



## PROPOSED REVISIONS TO THE CODE TO PROMOTE THE ROLE AND MINDSET EXPECTED OF PROFESSIONAL ACCOUNTANTS

Issued 31 October 2019

ICAEW welcomes the opportunity to comment on the Exposure Draft of *Proposed Revisions to the Code to Promote the Role and Mindset Expected of Professional Accountants* published by the International Ethics Standards Board for Accountants in July 2019, a copy of which is available from this [link](#).

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## KEY POINTS

1. Overall we support the concept of an inquiring mind and the proposed additional discussion to be inserted into the IESBA Code of Ethics (the Code) at a time when there is sufficient substantive material to warrant a revision to the Code. However we are not convinced that the Code is the right place for detailed discussions of organisational culture and we have significant concerns about the proposed inclusion of an additional requirement in respect of an individual duty to the public interest, which we believe to be impractical; and inappropriate.

## ANSWERS TO SPECIFIC QUESTIONS

### **Question 1**

***Do you support the proposals in Section 100 that explain the role and values of professional accountants as well as the relationship between compliance with the Code and professional accountants acting in the public interest? Are there other relevant matters that should be highlighted in these paragraphs?***

2. We broadly support the proposals that explain the role and values of professional accountants. In particular we welcome the proposed new section 100.1 A2 which describes the attributes that a professional accountant brings, and provides context for why the Code is so vital to the reputation and value of the profession of accountancy.
3. However we have concerns that the proposed requirement for professional accountants to act in the public interest could be read as implying a separate individual duty – in essence a sixth fundamental principle. It has been a long established position that professional accountants satisfy the profession's obligation to act in the public interest through their compliance with the spirit and letter of the Code. If this requirement were extended to each individual's personal conduct as an additional obligation it would put individual accountants in an impossible position. We discuss this in further detail in our response to question 3 below.
4. We note that the proposed wording within 100.1 A1 states "Compliance with the Code enables accountants to meet their responsibility to act in the public interest....". Similarly, the proposed wording in 100.2 A1 states "The Code sets out the ethical behaviours and approach to professional activities expected of professional accountants in meeting their responsibility to act in the public interest." We support the statements made in both 100.1 A1 and 100.2 A1.

### **Question 2**

***Do you support the inclusion of the concept of determination to act appropriately in difficult situations and its position in Subsection 111?***

5. We support the inclusion of the concept of determination to act appropriately when confronting dilemmas or difficult situations. The examples given in 111.1 A2 may need slight refinement however, to clarify that "Challenging others as and when appropriate" should only apply during the course of professional activities (as the first example in the sub-section specifies). We presume this is in the intention of the new paragraph 111.1 A2, and the Code does not expect that a professional accountant should challenge others in the broader context of their personal life.

### **Question 3**

***Do you support the proposal to require a professional accountant to behave in a manner that is consistent with the profession's responsibility to act in the public interest in paragraphs 110.1 A1 (e) and R115.1?***

6. While we acknowledge IESBA's ambition to increase the prominence of the responsibility for the profession to act in the public interest, we do not support the apparent effect of the proposal, which can be read to create an additional principle for individual professional accountants to act in the public interest. The duty to act in the public interest belongs to the profession overall: we do not believe that there is a separate personal duty to act over and above compliance with the spirit and letter of the Code. We note the comments made by IESBA that: the board does not feel that it has the legal authority to assure accountants that by complying with the Code they have acted in the public interest; and the board does not believe that compliance with the Code is prima facie evidence or a rebuttable presumption that the professional accountant has acted in the public interest. We question whether the purpose of the Code is to give legal authority in any context – the Code is concerned with ethical behaviour only and it has no legal locus.
  
7. ICAEW has considered this matter at some length and has issued guidance for members on their public interest responsibility. Acknowledging the profession's overall responsibility to the public interest, and that the Code has been written from this perspective, it goes on to state:

“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 concluded that it would be inappropriate for there to be such an obligation. 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.”
  
8. The duty of accountants to consider the public interest before accepting an assignment was considered in a disciplinary tribunal case taken by the UK Financial Reporting Council<sup>1</sup>The tribunal discussed a hypothetical example of a proposed takeover bid by a foreign company of a domestic manufacturer. It queried whether accountants approached to act for the foreign company would be free to act, if there is a risk that were the takeover successful the predator will close down domestic factories. The tribunal's view was that it would be absurd for accountants to have to consider the vague question of whether the takeover is in the public interest. The tribunal concluded that the discussion in the Guide to Professional Ethics<sup>2</sup> as to the public interest cannot alone form the basis of any charge that an individual accountant has been guilty of misconduct.

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<sup>1</sup> Full details of this case can be found at <https://www.frc.org.uk/news/january-2015/outcome-of-appeal-by-deloitte-touche-and-mr-magh>.

<sup>2</sup> The predecessor to the current IESBA - based ICAEW Code, though applying substantively the same requirements.

