

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

Prepared and issued by
Accounting Professional & Ethical Standards Board Limited

EXPOSURE DRAFT **XX/11**
ISSUED: (XXXX 2011)

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Commenting on this Exposure Draft

Comments on this Exposure Draft should be forwarded so as to arrive by **XX XXXX 2011**.

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A copy of all submissions will be placed on public record on the APESB website:
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Obtaining a copy of this Exposure Draft

This Exposure Draft is available on the APESB website: www.apesb.org.au. Alternatively, any individual or organisation may obtain one printed copy of this Exposure Draft without charge until **XX XXXX 2011** by contacting:

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Reasons for issuing Exposure Draft XX/11

Accounting Professional & Ethical Standards Board Limited (APESB) proposes to issue the Guidance Note APES GN 40 *Ethical Conflicts in the workplace - Considerations for Members in Business* to provide Members in Business with guidance on the application of APES 110. The predecessor guidance note, GN 1 *Members in Business Guidance Statement* was issued in August 2002, prior to the issue of APES 110 *The Code of Ethics for Professional Accountants* (the Code). To ensure any guidance provided is consistent with both the content and the conceptual framework of the Code, GN 1 has been reviewed and reissued as APES GN 40.

Key requirements and guidance in ED XX/11

The proposed APES GN 40 includes guidance in respect of:

- Fundamental responsibilities of Members in Business;
- Conceptual Framework approach;
- Threats and safeguards;
- Part C of APES 110 Members in Business;
- Potential conflicts arising from responsibilities to the Employer;
- Preparation and reporting of information to be used by internal and external parties;
- Responsibility to act with sufficient expertise;
- Financial interests that may give rise to conflict;
- Inducements;
- Disclosure of information and whistle blowing.

The proposed Guidance note includes case studies which illustrate examples of ethical issues faced by Members in Business and an ethical decision making approach that could be adopted to resolve such ethical issues using the conceptual framework in the Code.

Proposed operative date

It is intended that this Guidance Note will be operative from **XX XXXX 2011**.

Request for comments

Comments are invited on this Exposure Draft of APES GN 40 *Ethical Conflicts in the workplace – Considerations for Members in Business* by **XX XXXX 2011**. APESB would prefer that respondents express a clear overall opinion on whether the proposed Guidance Note, as a whole, is supported and that this opinion be supplemented by detailed comments, whether supportive or critical, on any matter. APESB regards both critical and supportive comments as essential to a balanced view of the proposed Guidance Note.

APES GN 40 Ethical Conflicts in the workplace - Considerations for Members in Business

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ISSUED: [DATE]

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Contents

	Paragraph
Scope and application.....	1
Definitions	2
Fundamental responsibilities of Members in Business	3
Conceptual Framework approach.....	4
Threats and safeguards.....	5
Overview of APES 110 PART C: Members in Business.....	6
Potential conflicts arising from responsibilities to the Employer	7
Preparation and reporting of information to be used by internal and external parties	8
Member in Business’s responsibility to Act with sufficient expertise	9
Financial interests of a Member in Business	10
Inducements offered to a Member in Business	11
Disclosure of information and whistleblowing	12
Case Studies.....	13

Conformity with International Pronouncements

Acknowledgements

Bibliography: High-profile examples of poor ethical behaviour in the corporate world

1. Scope and application

- 1.1 Accounting Professional & Ethical Standards Board Limited (APESB) issues professional guidance note APES GN 40 *Ethical Conflicts in the workplace – Considerations for Members in Business* (the Guidance Note). This Guidance Note supersedes GN 1 *Members in Business Guidance Statement*.
- 1.2 APES GN 40 provides guidance to Members in Business on the application of the fundamental principles contained within Part A: General Application and Part C: Members in Business of APES 110 *The Code of Ethics for Professional Accountants* (the Code). The Guidance Note provides examples for Members in Business of commercial situations that require professional judgment in the application of the principles of the Code.
- 1.3 Members in Business working in Australia should follow the guidance in APES GN 40 when they provide services to their Employer.
- 1.4 Members in Business working outside of Australia should follow the guidance in APES GN 40 to the extent to which they are not prevented from so doing by specific requirements of local laws and/or regulations.
- 1.5 The Guidance Note is not intended to detract from any responsibilities which may be imposed by law or regulation.
- 1.6 All references to Professional Standards and Guidance Notes are references to those provisions as amended from time to time.
- 1.7 Members in Business need to be familiar with relevant Professional Standards and Guidance Notes when providing Professional Services.
- 1.8 In applying the guidance outlined in APES GN 40, Members should be guided not merely by the words but also by the spirit of this Guidance Note and the Code.

