



# DETERMINING THE BASIS OF CHARGING FEES

Issued March 2017  
Updated February 2020

## CONTENTS

|                              |   |
|------------------------------|---|
| Introduction .....           | 2 |
| General considerations ..... | 2 |
| Threats to objectivity ..... | 2 |
| Contingent fees.....         | 3 |
| Documentation.....           | 4 |

© ICAEW 2020

All rights reserved.

If you want to reproduce or redistribute any of the material in this publication, you should first get ICAEW's permission in writing.

Laws and regulations referred to in this ICAEW Guidance are stated as at March 2017. Every effort has been made to make sure the information it contains is accurate at the time of creation. ICAEW cannot guarantee the completeness or accuracy of the information in this ICAEW Guidance and shall not be responsible for errors or inaccuracies. Under no circumstances shall ICAEW be liable for any reliance by you on any information in this ICAEW Guidance.

ISBN 978-1-78363-931-1

## INTRODUCTION

1. The Code of Ethics (the Code) is based on that of the International Ethics Standards Board for Accountants (IESBA). The Code<sup>1</sup>, in common with the IESBA Code, does not specify a particular method for determining fees but does caution that any threats to ethical behaviour resulting from the fee or method of charging, need to be assessed by members and appropriate safeguards applied. As the Code is principles-based, it is important that the spirit of its requirements is applied, as well as the letter.
2. Being paid a fee by a client will, by its very nature, create a potential threat to objectivity. This will normally be countered by the checks and balances of training, standards and reputation inherent in professionalism. However, where the terms of the fees are such that the threat to objectivity is significant, safeguards will need to be applied if the work is to be undertaken. This is particularly relevant where the fees are on a contingent basis, as the fee structure may heighten, or be perceived to heighten, the economic incentive to advise in a certain manner, to a point that it might threaten, or appear to threaten, objectivity.
3. In the case of audit and assurance engagements, additional independence requirements apply. These are not addressed by this guidance and members should refer to Part 4A of the Code<sup>2</sup> and the FRC's Ethical Standard on auditor independence<sup>3</sup>.
4. This guidance highlights matters for members and firms<sup>4</sup> to consider in order to help apply aspects of the Code in particular circumstances. The guidance does not add to or change anything in the Code in and of itself.

## GENERAL CONSIDERATIONS

5. The Code requires that: 'A professional accountant shall explain the basis on which fees will be calculated and provide an estimated initial fee where applicable. A professional accountant shall give the client this information at the earliest opportunity.....Fee levels are a commercial matter, but may be determined by:
  - The seniority and expertise of the individuals performing the work;
  - Time spent;
  - The risk and responsibility of the work;
  - The nature of the client's business;
  - The priority and importance of the work to the client;
  - Expenses properly incurred.'<sup>5</sup>
6. The categories noted in the Code are not intended to be used as a narrowly interpreted checklist: they are wide ranging and indicate that fees can be based on a variety of factors. Professional 'expertise' for example, might cover technical knowledge and ability, past experience of relevant issues, and/or intellectual property. 'Priority and importance of work to the client' could similarly cover a variety of issues, including value of the work to the client (and its outcome), urgency, and/or comparative fees charged or quoted by others.

## THREATS TO OBJECTIVITY

7. The amount of the fee to be agreed between members and their clients is a commercial matter between the parties involved and, specific requirements in respect of insolvency engagements apart, is not addressed by professional regulation. The statement in the Code (above) does not mean that the member has to justify the amount and/or basis of calculation on the grounds that it is mechanically derived from one or more of the items in the list.

---

<sup>1</sup> Section 330 <https://www.icaew.com/technical/ethics/icaew-code-of-ethics/icaew-code-of-ethics>

<sup>2</sup> Ibid.

<sup>3</sup> <https://www.frc.org.uk/auditors/audit-assurance/standards-and-guidance/current-ethical-standards>

<sup>4</sup> In this guidance, 'member(s)' also includes an affiliate, a provisional member, a foundation qualification holder, a provisional foundation qualification holder, and an employee of a member firm or an affiliate, as defined in the code of ethics glossary – <https://www.icaew.com/technical/ethics/icaew-code-of-ethics/icaew-code-of-ethics>.

<sup>5</sup> R330.4, 330.4 A1 *ibid*.

## DETERMINING THE BASIS OF CHARGING FEES

However, the fee must not be set in such a way that it would breach the fundamental requirement to maintain objectivity.

8. Threats to compliance with objectivity and the other fundamental principles, whether actual or perceived,<sup>6</sup> should be considered particularly where fee arrangements include a contingent fee being set, and/or the fee is to be paid or ultimately borne by someone other than the party to whom the member delivers the service.
9. Where the exact fee has not been agreed on accepting the engagement, it must be clear to the client, the basis on which fees will be rendered for the engagement in due course. Lack of understanding as to how fees have been calculated regularly contributes to a client or former client making a complaint to ICAEW about a member's conduct.
10. If the party paying or ultimately bearing the fee is not the same as the party receiving the advice or instructing the member, the member should consider the relationships with both parties. As well as practical issues such as whether there are tax consequences of the arrangement, there may be ethical considerations. There may be a heightened threat to objectivity as a result of bias either towards the fee payer or the party instructing the member, to the detriment of the other party. This may create a conflict of interest – see s310 of the Code and the separate guidance on conflicts.
11. If the fee arrangements are out of line with market practice or otherwise unusual, the basis of determining the fee may need to be discussed with, and explained to, both parties.
12. In any event it is sensible for the member to take steps to reduce the likelihood that the fee will be challenged subsequently. The existence of potential conflicts and the extent to which the client understands the implications of the basis described, are relevant in this context.
13. ICAEW's Ethics Advisory Service has produced a helpsheet for members which addresses a number of the practical aspects in providing clients with the fee basis and relevant analyses.<sup>7</sup>

