



Proposed Revisions Pertaining to Safeguards in the Code - Phase 1

ICAEW welcomes the opportunity to comment on the *Proposed Revisions Pertaining to Safeguards in the Code - Phase 1* published by IESBA on 4 January 2016, a copy of which is available from this [link](#).

ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 145,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.

Copyright © ICAEW 2016
All rights reserved.

This document may be reproduced without specific permission, in whole or part, free of charge and in any format or medium, subject to the conditions that:

- it is appropriately attributed, replicated accurately and is not used in a misleading context;
- the source of the extract or document is acknowledged and the title and ICAEW reference number are quoted.

Where third-party copyright material has been identified application for permission must be made to the copyright holder.

For more information, please contact: representations@icaew.com

icaew.com

OVERALL

1. While we have not encountered significant issues with our members understanding the notion of the conceptual framework, we are supportive of this project to enhance discussion in the IESBA Code of Ethics (the code), the general approach taken, and its co-ordination with the structure project. We look forward to the output from phase II as the review of examples of specific safeguards that is included within that phase, should be the primary focus of this project. It is probably the key area where the project can add value to users of the code.
2. We set out our responses to the questions asked in the consultation paper below, followed by a number of comments on the wording in specific paragraphs.

REQUEST FOR SPECIFIC COMMENTS

Proposed Revisions to the Conceptual Framework

Q1: Do respondents support the Board's proposed revisions to the extant Code pertaining to the conceptual framework, including the proposed requirements and application material related to:

- (a) Identifying threats;
- (b) Evaluating threats;
- (c) Addressing threats;
- (d) Re-evaluating threats; and
- (e) The overall assessment.

If not, why not?

3. Yes, subject to the documentation issue discussed below, we support the approach.
4. In a number of areas, the redraft includes explicit requirements in respect of matters which were more implicit in the current code. Examples include the need for an overall assessment and the need to re-evaluate threats. While we do not disagree with making these requirements more explicit, this can have an impact on documentation. We take the code's requirements in this area to be that documentation is not required (other than in respect of assurance activities) but may be in the accountant's own interests. However, the wording is capable of being read in a number of ways (a point we raise in our response to the structure consultation) – some member bodies and regulators could interpret these requirements, now that they are explicit, as requiring documentation where it was not required before. It would be helpful for the Board to be clear about its expectations.
5. In particular, where the work being undertaken by the professional accountant is an audit engagement in accordance with ISAs, is the overall assessment envisaged different than that required in, for example, ISA 220.11? While the code has a much wider focus than audits, where accountant carry out work in accordance with other standards with similar terminology, it is important to be consistent, or clear that differences are intended.

Proposed Revised Descriptions of “Reasonable and Informed Third Party” and “Acceptable Level”

Q2: Do respondents support the proposed revisions aimed at clarifying the concepts of (a) “reasonable and informed third party;” and (b) “acceptable level” in the Code. If not, why not?

6. We have not encountered significant issues among our members with understanding the concept of the reasonable and informed third party. However, we believe the enhanced description will be of use should such uncertainty arise. We are pleased that the opportunity to create a new formal definition has been resisted: definitions of concepts generally deflect attention away from what they are trying to achieve, onto the scope suggested by the exact words.
7. As regards the discussion on acceptable level, we support the inclusion of the discussion in the main body of the code – though would prefer it to be a discussion rather than a definition (see above). We note that the wording focuses exclusively on the views of the reasonable and informed third party. While this is consistent with the existing code, as the focus of much of this project is to set out explicitly what might be implicit at present, perhaps it would be worth pointing out that:
 - the threat to be considered is net of any safeguards applied; and
 - the accountant him- or herself should, having exercised professional judgment, be satisfied that the threat, adjusted for appropriate safeguards, would now be unlikely to be able to impact on his or her ethical behaviour.
8. Given the importance of the views of the reasonable and informed third party, we think that the change from taking a view that ‘compliance with the fundamental principles is not compromised’ to ‘complies with the fundamental principles’ is actually quite a significant change. While the explanatory memorandum states that the intention is to ‘better explain’ what the term means, in our view the meaning of the term has been changed: it is much more difficult to conclude that someone is behaving in line with a set of behavioural principles, than to assess whether there are reasons why they are not doing.