2. Definitions

For the purpose of this Guidance Note:

Acceptable Level means a level at which a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances, that compliance with the fundamental principles is not compromised.

Code means APES 110 *Code of Ethics for Professional Accountants*.

Employer within the context of this Guidance Note means an entity or person that employs, engages or contracts a Member in Business.

Member means a Member of a Professional Body that has adopted this Guidance Note as applicable to their Membership as defined by that Professional Body.

Member in Business means a Member employed or engaged in an executive or non-executive capacity in such areas as commerce, industry, service, the public sector, education, the not for profit sector, regulatory bodies or Professional Bodies, or a Member contracted by such entities.

Professional Bodies means the Institute of Chartered Accountants in Australia, CPA Australia and the National Institute of Accountants.

Professional Services means services requiring accountancy or related skills performed by a Member including accounting, auditing, taxation, management consulting and financial management services.

Professional Standards means all standards issued by Accounting Professional & Ethical Standards Board Limited and all professional and ethical requirements of the applicable Professional Body.

3. Fundamental responsibilities of Members in Business

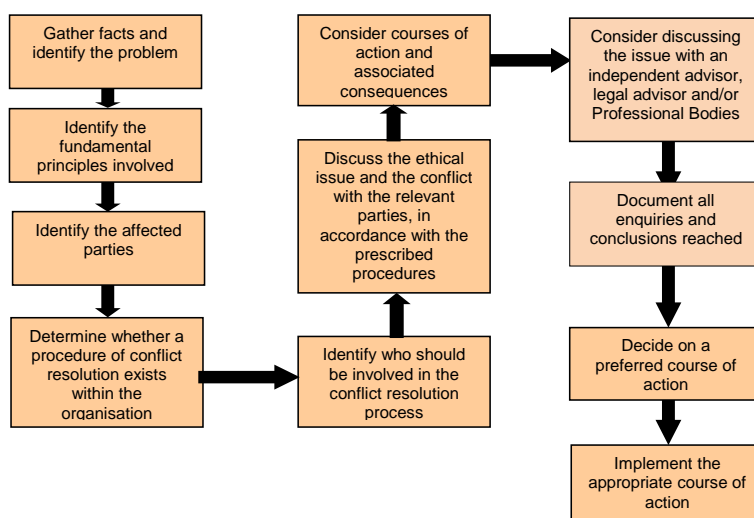
- 3.1 APES 110 *Code of Ethics for Professional Accountants* is the conceptual framework and foundation on which all APESB pronouncements are based. Compliance with and application of the Code is fundamental to the professional behaviour of Members in Business. Non-compliance with the Code can lead to disciplinary proceedings being initiated by the Professional Body to which the Member belongs.
- 3.2 Professional obligations and ethical requirements that Members in Business are required to comply with are based on the five fundamental principles of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour in the Code.
- 3.3 The term Professional Services is defined in the Code as services requiring accountancy or related skills performed by a Member including accounting, auditing, taxation, management consulting and financial management services. Whilst a number of these services are typically performed by Members in Public Practice, services performed by Members in Business are also captured by the definition of Professional Services. Such services typically include those performed by financial accountants, tax accountants, financial analysts, management accountants, internal auditors and financial controllers.
- 3.4 A Member in Business who provides Professional Services is required to comply with Section 100 *Introduction and Fundamental Principles* of the Code and relevant law or regulation.
- 3.5 A Member in Business who provides Professional Services is required to comply with *Part A – General Application of the Code* and *Part C – Members in Business*. Part C is specific to Members in Business and describes the application of the fundamental principles to some of the more common commercial situations.

