



PUBLIC INTEREST RESPONSIBILITY OF ACCOUNTANTS

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INTRODUCTION

PUBLIC INTEREST RESPONSIBILITY OF THE ACCOUNTANCY PROFESSION

1. The public interest is an important, though abstract notion associated with the public benefit, rather than matters in which the public is interested.¹ ICAEW's charter of incorporation refers to the public benefit as the core rationale for the Institute to be brought into existence. The accountancy profession's actions to further the public interest include: developing technical and behavioural standards; establishing an infrastructure of training, development, monitoring and enforcement to help ensure those standards are applied; and promoting programmes to advance thinking and develop guidance to further the profession's contribution to business and society. The profession adjusts these actions and evolves the standards that members apply, to respond to changes in social and commercial norms. An example of this is guidance issued jointly by a number of professional bodies, 'Professional Conduct in Relation to Taxation'. This was updated in 2016² to discuss the boundaries of tax planning advice, an issue which had been under discussion given changes in public expectations.
2. The behavioural standards are manifested in ICAEW's Code of Ethics (the Code), which recognises that professional work requires the application of extensive judgement based on expert and often complex knowledge. For it to continue to be for the benefit of the public for the profession to exist, it is important for the public to have confidence that that judgement is applied in an ethical manner.
3. The Code is based on that of the International Ethics Standards Board for Accountants (IESBA). The Code,³ in common with the IESBA Code, recognises the accountancy profession's public interest responsibility, and is based around a set of fundamental principles of ethical behaviour. This is consistent with ICAEW's original charter of incorporation. The fundamental principles are:
 - **Integrity** – straightforwardness and honesty, including non-association with misleading information;
 - **Objectivity** – ensuring bias, conflicts and undue influence do not override professional judgement;
 - **Professional competence and due care** – maintenance of knowledge and skill and acting diligently;
 - **Confidentiality** – non-disclosure of confidential information unless there is a legal or professional right or duty to do so; and
 - **Professional behaviour** – compliance with law and regulation, and avoidance of actions which discredit the profession.

ICAEW believes that a principles-based approach provides the best basis upon which to promote high standards of professional behaviour, while allowing the flexibility to ensure that the public receives objective, competent and diligent professional services in respect of often complex financial matters.

4. The profession's wider public interest responsibility is also taken into account by ICAEW and IESBA in setting the detailed requirements of the Code. Thus, for example, the Code includes requirements to override confidentiality in certain circumstances, ensure transparency where necessary and consider reasonable and informed public perception, based on knowledge at the time. The application of the fundamental principles is kept under review to ensure that it continues to be reflective of society's reasonable expectations of the profession's roles and responsibilities. The principles and requirements are supplemented by professional standards and guidance (specific to the service in question) that help to ensure members deliver objective professional advice and outputs on which relevant stakeholders can rely.

¹ For further discussion, see ICAEW publication 'Acting in the Public Interest' at <http://www.icaew.com/publicinterest>.

² <https://www.icaew.com/technical/tax/pct>

³ <https://www.icaew.com/technical/ethics/icaew-code-of-ethics/icaew-code-of-ethics>

5. This guidance highlights matters for individual members and firms to consider in order to satisfy the profession's public interest responsibility that the Code is designed to meet. The guidance does not add to or change anything in the Code in and of itself.

