

The Chairman
Accounting Professional & Ethical Standards Board Limited
Level 7, 600 Bourke Street
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AUSTRALIA

16 December 2011

Dear Sir

Proposed Guidance Note: APES GN 40 Ethical Conflicts in the workplace – Considerations for Members in Business

The Association of Chartered Certified Accountants (ACCA) welcomes the opportunity to comment on this exposure draft, and we note the acknowledgement of ACCA's contribution on page 32. ACCA is the global body for professional accountants. We aim to offer business-relevant, first-choice qualifications to people of application, ability and ambition around the world who seek a rewarding career in accountancy, finance and management.

We support our 147,000 members and 424,000 students throughout their careers, providing services through a network of 83 offices and centres. Our global infrastructure means that exams and support are delivered – and reputation and influence developed – at a local level, directly benefiting stakeholders wherever they are based, or plan to move to, in pursuit of new career opportunities.

General comments

The guidance assumes that a member in business is necessarily an employee. In fact, a professional accountant may be a proprietor of a business which is not an accountancy practice. By way of illustration, we would refer to paragraphs 1.3, 5.2(d), 9.1, 12.6 and 12.8.

The structured approach set out in paragraph 4.2 is very specific, and we have identified the following weaknesses:

- (i) What is meant by 'determine whether a procedure of conflict resolution exists within the organisation'? Many large organisations may have a department or an individual who is responsible for the organisation's code of ethics or whom may be consulted in respect of ethical issues. However, it is unlikely that many will have a prescribed procedure for resolving ethical conflicts specifically. If, in fact, the point refers to conflicts between two individuals within an organisation, then we suggest

that the point be removed, as such internal conflict is not relevant to all ethical dilemmas. On analysis of the individual case studies, it appears that this section, in fact, adds little to them.

- (ii) The sixth bullet point appears to suggest that the professional accountant must always discuss the ethical dilemma with the relevant parties, without explaining who the relevant parties might be (or might not be). We believe this might cause harm, for example, if breaching the tipping off provisions of the anti-money laundering legislation.

We believe that this part of the guidance (and the case studies) should adopt a process more closely aligned with section 100 of the Code concerning ethical conflict resolution.

Paragraph 4.3 is repetitious of one of the bullet points in the list in paragraph 4.2. We believe the point regarding the documentation of discussions and conclusions is best made in paragraph 4.3, rather than 4.2, as it is, in fact, a specific safeguard. Although this safeguard is probably always relevant, the objective of the guidance is to teach members to apply the framework, and not to tell them which safeguards to implement. The same argument is true in respect of discussing the issue with an independent advisor.

However, we would question the reference to 'the materiality of the matter' in paragraph 4.3. There is no other reference, in either the Code or the draft Guidance Note, to assessing the materiality of an ethical issue. A threat to a fundamental principle may be considered to be significant or insignificant, but even this judgement is not applicable to the ethical dilemma itself.

In each case study, there is a tendency to introduce the agent by name in the case outline, but refer to him or her as 'the member in business' thereafter. This makes the case study less easy to read and, we believe, diminishes the value of using case studies.

Within the case studies, many of the paragraphs that form part of the 'ethical decision-making approach' appear repetitious, and add little to the case studies. In view of earlier comments also, we recommend that the approach outlined be reconsidered, and would recommend that the APESB explore a structure that that would make the case studies easier to understand and engage with.

Comments on specific case studies

Case study 1:

Under the fundamental principle of integrity, it questions whether the practice would be 'considered legal and acceptable to taxation authorities'. This is more akin to a threat to the fundamental principle of professional behaviour.

Under 'objectivity', it asks how the member will demonstrate objectivity 'from the chief executive'. This should refer to 'independence' from the chief executive, although the problem is, in fact, that the member *cannot* be independent of the chief executive. Therefore, the issue is how the member can address the threat, and protect the principle of objectivity.

Under the ethical decision-making approach, 'applicable accounting standards, best practice and applicable laws and regulations' are listed in connection with possible conflict resolution procedures. In fact, these are things to be considered when establishing the facts.

At the end of the case study, what is meant by 'consider the ethical conflict resolution process of the Member's Professional Body'? Should this simply say that the member should consider consulting his professional body?

Case study 2:

This case study appears to imply that the principle of professional behaviour focuses on serving the public interest. We suggest that the principle of professional behaviour specifically means acting in accordance with law and regulations, and not discrediting oneself or one's profession.

The paragraph that sets out the possible courses of action focuses on the professional accountant trying to persuade the managing director to 'do the right thing'. However, it does not suggest what should be done if the managing director refuses to authorise the disclosure of the unpaid rates.

Case study 3:

We are not convinced that the fundamental principle of professional behaviour is appropriate for mention in this context. If the professional accountant ignores the information he has, the issue is one of integrity. In view of the fact that this is a '*small* expense claim', perhaps the principle of confidentiality is more worthy of discussion.

Other stakeholders in the company should be identified as affected parties, as there may be a larger scale problem in respect of false expense claims, due to the poorly documented procedures. Assessing the scale of the problem is also something that should be mentioned when identifying the relevant facts.

The member has been provided with receipts and told that his supervisor was entertaining a client. Therefore, it appears dishonest to suggest that the member should claim he needs more information to ‘appropriately classify it for financial reporting and taxation purposes’. The case study does not state that the member must record the transaction correctly (and not classify it all as a business expense), and does not state what should be done if the member’s views are not respected.