## CONTINGENT FEES

14. One indicator of a potential fee-related threat being significant and therefore needing to be addressed specifically is that the amount of the fee is dependent on some aspect of the outcome of the engagement, rather than just the factors noted in paragraph 5 above. These are generally referred to as contingent fees and are considered below.<sup>8</sup> The potential for similar threats to arise should be considered with more informal arrangements such as explicit or implicit promises of further work, again dependent on the outcome of the current engagement.
15. Contingent fees are prohibited for assurance engagements and in many circumstances for non-assurance services provided to assurance clients, as they would create or be seen to create unacceptable threats to the independence needed for such engagements. This guidance does not address these requirements, which are covered in detail in Parts 4A and 4B of the Code<sup>9</sup> and the FRC's Ethical Standard on auditor independence.<sup>10</sup> However it is worth noting that even for such engagements, it is not intended to prohibit an audit firm from charging a lower fee for a non-audit service where the transaction that was the subject of the engagement is later aborted and where the rationale for the lower fee is to take account of either the firm's reduced risk and responsibility involved or the fact that less work was undertaken than had initially been planned.
16. In other areas of activity, contingent fee arrangements may reflect general market practice and can be advantageous to clients: for example where an uncertain transaction might not be contemplated by a client without the accountant bearing some of the cost incurred, if the transaction did not proceed.

---

<sup>6</sup> Perception is to be considered in the context of what a reasonable and informed third party with knowledge of the facts and circumstances, would conclude.

<sup>7</sup> <http://www.icaew.com/en/members/advisory-helplines-and-services/ethic-helpsheets/fee-breakdown-information>.

<sup>8</sup> See definition of contingent fee at <https://www.icaew.com/technical/ethics/icaew-code-of-ethics/icaew-code-of-ethics>.

<sup>9</sup> 410.9 A1 and 905.6 A1 *ibid.*.

<sup>10</sup> <https://www.frc.org.uk/auditors/audit-assurance/standards-and-guidance/current-ethical-standards>

## DETERMINING THE BASIS OF CHARGING FEES

17. Nonetheless, even in such circumstances, contingent fees will only be acceptable if the way in which the fee is set does not create, or would not be seen by the reasonable and informed third party to create, insurmountable threats to objectivity: the economic incentive inherent in high risk arrangements to advise in a certain manner, to a point that outweighs professionalism, must be safeguarded against or the work not undertaken. Heightened awareness is therefore needed to ensure that the fee arrangement does not result in the member being, or being seen to be, partial to one outcome rather than another in order to benefit from increased fees.
18. The fee structure should be set to avoid creating or exacerbating significant conflicts against which safeguards cannot be applied. It will be helpful to be clear on all sides what the objective is (for example is a sale to be completed at the greatest speed or to achieve the highest price?) and to set the fee basis accordingly to align with that objective. The Code gives examples of safeguards based on transparency and oversight,<sup>11</sup> including quality control policies and procedures and independent review of the work performed.
19. Disclosure to intended users of the work performed and the basis of remuneration will allow clarity and discussion of the potential need for safeguards. It is important, however, to appreciate that transparency is not a substitute for effective safeguards. More detailed supplementary guidance on threats and safeguards in conflict situations will be relevant.
20. It is important to keep the potential threats, and accordingly the need for safeguards, under review throughout the engagement as circumstances may change.

## DOCUMENTATION

21. The Code requires the fee arrangements (which may be an amount, or a basis for determining an amount) for all engagements to be confirmed in writing before the engagement commences.<sup>12</sup>
22. Where there are ethical considerations to be assessed and they are not self-evident, members are strongly encouraged to document the reasoning and other evidence which supports the evaluation of threats and safeguards. The act of documenting can help with the identification and thinking through of ethical issues, and the documentation helps to preserve the consideration applied. This can mitigate the risk of any subsequent challenge from regulators and others.
23. That said, the Code does not generally require documentation of considerations, except in respect of certain audit-related matters and the confirmation of the basis of charging fees referred to above. It follows that a lack of documentation does not of itself create a threat to compliance with the fundamental principles, or mean that a relevant consideration or action has not happened. Not documenting the steps which have been taken cannot therefore in itself amount to misconduct.

---

<sup>11</sup> 330.8 A3 <https://www.icaew.com/technical/ethics/icaew-code-of-ethics/icaew-code-of-ethics>.

<sup>12</sup> R330.5 *ibid*.

There are over 1.7m chartered accountants and students around the world – talented, ethical and committed professionals who use their expertise to ensure we have a successful and sustainable future.

Over 150,000 of these are ICAEW Chartered Accountants. We train, develop and support each one of them so that they have the knowledge and values to help build local and global economies that are sustainable, accountable and fair.

We've been at the heart of the accountancy profession since we were founded in 1880 to ensure trust in business. We share our knowledge and insight with governments, regulators and business leaders worldwide as we believe accountancy is a force for positive economic change across the world.

[www.charteredaccountantsworldwide.com](http://www.charteredaccountantsworldwide.com)

[www.globalaccountingalliance.com](http://www.globalaccountingalliance.com)

#### **ICAEW**

Chartered Accountants' Hall  
Moorgate Place  
London  
EC2R 6EA  
UK

T +44 (0)20 7920 8100

E [generalenquiries@icaew.com](mailto:generalenquiries@icaew.com)

[icaew.com](http://icaew.com)