RESPONSIBILITY OF INDIVIDUAL MEMBERS AND FIRMS

6. Within the preamble that introduces the requirements of the Code, the Code states that: 'A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. A professional accountant's responsibility is not exclusively to satisfy the needs of an individual client or employing organisation. Therefore, the Code contains requirements and application material to enable professional accountants to meet their responsibility to act in the public interest'.⁴
7. Given that the Code itself is designed to take into account the profession's responsibility in respect of the public interest, members⁵ discharge their individual public interest responsibility by complying and being seen⁶ to comply with the five fundamental principles and other detailed requirements that are in the Code.⁷ That said, the fundamental principles are widely drawn: no professional, whether in business or practice, operates in an ethical vacuum and the obligation to bear in mind the profession's public interest purpose can be characterised as an obligation to apply the spirit, and not just the letter, of the Code, bearing in mind reasonable and informed public perception.
8. The first four fundamental principles set out discrete and definable ethical obligations. The fifth fundamental principle, professional behaviour, encompasses an obligation⁸ that members shall avoid conduct that discredits the profession.
9. The assessment of what conduct brings discredit includes a perception test: would a reasonable and informed third party conclude that the conduct adversely affects the reputation of the profession? The Code makes it clear that the assessment of a member's compliance with this fundamental principle (and indeed any of the fundamental principles) must be made on the basis of the facts and information available to the member at the time of the action or omission in question, not with the benefit of hindsight. Ethical considerations start when an engagement or action is anticipated and continue through to its conclusion. However, members cannot anticipate how cultural, political or ethical norms may change subsequently and a member's actions or omissions can only be judged by reference to norms at the time of the assessment.
10. It is very difficult to translate this general 'discredit' obligation into a precise rule or norm but if an accountant were to act in accordance with the fundamental principles and relevant guidance at the time in relation to a transaction which is lawful but comes to be regarded as against the public interest later on, that would not in itself, except in very unusual circumstances, amount to a breach of the Code.
11. Where a professional service is provided which complies with the first four fundamental principles of the Code, therefore, in most cases it would be reasonable for members to conclude that the professional service provided is not against the public interest. Indeed, it would not be in the public interest for members to set themselves up to make broad political or philosophical judgements when deciding whether to provide particular services. A disciplinary appeal tribunal considered this issue and pointed out by way of illustration, that such an approach to the public interest concept could compel an accountant to form a judgement, as a condition of taking on or continuing with a task, as to whether enhanced profit for a business is a greater public good than increased levels of employment. It

⁴ 100.1 A1 <https://www.icaew.com/technical/ethics/icaew-code-of-ethics/icaew-code-of-ethics>.

⁵ 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 – *ibid*.

⁶ 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.

⁷ R100.3, R110.2 *ibid*.

⁸ R115.1 *ibid*.

concluded that it would be inappropriate for there to be such an obligation.⁹ Similarly, the discredit obligation does not mean that members cannot, if they wish, act for clients or employers whose legal activities are controversial with the general public, eg, tobacco or animal research. There is a clear public interest that such businesses, as long as they remain lawful, should have access to accountancy services.

12. The ethical course of action will usually be clear. However, where a member is uncertain as to which of two apparently ethical but conflicting courses of action to follow, or where there is doubt as to whether providing a service or being associated with a client or employer activity is likely to result in discredit or any other breach of the fundamental principles, the member may wish to consider some high level questions in connection with the engagement or activity:
 - What is the service the member is providing to the client or employer?
 - Who could reasonably be thought of as stakeholders with a legitimate interest in the member's work and what are their interests?
 - How will these interests be taken into consideration when applying the fundamental principles – for example;
 - Is there a potential for the output from the member's work to be misleading?
 - Is there undue influence over the member's objectivity?
 - Does the member have, or have access to, the requisite skills?
 - Is there likely to be a confidentiality issue?
 - As an overall sense check, does this feel right? Would a hypothetical reasonable and informed third party consider the action to be discreditable?
13. Members may also wish to undertake additional consultation with, for example, the ethics partner if there is one, another senior partner or professional accountant in the organisation, an independent non-executive, ICAEW, or external sources (subject to maintaining appropriate confidentiality). The core duty to maintain the fundamental principles is the same regardless of the service. However, where there is significant public interest in or reliance on the outputs (eg, reports, advice and opinions) of the member's work, perception is particularly relevant. In such cases, the member should consider whether appropriate safeguards can be demonstrated to have been put in place.
14. While judgment cannot be based on hindsight, any threat would need to be assessed on an ongoing basis until the conclusion of the engagement or assignment, as circumstances may change during the course of the work.

