



## Improving the Structure of the Code of Ethics for Professional Accountants - Phase 1

ICAEW welcomes the opportunity to comment on the *Improving the Structure of the Code of Ethics for Professional Accountants - Phase 1* published by IESBA on 11 January 2016, a copy of which is available from this [link](#)

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## MAJOR POINTS

1. We welcome the new structure and distinction between requirements and application material, as well as the prominent positioning of principles over rules and the threats and safeguards approach. However we are keen to ensure that this approach is fully reflected throughout the code and that the guidance continues to evolve in the spirit of helping users apply the principles rather than facilitating regulatory compliance.
2. The new title appears indicative of an unsatisfactory compromise. Without evidence to suggest that this is a problem in need of fixing we suggest keeping the original title as it better represents what the document is and should be.
3. We support the changes around use of language and organisation of sections, as well as the facilitation of an electronic version.
4. We query the removal of useful practical guidance such as the ethical decision making framework and the condensation of some of the more useful threats and safeguards guidance.
5. We do not agree with the proposed explanation of the interaction between independence and objectivity.

## REQUEST FOR SPECIFIC COMMENTS

**Q1: Do you agree with the proposals, or do you have any suggestions for further improvement to the material in the ED, particularly with regard to:**

**a. Understandability, including the usefulness of the Guide to the Code?**

6. If the aim is for the requirements to be clearer then we would suggest either boxing them or boldening the text. This could be in addition to denoting them with an R.
7. Paragraph 100.1 wording has changed and this presents certain difficulties, the implication being that the responsibility to act in the public interest rests with the individual accountant rather than with the profession. Given that the Code itself is set to take into account the profession's responsibility in respect of the public interest, members will discharge their individual public interest responsibility if they comply with the five fundamental principles and other detailed requirements that are in the Code. The view of ICAEW is discussed further in our [proposed guidance](#) to accompany the Code of Ethics. We believe the previous wording of 100.1 was preferable.
8. We don't think that the new wording of paragraph 120.5 A4 represents an improvement with regards to clarity and user understanding.
9. The guide to the code references proposed non authoritative guidance being available to aid understanding of the code. Users may struggle with the labelling of such guidance as non-authoritative since where might authoritative guidance be available if not IESBA. Furthermore we would suggest that if users are viewing such guidance on the IESBA website they are likely to deem it authoritative even if it is labelled otherwise. IESBA is the international authority on accounting ethics. If such guidance can be produced without due process this presents a further risk, even if it is only viewed as semi-formal.

**b. The clarity of the relationship between requirements and application material?**

10. In paragraph 402.2 A1 it may be helpful to point out that, whilst a lack of documentation does not determine independence (or lack of), it can be encouraged to assist the professional accountant in justifying their decisions.

11. The ethical conflict resolution framework (previously found in paragraph 100.19) is notably absent from the new text. This represents a practical and user friendly tool and therefore its removal seems contrary to the intended goal of the project. As does the removal of a number of examples from the lists of threats in Section 300.

**c. The clarity of the principles basis of the Code supported by specific requirements?**

12. We are supportive of an approach that emphasises the principles basis of the Code, but we remain conscious that the very use of the term requirements is indicative of a rules based approach. Care should be taken not to lose the importance of the application guidance. After all, surely the primary purpose of a Code is to help users behave properly by applying the principles, not to make regulatory enforcement easier.
13. We are supportive of the incremental approach which lays out the baseline requirements applicable to certain professional accountants. To this end sections 120 and 300 appear to run contrary. There is an element of duplication and a professional accountant in public practice will find themselves re-reading much of the 'general requirements'.
14. The addition of "attain" in R113.1 sub paragraph (a) is a welcome one.

**d. The clarity of the responsibility of individual accountants and firms for compliance with requirements of the Code in particular circumstances?**

15. We agree with the approach of not prescribing specific responsibility to individuals within the firm.

**e. The clarity of language**

16. Is it necessary to make repeated references to 'professional accountant'? 'Accountant' could simply be defined to cover members of IFAC member bodies.
17. The mapping tool published alongside the consultation document mentions the advantages of using the word generally with specific reference to paragraph 340.3 A1, in which the word generally does not appear at all.
18. In paragraph 320.3 A3 "recommended" has been changed to "encourage". This is apparently due to the fact that recommending something does not require action on the part of the recommendee. We should point out that neither does encouragement. Further, we do not think that action should be compelled in this case, instead suggest that it may, in certain cases, be in the best interests of the professional accountant.