9. The concept that individual professional accountants have to consider the public interest in how they personally conduct themselves is a rather abstract one. It is unclear in which scenarios the board considers that a professional accountant could have complied with the spirit and letter of the Code, and yet have acted in a manner that is not in the public interest? We note the reference to changing public expectations, but the fact that the Code is principles-based should allow interpretation of the principles to adapt where necessary to reflect changes in societal attitudes. Professional accountants should be expected to apply their professional judgement when assessing how to deal with situations, and this judgement should take into account prevailing reasonable public perceptions as one of the relevant factors.
10. Subsection 115 of the Code already deals with how individual members behave; making it clear that they must, in essence, conduct themselves as a professional, i.e. in a respectable manner so that they are deserving of the respect the profession holds. Subsection 115 also requires as an extension of this personal conduct, that the individual must comply with relevant laws and regulations. It should be clear to individuals what their responsibilities are in this regard.
11. To add the suggested wording for revised R115.1 (a) that a professional accountant shall..... "Behave in a manner that is consistent with the profession's responsibility to act in the public interest" could be read to fundamentally change the existing requirements from fairly clear edicts to behave in a decent, trustworthy and law abiding manner, to something far harder to comprehend or apply. The exposure draft does not provide a definition of the public interest, and it is a concept that has proven difficult for people to agree on.
12. There are further practical issues with introducing this personal duty to act in the public interest. ICAEW members, along with those of many other IFAC bodies, are obliged to comply with the Code and are subject to disciplinary action if they breach the Code requirements. Many cases are taken for breaches of Professional Behaviour, including failure to comply with the law, and members conducting themselves in an offensive or grossly inappropriate fashion. It is hard to imagine how such a disciplinary case could be taken under the principle of Professional Behaviour for a failure to act in the public interest, especially given the comments made by the FRC disciplinary tribunal referred to above. Members may rightly be concerned that they are being expected to adhere to a requirement without any clarity over what that means for them in their day to day lives.
13. In summary, we question the benefit, usefulness and practicality of introducing this additional personal requirement. The proposed wording referred to in this question should be deleted.

#### **Question 4**

***Notwithstanding that the IESBA has a separate working group that is exploring the implications of developments in technology, are there any additional matters relating to the impact of technology beyond the proposals in paragraphs 110.1 A1(b)(iii), 113.2 A2 and 120.12 A2 that you consider should be addressed specifically as part of the Role and Mindset project?***

14. There are no additional matters that we consider should be addressed as part of the Role and Mindset project. We look forward to the results of the technology working group which should inform the development of the Code for the future.

**Question 5**

***Do you agree with the concept of an inquiring mind as set out in the proposals in Section 120?***

15. The concept as defined is sound and we welcome the additional clarity of including an Inquiring Mind as an explicit part of section 120. In our view, the extant requirement to consider or remain alert to whether facts and circumstances have changed, already obliges professional accountants to exercise an inquiring mind in the judgements they reach. However, making this more explicit is likely to be helpful to for users of the Code. We agree that the inclusion of the Inquiring Mind concept within section 120 is an appropriate location, as an Inquiring Mind is a wider concept that applies across all of the fundamental principles. There is an argument to include it in sub-section 112 as it does address behaviour rather than process, which section 120 focuses more on.

**Question 6**

***Do you support the approach to addressing bias? If so, do you agree with the list of examples of bias set out in paragraph 120.12 A2? Should any examples be omitted or new ones added?***

16. We welcome the extra discussion on bias which provides a helpful framework for accountants to evaluate whether bias could be affecting their judgements. In our view the detailed discussion on bias sits more logically within sub-section 112, rather than within section 120, given that avoiding bias is one of the main aspects of the fundamental principle of objectivity.
17. The additional examples of bias provided are useful and illustrate well the different aspects of bias. There are a few examples which appear fairly similar in that they refer to bias towards information that an accountant already knows, sees first, or perceives in a certain way – anchoring bias, confirmation bias, representation bias, and selective perception bias. In the interests of simplicity and understandability, there may be some merit in grouping these similar types of bias together. This would allow members to focus on other types of bias such as automation and groupthink.

**Question 7**

***Are there any other aspects about organisational culture in addition to the role of leadership that you consider should be addressed in the proposals?***

18. We agree that an ethical culture within an organisation is a good thing, and should always be encouraged, but we question whether the Code of Ethics for Professional Accountants is the appropriate place for this commentary on the factors that can positively influence organisational culture. Separate guidance on organisational culture might be issued for the use of members and others.
19. We believe that IESBA should proceed with caution in introducing such material into the Code given the risk that professional accountancy firms could find themselves subject to disciplinary action from oversight regulators, if they consider the firm has failed to adhere to this best practice on organisational culture.
20. The seniority of individuals within an organisation will also have a significant bearing upon their ability to influence the culture, in particular the actions of leadership, and the processes and programmes in place within the organisation. Should IIESBA decide to retain these paragraphs, clarity would be welcomed on the purpose of these sub-sections and who they

are intended to apply to and for what purpose: - all professional accountants individually?  
Firms in practice? Professional accountants in business only?