ASSOCIATION WITH MISLEADING ACTS OR INFORMATION

15. Services provided by members, whether to clients or employers, are frequently related to the provision or assurance of information. Core to the issue of discredit, therefore, is the extent to which it is reasonable that intended users of information that members provide or assure should rely on it.
16. The fundamental principle of integrity in the Code includes a requirement for honesty by members. Following from this, it also includes an obligation for members not to knowingly be associated with misleading information.¹⁰ This is therefore considered further below.
17. It is in the public interest for people seeking professional advice to be able to obtain advice as to how they may go about their affairs within the law. However, members need to consider the context in which it is expected that reliance will be placed on that advice. Members cannot require their clients or employers to act in the public interest but can take responsibility for their own actions. The fundamental principles of integrity and professional behaviour in particular mean that members must not knowingly associate themselves directly or indirectly with misleading acts or information. It would be contrary to the public interest for

⁹ Paragraph 82, 'Report of the Appeal Tribunal: Deloitte & Touche and Mr Maghsoud Einollahi' Financial Reporting Council 30 January 2015, <https://www.frc.org.uk/News-and-Events/FRC-Press/Press/2015/January/Outcome-of-appeal-by-Deloitte-Touche-and-Mr-Maghsou.aspx>.

¹⁰ R111.2 <https://www.icaew.com/technical/ethics/icaew-code-of-ethics/icaew-code-of-ethics>.

members to do so. Deliberate or reckless deception is often proscribed by law in any event and active assistance in a criminal activity is itself a crime.

18. Members are not generally¹¹ expected pro-actively to seek out intent by a client or employer to mislead third parties, whether unlawfully or otherwise. The test is whether members come across evidence in the course of their work from which they can reasonably foresee that the overall result of the client's or employer's activities will be to mislead third parties in respect of the matters to which the engagement or activity relates. Members should have a reasonable understanding of how the client or employee intends to use their work but this does not mean that they have an obligation to verify the absolute accuracy of every statement with which they are associated. Members will frequently prepare reports which may be attached to documents in which, for instance, the client or employer makes optimistic, but difficult to verify, statements about the prospects of the company. It is a matter of judgement whether a document is a vague and subjective promotional claim and would be accepted as such by a reasonable and informed third party, or, alternatively, goes so far as to be deceptive. The member's assessment of such matters can only be based on evidence available at the time but needs to be undertaken when taking on, and throughout, the engagement or activity, bearing in mind that there may be a later assessment of what the member knew or reasonably ought to have known.
19. From the perspective of a reasonable and informed third party, where the member is seen to be involved, this would lend an element of credibility to the information regardless of whether an opinion is provided. Where such credibility might reasonably be seen to be attached, the member has a responsibility to consider whether, depending on the circumstances, it may be possible to correct the misleading impression through additional disclosure, or achieve disassociation by way of disclaimer. It may be of assistance to seek a review by another partner, professional or independent non-executive in the organisation, or consult the professional body. However, ultimately, disengagement may be necessary. Informing the third party of the deception could be contrary to the fundamental principle of confidentiality (although if of a significant scale, disclosure to appropriate authorities is required if considered to be in the public interest).¹²
20. Where such situations involve actual or potential conflicts of interest, the Code requirements¹³ and supplementary guidance on identifying and managing conflicts of interest will be relevant.

ADDITIONAL CONSIDERATIONS IN SPECIFIC CIRCUMSTANCES

21. In particular circumstances, specific regulatory and/or ethical requirements will apply which will be a factor in the considerations above. For example:
 - In insolvency work, the law (which will always prevail over the requirements of the Code) often specifies particular actions in particular situations. UK law states that creditor interests are paramount for any officer of a business in an insolvent position.
 - In tax work, as well as the Code, the guidance on Professional Conduct in Relation to Taxation¹⁴ is relevant to members, which covers responsibilities in this area including an assessment of the acceptable boundaries of tax avoidance.
 - There are specific money laundering reporting obligations for members providing audit, accountancy, tax advisory, insolvency or related services in the United Kingdom.

EXAMPLES

22. A number of illustrative examples of situations in which considerations of association and discredit may become relevant are set out below.
 - a) **Accounts preparation** –Members in practice and business will often prepare sets of financial statements on behalf of clients or employers. It is not uncommon practice for

¹¹ Specific requirements on, for example, detecting fraud, are included in standards applicable to audit work.

¹² Sections 260 and 360 <https://www.icaew.com/technical/ethics/icaew-code-of-ethics/icaew-code-of-ethics>.

