

Section 240 - Fees and Other Types of Remuneration

(Applicable from 1 January 2011 to 31 December 2012)

- 240.0** *ICAEW does not set charge-out rates or otherwise prescribe the basis for calculating fees, nor does it ordinarily investigate complaints relating solely to the quantum of fees charged. However, professional accountants in public practice* have certain professional responsibilities in relation to fees as set out in the following paragraphs.*
- 240.1** When entering into negotiations regarding professional services*, a professional accountant in public practice* may quote whatever fee is deemed appropriate. The fact that one professional accountant in public practice* may quote a fee lower than another is not in itself unethical. Nevertheless, there may be threats to compliance with the fundamental principles arising from the level of fees quoted. For example, a self-interest threat to professional competence and due care is created if the fee quoted is so low that it may be difficult to perform the engagement in accordance with applicable technical and professional standards for that price.
- 240.2** The existence and significance of any threats created will depend on factors such as the level of fee quoted and the services to which it applies. The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level*. Examples of such safeguards include:
- Making the client aware of the terms of the engagement and, in particular, the basis on which fees are charged and which services are covered by the quoted fee.
 - Assigning appropriate time and qualified staff to the task.
- 240.2a** *The basis on which fees will be calculated shall be discussed and explained at the earliest opportunity together with, where practicable, the estimated initial fee. Fees shall be determined by reference to:*
- *The seniority and professional expertise of the persons necessarily engaged on the work;*
 - *The time expended by each;*
 - *The degree of risk and responsibility which the work entails;*
 - *The nature of the client's business, the complexity of its operation and the work to be performed;*
 - *The priority and importance of the work to the client;*
 - *Expenses properly incurred.*
- 240.2b** *The arrangements agreed shall be confirmed in writing prior to the commencement of any engagement, normally in an engagement letter, including a confirmation of any estimate, quotation or other indication, and where the basis of future fees will differ from that of initial fees, the basis on which such fees will be rendered. Where there is no engagement letter the professional accountant in public practice* shall confirm the initial discussion in writing to the client as soon as practicable.*
- 240.2c** *In the case of assurance work, and in particular audit work, professional accountants in public practice* who obtain work having quoted levels of fees which*

they have reason to believe are significantly lower than existing fees or, for example, those quoted by other tendering firms , shall be aware that their objectivity and the quality of their work may appear to be threatened by self-interest in securing the client. Such professional accountants in public practice* shall ensure that their work complies with relevant standards, guidelines and regulations and, in particular, quality control procedures.*

240.2d *In the event of a complaint being made to ICAEW where fees were a feature in obtaining or retaining the work, professional accountants in public practice* shall demonstrate that:*

- *The work done was in accordance with relevant standards; and*
- *The client was not misled as to the basis on which fees for the current and/or subsequent years are to be determined.*

240.3 Contingent fees* are widely used for certain types of non-assurance engagements*.¹ They may, however, create threats to compliance with the fundamental principles in certain circumstances. They may create a self-interest threat to objectivity. The existence and significance of such threats will depend on factors including:

- The nature of the engagement.
- The range of possible fee amounts.
- The basis for determining the fee.
- Whether the outcome or result of the transaction is to be reviewed by an independent third party.

240.4 The significance of any such threats shall be evaluated and safeguards applied when necessary to eliminate or reduce them to an acceptable level*. Examples of such safeguards include:

- An advance written agreement with the client as to the basis of remuneration.
- Disclosure to intended users of the work performed by the professional accountant in public practice* and the basis of remuneration.
- Quality control policies and procedures.
- Review by an independent third party of the work performed by the professional accountant in public practice*.

240.4a *In some formal appointments under insolvency legislation, in particular bankruptcies, liquidations and administrations, the remuneration of the professional accountant in public practice* may, by statute, be based on a percentage of:*

- *Realisations or the value of the property with which the professional accountant in public practice* has to deal; and/or*
- *Distributions.*

Consequently, it may not be possible to base the fee on the principle in paragraph 240.4 above.