4. Conceptual framework approach

- 4.1 The environment in which Members in Business operate may give rise to specific threats to compliance with the fundamental principles. This Guidance Note uses the framework in the Code to assist Members in Business to identify, evaluate and respond to threats to compliance with the fundamental principles. Members in Business are required to implement safeguards to eliminate the threats or reduce them to an Acceptable Level so that compliance with the fundamental principles is not compromised. The Guidance Note provides a range of examples dealing with a variety of circumstances in which threats may arise and provides guidance on safeguards that may be adopted. Members in Business should use the framework to address ethical issues arising from their work at an early stage to enable them to adopt appropriate safeguards which are suitable to the circumstance.
- 4.2 When considering their own circumstances, Members in Business should use the following structured approach to ethical decision making:
 - Gather the facts and identify the problem;
 - Define the fundamental principles involved;
 - Identify the affected parties;
 - Determine whether a procedure of conflict resolution exists within the organisation;
 - Identify who should be involved in the conflict resolution process;

- Discuss the ethical issue and the conflict with the relevant parties, in accordance with the prescribed procedures;
- Consider courses of action and associated consequences;
- Consider discussing the issue with an independent adviser, legal advisor and/or the Professional Body to which the Member belongs;
- Document all enquiries and conclusions reached;
- Decide on a preferred course of action; and
- Implement the appropriate course of action.

Structured approach for considering ethical issues in the workplace



- 4.3 When resolving an ethical issue, a Member in Business should document the substance of the issue and details of any discussions held, and conclusions reached concerning that issue. The Member should take into account the materiality of the matter under consideration, assessing both the qualitative and quantitative aspects of materiality and be alert to the fact that reassessment of materiality may need to occur on an ongoing basis.
- 4.4 The case studies in Section 13 illustrate the application of the fundamental principles and the types of safeguards that can be implemented. The case studies follow the structured approach noted above in analysing the relevant ethical considerations. These case studies are not intended to be, nor should they be interpreted as, an exhaustive list of all circumstances likely to be experienced by Members in Business that create threats to compliance with the fundamental principles of the Code. Consequently, it is not sufficient for Members to merely comply with these case studies. Members should apply the principles of the Code to the particular circumstance they face.

5. Threats and safeguards

Threats

- 5.1 Compliance with the Code may be threatened by a broad range of circumstances and relationships. Any given circumstance may create more than one threat, and the threats that arise may affect compliance with more than one fundamental principle. A Member

in Business is required to implement safeguards to eliminate the threats or reduce them to an Acceptable Level so that compliance with the fundamental principles is not compromised.

- 5.2 Threats to the fundamental principles are discussed in Part A – *General Application of the Code*. Threats fall into one or more of the following categories:
- (a) Self-interest – the threat that a financial or other interest will inappropriately influence the judgment or behaviour of a Member in Business;
 - (b) Self-review – the threat that a Member in Business will not appropriately evaluate the results of a previous judgment or service performed by the Member or another individual within the Employer, on which the Member in Business will rely when forming a judgement as part of providing a current service;
 - (c) Advocacy – the threat that a Member in Business will promote the Employer's position to the point that the Member's objectivity is compromised;
 - (d) Familiarity – the threat that due to a long or close relationship with the Employer, a Member in Business will be too sympathetic to the Employer's interests or will accept the Employer's view on certain matters without sufficient scrutiny; and
 - (e) Intimidation – the threat that a Member in Business will be deterred from acting objectively because of actual or perceived pressures, including attempts to exercise undue influence over the Member.

Safeguards

- 5.3 The Code classifies safeguards that may eliminate or reduce threats faced by Members in Business to Acceptable Levels into two broad categories:
- safeguards created by the profession, legislation or regulation; and
 - safeguards in the work environment.
- Examples of such safeguards are outlined in paragraphs 100.14 - 100.16 and 300.14 - 300.15 of the Code.
- 5.4 In addition to the categories above, safeguards may also be created by the Member in Business. Such safeguards may include but are not restricted to:
- keeping records of contentious issues and the action taken to resolve them;
 - maintaining a broader perspective on how similar organisations function through establishing business relationships with other professionals; and
 - using an independent advisor.
- 5.5 Discussion of ethical issues with Professional Bodies is strongly encouraged as the Professional Bodies are able to provide valuable advice in line with the behaviour expected of their Members and within the limits of acceptable practice and the law.

6. Overview of APES 110 PART C: Members in Business

- 6.1 APES 110 Part C illustrates how the conceptual framework contained in APES 110 Part A is to be applied by Members in Business.
- 6.2 APES 110 Part C Section 300 provides an overview of the various types of threats encountered by Members in Business in their work environment and appropriate safeguards that can be considered
- 6.3 APES 110 PART C Sections 310-350 specifies professional obligations of Members in Business in the following circumstances:

- Section 310 – Potential Conflicts
- Section 320 – Preparation and Reporting of Information
- Section 330 – Acting with Sufficient Expertise
- Section 340 – Financial Interests
- Section 350 – Inducements