Case study 4:

This case study should focus on the fact that the company is breaking the law, and Jamie is being asked to assist in this. The fundamental principle of professional behaviour is very relevant, but no mention of the law has been made when considering the fundamental principles. The issue of confidentiality and whistleblowing might also be relevant.

Among the affected parties, Microsoft should be included (whom the licence is designed to protect) and even other Microsoft users, for whom the cost of the product is inflated due to such licensing infringements.

Case study 5:

It is not clear what is meant by ‘the ethical conflict resolution process of the Member’s Professional Body’. (This is also mentioned in other case studies.)

Case study 6:

The case outline appears to imply that the costs have been capitalised or that someone is pressurising Nathan to capitalise them, but it does not make this clear. Therefore, the case study is not easy to read.

The discussion of objectivity could mention the familiarity threat created by the friendship with Doug, as previous case studies have been more concerned with intimidation. Professional competence should also be highlighted, as it is important that Nathan is seen to be aware of the correct treatment of the expenditure.

The paragraph headed ‘identify relevant facts’ is dissimilar to all the other paragraphs with that heading. Its current content would be better placed under the case outline or the consideration of the fundamental principles.

The case outline refers to the Income Tax Assessment Act, but the taxation office is not mentioned among the affected parties.

The possible courses of action do not include highlighting the expense as an exceptional item in order to provide a true and fair view.

Case study 7:

The discussion of professional behaviour comprises only the question 'How should the Member in Business proceed?'. Instead, it might be more worthwhile to raise the issue of a possible failure to meet statutory requirements. More relevant than the principle of professional behaviour might be that of confidentiality. What whistleblowing responsibilities does William have?

The resolution process does not appear to question why the engineering manager wants to conceal a 'significant fraud'.

There is no explanation why the step of determining whether a procedure of conflict resolution exists is 'not applicable for this case study', although it is applicable in other case studies.

We disagree that a possible course of action is to discuss the fraud with the contractor (or contractors) concerned, and it is not William's responsibility to 'request a refund of excess money paid'. Having checked the accuracy of his information, he should approach more senior management, those responsible for governance, and perhaps the auditors.

Case study 8:

We note that the principles in this case study are the same as those in case study 7, as several paragraphs are identical within both case studies, we would question the merit of including both case studies within the Guidance Note.

Case study 9:

The principle of objectivity is not well discussed. The issue is not the company's 'financial status', but how it is reported. The threat created by Sandra's self-interest is only mentioned in the title of the case study, and not as a threat to objectivity.

The six steps set out as the 'ethical decision-making approach' achieve very little. There is a great deal of repetition, and the suggested course of action is not clear, but simply sets out the position and suggests 'additional discussions'. Someone reading this case study is likely to ask what to do if the CEO does not see Sandra's point of view.

Case study 10:

Identifying the relevant facts should include obtaining an explanation of the reason for the share option valuation, and determining the time scale for the work.

Case study 12:

Identifying the relevant facts could include understanding any requirements of legislation to make disclosures, and any protection that John may seek from relevant legislation.

When documenting the resolution process, this case study (and others) mentions that the professional accountant should consider the 'legal implications of maintaining such documentation'. If this caution is going to remain, the Guidance Note should explain it fully.

Case study 13:

The case study does not consider the threat to objectivity caused by the link between the reported figures and the professional accountant's bonus. This may be addressed in the case study by suggesting that the link be severed

The case study does not advise that the professional accountant should consider his employment options.

Case study 14:

It is not clear from the case study why Paula must consider the interests of the other parties to the tender process. However, we agree that thorough consideration of this case study would require a deep ethical analysis, including the consequences for all parties of the proposed course of action. The principle of objectivity should mention the self-interest threat created by the payment from which Paula stands to benefit.

Under 'identify relevant facts', it simply advises to consider any further information that may be required. In the context of a case study, this is not helpful.

Under 'possible course of action', it states that the member must 'ensure' a fair tender process and compliance with the law. This says nothing about the possible safeguards to protect integrity and confidentiality, and consider the perception of others also. The most important safeguard is to disclose the initial call, but this important point is hidden within other paragraphs of the case study.

Case study 15:

Under 'possible course of action' the first paragraph would be relevant to any resolution process, and so may appear out of place in this case study alone. We suggest that it would be better situated in the main body of the Guidance Note.

Case study 16:

This is not a detailed case study, as the case outline says little more than that expense claims are being made that are 'contrary to local tax laws'.

Although objectivity is mentioned in almost every case study, the threat to objectivity is seldom explained. This case study is a good example. If each case study were to explain why objectivity is important, it would highlight why the threats are stronger in some cases than in others. (In this case, the only threat to objectivity comes about because Crystal is in conflict with a senior colleague in the organisation that employs her.)

Case study 17:

As with case studies 15 and 16, under 'possible course of action' most of the first paragraph would be relevant to any resolution process. Therefore, the last three case studies in the draft Guidance Note appear to have come from a different source to the other case studies.

Conclusions

ACCA is very supportive of the objectives of the APESB in working to publish GN 40. However, in our opinion, the document requires a significant amount of further work. We have taken great care to provide relevant comments in respect of each case study above, and it is hoped that this will enhance the quality of the Guidance Note finally issued.

Should you require any further information or opinion on this matter, please contact Ian Waters, Regulation and Standards Manager (tel: 020 7059 5992, email: ian.waters@accaglobal.com), in the first instance. We should be very happy to provide comment on a further draft of the Guidance Note should the APESB require it.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Sundeep Takwani', written over a horizontal line.

Sundeep Takwani
Director – Regulation