240.4b *In some circumstances, such as advising on a management buy-in or buy-out, the raising of venture capital, acquisition searches or sales mandates, where no professional opinion is given, it may not be appropriate to charge fees save on a*

¹ Contingent fees* for non-assurance services provided to audit clients* and other assurance clients* are discussed in sections 290 and 291 of this Part of the Code.

contingent fee basis: to require otherwise might deprive potential clients of professional assistance, for example where the capacity of the client to pay is dependent upon the success or failure of the venture.*

240.4c *Due diligence assignments, particularly those performed in relation to a prospective transaction, typically involve a high level of risk and responsibility. A higher fee may be charged for such work in respect of a completed transaction than for the same transaction if it is not completed, for whatever reason, provided that the difference reflects any additional risk and responsibility.*

Fee Information and Disputes

240.4d *A professional accountant in public practice* shall furnish, either in the fee account or subsequently on request, and without further charge, such details as are reasonable to enable the client to understand the basis on which the fee account has been prepared.*

240.4e *Where fees rendered without prior agreement exceed, by more than a reasonable amount, a quotation or estimate or indication of fees given by a professional accountant in public practice*, the professional accountant in public practice* shall be prepared to provide the client with a full and detailed explanation of the excess and to take steps to resolve speedily any dispute which arises.*

240.4f *A professional accountant in public practice* whose fees have not been paid may be entitled to retain certain books and papers of a client by exercising a lien and may refuse to pass on information to the client or the successor accountant until those fees are paid (but see section 210, 'Professional appointment'). However, a professional accountant in public practice* who so acts shall be prepared to take reasonable and prompt steps to resolve any dispute relating to the amount of that fee. In respect of any fee dispute, a professional accountant in public practice* shall be aware of the fee arbitration services offered by ICAEW.*

240.4g *Overdue fees may give rise to a perceived or real self-interest threat (see section 280). Similar considerations apply to work-in-progress for a client if billing is unduly deferred.*

Referrals and Commissions

240.5 In certain circumstances, a professional accountant in public practice* may receive a referral fee or commission relating to a client. For example, where the professional accountant in public practice* does not provide the specific service required, a fee may be received for referring a continuing client to another professional accountant in public practice* or other expert. A professional accountant in public practice* may receive a commission from a third party (e.g., a software vendor) in connection with the sale of goods or services to a client. Accepting such a referral fee or commission creates a self-interest threat to objectivity and professional competence and due care.

240.6 A professional accountant in public practice* may also pay a referral fee to obtain a client, for example, where the client continues as a client of another professional accountant in public practice* but requires specialist services not offered by the existing accountant*. The payment of such a referral fee also creates a self-interest threat to objectivity and professional competence and due care.

240.7 The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level². Examples of such safeguards include:

- Disclosing to the client any arrangements to pay a referral fee to another professional accountant* for the work referred.
- Disclosing to the client any arrangements to receive a referral fee for referring the client to another professional accountant in public practice*.
- Obtaining advance agreement from the client for commission arrangements in connection with the sale by a third party of goods or services to the client.

Remuneration of employees would not normally be included within the scope of the payments addressed above.

240.7a *A fiduciary relationship between a professional accountant in public practice* and his or her client will arise where the accountant acts as the client's agent; and/or where the accountant gives professional advice to the client so as to give rise to a relationship which the law would regard as one of 'trust and confidence'. Where a fiduciary relationship exists at the time between a professional accountant in public practice* and a client, the professional accountant in public practice* is legally bound to account to the client for any commission, fee or other benefit received from a third party at any time. ICAEW is advised that the effect is that a professional accountant in public practice* will require the informed consent of the client if the professional accountant in public practice* is to retain the commission, fee or other benefit or any part of it. If professional accountants in public practice* are in doubt as to whether the circumstances give rise to a fiduciary relationship, they are recommended to seek appropriate legal advice.*

240.7b *Under the general law, professional accountants* must adopt one of the following courses in respect of commission receivable²:*

(a) *Account to the client for the commission or other benefit*

This could be effected:

- *By payment of the whole commission or benefit to the client, or*
- *By deducting the amount received from the fees otherwise chargeable to the client and by showing such deduction on the face of the bill.*

(b) *Obtain the client's advance consent to each receipt of commission*

This involves obtaining consent before the commission is received and the firm must disclose, in advance, the actual amount of the commission (or its basis of calculation) and the terms and timing of its payment.*