**f. The navigability of the Code, including:**

19. The printed version does not highlight defined terms.

**i. Numbering and layout of the sections;**

20. We think the structure of Section 310 could be improved further. It seems logical to consider disclosure of the conflict prior to assessing safeguards.
21. Paragraph 112.2 A1 gives an example of a threat despite these not being defined until paragraph 120.5.A2. It might be better to remove this example. Paragraph 112.3 A1 describes independence as a measure of objectivity. We would question this. There is a relationship between the two and they do interact, just not like this. One can demonstrate that one is independent if one can show freedom from external relationships and circumstances that might influence them. Perception and outcomes are just as important as mind-set. Objectivity (freedom from undue bias) on the other hand is entirely deontological; we are looking purely at the motives for a particular action or inaction. One can therefore be independent without being objective and vice versa.

22. Furthermore this links directly to our point in paragraph 13 about the primary purpose of a code being to guide correct behaviour. Given that independence requirements tend to about demonstrating compliance it is important to keep them conceptually separate from practical guidance on objectivity, which seeks to achieve a different outcome being correct behaviour.

**ii. Suggestions for future electronic enhancements; and**

23. We support the development of an enhanced electronic code, provided the print version is also well thought through.

**iii. Suggestions for future tools?**

24. Training tools are always a welcome resource, preferably as interactive as possible.

**g. The enforceability of the Code?**

25. We believe that distinguishing requirements from other guidance will make the Code easier to adopt into law and regulations, and in doing so facilitate enforcement by regulators. However, the Code should be about setting out the right behaviour by professional accountants in the public interest: we are not convinced that ease of enforceability should be a primary purpose of the restructuring.

**Q2: Do you believe the restructuring will enhance the adoption of the Code?**

26. Yes

**Q3: Do you believe that the restructuring has changed the meaning of the Code with respect to any particular provisions? If so, please explain why and suggest alternative wording.**

27. We think paragraph R524.3 is too subtle in that it refers to partners joining **an** audit client and audit team members joining **the** audit client. The distinction could be clearer.

28. The new definition of professional behaviour now reflects the discussion that was previously in 150.1. However we note that 'avoid any action that the professional accountant knows or should know might discredit the profession' is considerably wider than 'avoid any action that discredits the profession'. It is not clear whether the definition has been changed to address the previous inconsistency between paragraph 100.5 and paragraph 150.1 or to address a perceived problem with the definition itself. We suggest that the definition itself remains as it was. We are also not certain that the distinction between 'may' and 'might' is clear enough for non-English speakers.

**OTHER MATTERS**

**Q4: Do you have any comments on the clarity and appropriateness of the term "audit" continuing to include "review" for the purposes of the independence standards?**

29. The varied level of assurance and procedures involved mean that review engagements are actually on a continuum rather than being engagements that sit at a single point between audits and non-audit assurance work. Audits are often required by law and exist within a framework of strict regulation, review engagements, on the other hand, are often contracted voluntarily and for a specific purpose rather than wider stakeholder edification. As long as this situation persists it would be prudent to continue to require all the independence standards that attach to an audit for a review engagement, however this may also present a good opportunity to reconsider the concept of review engagement.

**Q5: Do you have any comments on the clarity and appropriateness of the restructured material in the way that it distinguishes firms and network firms?**

30. No.

**TITLE**

**Q6: Is the proposed title for the restructured Code appropriate?**

31. The new title is indicative of an unsatisfactory compromise.

32. Although there might be senses in which the notion of standards is relevant, professional ethics is about much more than meeting certain standards – unless the term is used in the most general (and therefore not very useful) of ways. In the case of accounting any reference to “standards” invites comparison with, and linkage to, IFRSs which are the result of a development process where principles are much less sacred. Such a comparison therefore serves to undermine a principles-based ethics code.