other paragraphs within the professional behaviour provisions have an absolute requirement for a member to avoid any conduct that they know or should know might discredit the profession. The consultation feedback on this point suggests further clarity is needed.
- Some respondents said that the new provisions’ application to social media was not clear especially where this is entirely in a members’ private life.

- As noted above, it was flagged [REDACTED] that there is a potential inconsistency with the CCAB guidance on boundaries between personal and professional life.

Inclusion of examples of behaviour

- There was mixed support for the list of examples content – some liked the list as drafted; some questioned the need for ‘harass’ and ‘discriminate’ which are legally defined terms; and workplace bullying which is due to become a legally defined term under the bullying and respect at work bill; there were concerns that by listing negative behaviours the focus is then on the example behaviour and not the principle of behaving professionally. Other respondents welcomed these negative behaviours being highlighted and the clarity this brings about what is expected in terms of professional conduct.
- Some respondents disliked the term ‘respect’ as infringing free speech. Some suggestions were made to add the term ‘dignity’ and retain courtesy and consideration, possibly as well as the new positive examples.
- A few respondents raised strong concerns that by removing the term ‘courtesy’ and instead talking about bullying and harassment meant lowering the bar in terms of what we expect of members, and that the provision would become an anti-bullying one when the intent is much wider. There were also comments that if you conduct yourself with courtesy and consideration towards others then by definition you do not bully, harass or discriminate.
- There were also concerns that the language of respect, bullying and discrimination had been adopted by organisations whose promotion of their agendas can extend to aggressive attacks on those who hold perfectly legitimate, but opposing views.
- There was mixed support for having a list of examples at all – some thought the principle should be sufficient, some thought giving examples suggested it was an exhaustive list. Others liked the list of examples and thought it was helpful.

NEXT STEPS

14. We are reflecting on the feedback and discussing refinements and potential alternative formulations with experts from within the Institute. Following this consultation exercise, a further update will be given to the board albeit, as the board recognises, the final decision on whether to amend the ICAEW Code of Ethics lies with ICAEW Council.
15. Should Council approval be obtained for the changes, it is envisaged that that a revised Code of Ethics would be implemented later in 2024. It should be noted however that the team in R&I who own the Code of Ethics (the Trust and Ethics team) will also be making changes to the Code to align with recent IESBA changes in relation to a number of areas. Both the IESBA changes and the professional behaviour changes will be made together as one change to the ICAEW Code.

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Date of report	5 March 2024