(c) *Obtain the client's advance general consent to the member's* retaining commission.*

This could be by way of the engagement letter, or by a supplementary agreement, containing explicit wording permitting such retention, such as the following:

'In some circumstances, commissions or other benefits may become payable to us [or to one of our associates] in respect of transactions we [or such associates] arrange for you, in which case you will be notified in writing of the amount and terms of payment. [The fees that would otherwise be payable by you as described above will [or will not] be abated by such amounts.] You

² Professional accountants* are reminded that where detailed regulatory requirements cover the same issues as this Code, the regulatory requirements prevail where these are more onerous.

consent to such commission or other benefits being retained by us [or, as the case may be, by our associates,] without our, [or their,] being liable to account to you for any such amounts.'

Note:

- i. Before the client agrees to any such provision, examples must be given of likely commissions that may be received and the likely amounts, and it shall be emphasised that these are only examples and may not cover all receipts in the future. If, in the future, abnormally large commissions are received which were not envisaged when the engagement letter was signed, it would be advisable to obtain specific consent to the retention of those commissions in order to meet any assertion that retention of such commission was not authorised by the engagement letter.*
- ii. Any further provision which indicated likely levels of commission, and then continued 'Commissions of less than £X will be retained by us, and commissions of more than £X will be divided equally between yourselves and ourselves' might be effective. Members* are advised, however, to consult with their lawyers before including such a provision.*
- iii. Where an existing client of the member* is to sign a new engagement letter containing such a provision as is referred to above, the firm* shall explain that, in the absence of the signed engagement letter, the firm* could retain the commission only if the client gave full and informed consent on each occasion after receiving full disclosure of the amount involved, whereas, once the letter is signed, the firm* can keep the commission.*

(d) Obtain the client's subsequent consent

If the member does not obtain the client's consent in one of the ways referred to in paragraph 240.7b above, the commission may still be able to be retained if the client subsequently expressly consents to such retention (on the basis of full disclosure of the amount, terms and timing of payment).*

240.7c *Alternatively professional accountants* will be able to retain the commission if the client (with knowledge of all relevant facts) impliedly consents by acquiescing in such retention, for instance by deciding to proceed with the transaction having been notified both of the fact that the firm* will receive commission and of the full details of that commission.*

240.7d *Even where a fiduciary relationship does not exist, where a professional accountant in public practice* becomes aware that any commission, fee or other benefit may be received (directly or indirectly), there shall be disclosed to the client in writing:*

- That commission or benefit will result or is likely to result, and*
- When the fact is known, that such commission or benefit will be received, and*
- As early as possible, the amount and terms of the benefit to the professional accountant in public practice*.*

240.7e *As regards payments of referral fees, professional accountants in public practice* have a responsibility to ascertain that a referral manner is in accordance with this Code because professional accountants in public practice* must not do, or be seen to do, through others what they may not do themselves. To this end, professional accountants in public practice* shall consider whether there are any indications that the work or client has been initially procured in an unprofessional manner.*

In addition, where needed to complete a referred engagement properly, professional accountants in public practice shall:*

- *Satisfy themselves as to the competence and professional standards of staff within their firm* whose work on the engagement it would be their duty to review; and*
- *Ensure their right of direct access to the client and, in appropriate circumstances, render their own fee account to the client.*

240.7f *In the case of insolvency work, Insolvency Practitioners shall have regard to Part D of this Code.*

240.7g *Where an invitation to conduct a statutory audit comes other than directly from the client, the professional accountant in public practice* shall first ensure that the audit appointment has properly been made in accordance with statute. It shall be made clear to all interested parties on all relevant documents that the professional accountant in public practice* is acting as principal, with all that that function implies. In those circumstances, professional accountants in public practice* shall deal directly with the client and shall render their own fee account in addition to complying with the other requirements above.*

240.8 A professional accountant in public practice* may purchase all or part of another firm* on the basis that payments will be made to individuals formerly owning the firm* or to their heirs or estates. Such payments are not regarded as commissions or referral fees for the purpose of paragraphs 240.5–240.7 above.

Attention is drawn to additional requirements in respect of agency and referral arrangements, in section 241.