¹³ Sections 210 and 310 *ibid*.

¹⁴ <https://www.icaew.com/technical/tax/pct>

practitioners in particular to file the financial statements at Companies House, bearing the name of the firm of chartered accountants, even if there is no assurance opinion or compilation report given. As the financial statements would clearly be seen to be relating to the work of the member, this would add an element of credibility through association and the member would need to consider whether that credibility is warranted. Similar considerations will apply to members in business if they add their individual identity and qualification to the submission.

- b) **Restricted financial engagements or assignments** – A member is engaged by an energy company to assist in finding a buyer for an asset with a significant environmental restoration liability attached to it. The engagement includes reporting on certain financial information, but specifically not on the liability. However, in the absence of disclaimers, the member's very involvement could be seen to be lending credibility to some or all of the information provided by association, whether reported on or not. The member needs to consider, when assessing whether the engagement can be accepted, and throughout the engagement when new information comes to light, whether the scope of it was designed deliberately narrowly to give a false impression. Similar considerations would arise for a member employed within the energy company itself to provide such information for external use in selling the asset. Might the net effect of the information disclosed be to mislead the intended audience? As noted above, members need not seek out intent to mislead, but their planning and subsequent work may produce indications and they must take into account information of which they have become, or in the opinion of the hypothetical reasonable and informed third party should have become, aware. If this assessment causes doubts as to whether providing or continuing to provide the service or being associated with the output is likely to result in discredit, members may wish to consider the public interest perspective as outlined in paragraph 12 above. It should be noted that members cannot be held responsible for subsequent usage of the information by third parties in different ways to that reasonably anticipated.
- c) **Tax avoidance** – A member is engaged (or employed) to advise on a tax avoidance scheme which, while legal, goes considerably beyond normal tax planning. As noted above, it is in the public interest for people seeking professional advice to be able to obtain that advice, as to how they may go about affairs within the law: the profession's responsibility to the public interest does not mean members never advising someone how to save tax. However, the fundamental principles require members to comply with the law and ensure that they are not associated with misleading information. The member needs to consider the guidance in the Professional Conduct in Relation to Taxation¹⁵ which interprets the fundamental principles to advise members that, among other things, they must not 'create, encourage or promote' tax planning arrangements that are contrary to the clear intention of Parliament (where there is one) and/or are highly artificial or highly contrived. If in doubt, the member should consult other members, specialists and/or ICAEW. If it is decided that the work can proceed, safeguards may include full disclosure of the relevant facts of proposed arrangements and rationale to the tax authorities in a manner that allows the authorities to make a properly informed judgement.
- d) **Insolvency** – A member engaged in insolvency practice is invited to handle an administration process for a struggling business, where parties connected to the business have indicated an interest in acquiring the business shortly after it is put into administration – a 'pre-pack'. Although as noted above, insolvency is an area of practice where the law often specifies particular actions in particular situations, but pre-packs to connected parties can create actual or perceived ethical threats to objectivity which need to be considered by the member. The supplementary conflicts of interest guidance refers to this example and addresses conflicts safeguards further. The member may, if in doubt, consider the issue of discredit further and may wish to

¹⁵ <https://www.icaew.com/technical/tax/pctr>

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encourage a connected party purchaser to use the Pre-Pack Pool,¹⁶ which gives an independent opinion on the reasonableness of the transaction, in order to mitigate against any perceived threats.

DOCUMENTATION

23. 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.
24. That said, the Code does not generally require documentation of considerations, except in respect of certain audit and fee-related matters. 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.

OTHER SOURCES OF ADVICE AND INFORMATION

25. ICAEW's ethical conflict resolution framework¹⁷ provides a useful framework for consideration of ethical challenges. ICAEW's 'Acting in the Public Interest' publication explores the concept of the public interest in a wider setting and includes a framework for assessment.¹⁸

¹⁶ <https://www.prepackpool.co.uk/>.

¹⁷ <https://www.icaew.com/technical/ethics/ethics-helpsheets/ethical-problems-framework-for-resolution> .

¹⁸ <http://www.icaew.com/publicinterest>.

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