Proposed Revised Description of Safeguards

Q3: Do respondents support the proposed description of “safeguards?” If not, why not?

9. Yes.

Q4: Do respondents agree with the IESBA’s conclusions that “safeguards created by the profession or legislation,” “safeguards in the work environment,” and “safeguards implemented by the entity” in the extant Code:

(a) Do not meet the proposed description of safeguards in this ED?

(b) Are better characterized as “conditions, policies and procedures that affect the professional accountant’s identification and potentially the evaluation of threats as discussed in paragraphs 26–28 of this Explanatory Memorandum?”

If not, why not?

10. Yes: this has caused confusion in the past, resulting in arguments that effective safeguards have been applied when they have not.
11. We note that in discussing the conditions, policies and procedures, paragraph 120.5A4 notes that their existence or otherwise might affect the identification of threats. We believe that it would be worth clarifying that they might also affect the assessment of whether those identified threats are significant (presently alluded to in the draft in 120.6A3), and the availability and effectiveness of safeguards.

Proposals for Professional Accountants in Public Practice

Q5: Do respondents agree with the IESBA’s approach to the revisions in proposed Section 300 for professional accountants in public practice? If not, why not and what suggestions for an alternative approach do respondents have that they believe would be more appropriate?

12. Subject to our observations on the examples (noted below) we agree with the approach taken.
13. We note that the number of examples of both threats and safeguards has been reduced, compared to the current code. We agree with streamlining the number of examples in the code itself – there is a danger that too many examples result in people using them as a checklist. However, we note that those that remain do seem to be dominated by assurance–service related circumstances, particularly the threats in 300.2A1.
14. As regards the examples deleted, it would be unfortunate for them to disappear from the public domain: in our experience, members find the current examples to be useful memory-joggers. We wonder if they could at least be maintained in the off-code tools that the structure project discussion refers to.

OTHER DETAILED COMMENTS

15. 120.1 – We note the reference to the public interest, specifically the words ‘meeting the responsibility to act in the public interest’. In our view the references elsewhere in the code to the public interest mean that the profession has a public interest duty, which it discharges by, among other things, setting the code in the public interest. The individual member’s public interest responsibility is to follow the code. We are concerned that the words referred to above could lead to an interpretation that individual accountants have an additional specific public interest duty. We are not sure that paragraph 120.1 needs to refer to the public interest at all, but if it is thought useful, it would be helpful to insert ‘profession’s’ before ‘responsibility’¹.
16. 120.7A1 - The reference to parts C1 and C2 of the code, in the context of specific examples, do give the impression that circumstances where no safeguards could reduce the threat to an acceptable level are only likely to arise in assurance engagements. To avoid this erroneous impression, we suggest that the last sentence be generalised to something like ‘Examples of such situations are included in appropriate places in the code’.
17. 300.2A3 – There is a slight awkwardness in the wording that could be revisited: the introduction refers to ‘the following types of clients or professional service’, and then goes on to list only types of client.
18. 300.2A5 – Again, examples of types of service and relevant threats are cross-referenced only to parts C1 and C2. Surely there are discussions of other types of service in the rest of what is now to be part C under the restructure proposals?
19. 300.2A6 – We note that the first example has been changed from ‘expectation that members of an assurance team will act in the public interest’ to ‘expectation that professional accountants will act in the public interest’. While we doubt that any change of substance was intended, we believe this does fundamentally change the example –see our comments on the public interest above.
20. 300.2A9 – The first and second examples seem to be very similar: the second example, being more general, might suffice for the purposes of this paragraph.

¹ ICAEW has issued a consultation on the meaning of the public interest references in the code, at <http://www.icaew.com/en/technical/ethics/consultation-on-guidance-on-aspects-of-the-icaew-code-of-ethics>. While the consultation is in the context of the ICAEW code of ethics, the public interest concept is the same as that in the IESBA code.

REQUEST FOR GENERAL COMMENTS

21. We have no comments on the general issues referred to in the consultation paper other than to endorse the references in the explanatory memorandum to the unique challenges faced by SMPs in employing some safeguards, and the need for a review of the examples given with them in mind, which phase II of this project is set to include.