7. Potential conflicts arising from responsibilities to the Employer

- 7.1 Potential conflicts may arise from the obligation of the Member in Business to comply with the fundamental principles of the Code whilst fulfilling responsibilities to the Employer. Ordinarily a Member in Business is required to support the legitimate and ethical objectives established by the Employer and rules and procedures in support of those objectives. However, as a consequence of these obligations, a Member in Business may be under pressure to act or behave in ways that could directly or indirectly threaten compliance with the fundamental principles of the Code.
- 7.2 Where potential conflicts arise, a Member in Business is required to comply with section 310 *Potential Conflicts* of the Code. Examples and the potential approaches to resolving such conflicts are shown in Case Studies 1 - 4.

8. Preparation and reporting of information to be used by internal and external parties

- 8.1 Members in Business are often involved in the preparation and reporting of information that may either be made public or used by others inside or outside the Employer. When preparing and reporting such information, Members in Business are required to comply with section 320 *Preparation and Reporting of information* of the Code.
- 8.2 A Member in Business is required to prepare or present information fairly, honestly and in accordance with relevant Professional Standards so that the information will be understood in its context. Threats to the Member's ability to do so may arise from pressure (intimidation or self-interest) to become associated with misleading information. Where the threats have been evaluated, safeguards such as those discussed in section 320 *Preparation and Reporting of information* of the Code should be applied. Examples addressing the analysis of threats and application of safeguards are shown in Case Studies 5 - 9.

9. Member in Business's responsibility to Act with sufficient expertise

- 9.1 The fundamental principle of professional competence and due care requires that a Member in Business should only undertake tasks for which the Member has, or can obtain, sufficient specific training or experience. Members in Business should not intentionally mislead Employers as to how much expertise or experience they have, nor should they fail to seek appropriate expert advice and assistance when required.
- 9.2 Where the ability of a Member in Business to perform duties with the appropriate degree of professional competence and due care is threatened by factors such as insufficient time, inadequate information, inadequate resources or insufficient knowledge, safeguards such as those in section 330 *Acting with Sufficient Expertise* of the Code should be applied. An example addressing the need to act with sufficient expertise is provided in Case Study 10.

10. Financial interests of a Member in Business

- 10.1 Financial interests of a Member in Business or their immediate or close family members may give rise to threats to compliance with the fundamental principles of the Code. A Member in Business is required to comply with section 340 *Financial Interests* of the Code in such circumstances. The Code requires a Member in Business to evaluate the

significance of such a threat, and the appropriate safeguards to be applied. A Member in Business should examine the nature of the financial interest which includes considerations such as the nature of the interest and whether it is direct or indirect. An example showing considerations which may be applied by Members in Business where financial interests threaten compliance with the fundamental principles of the Code is provided in Case Study 11. An additional example of personal financial gain for a Member in Business is provided in Case Study 13.

11. Inducements offered to a Member in Business

11.1 Inducements refer to both the receiving of offers and making offers.

11.2 A Member in Business or an immediate or close family member may be offered an inducement such as gifts, hospitality, preferential treatment and inappropriate appeals to friendship or loyalty. Alternatively, a Member in Business may experience pressure to offer inducements to subordinate the judgment of another individual or organisation, influence a decision making process or obtain confidential information.

11.3 Where threats to the fundamental principles arise from inducements, the Member in Business is required to follow the principles and guidance in Section 350 *Inducements* of the Code. Examples showing approaches that can be adopted by a Member in Business where inducements threaten compliance with the fundamental principles of the Code are provided in Case Studies 12 - 14.

12. Disclosure of information and whistleblowing

12.1 In accordance with Section 140 Confidentiality of the Code, a Member in Business who acquires confidential information in the course of a providing a Professional Service is prohibited from using that information for any purpose other than in proper performance of that Professional Service.

Comment [RA 1]: JS para 5.1

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12.2 The Member will not breach the confidentiality requirements referred to in paragraph 12.1 or the Privacy Act 1988, in circumstances where disclosure of confidential information is either required or authorised by the law or where there is a professional right or duty to disclose. Examples of the disclosure of information that may be required or authorised by the law include:

Comment [RA2]: JS para 5.2,5.3,5.4,5.5

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- reporting of suspected money laundering activities to AUSTRAC¹.
- disclosure by the company's auditor of a whistleblower's revelation to an authorised person under the Corporations Act 2001.

12.3 A legal or professional right or duty to disclose confidential information may also arise when a Member in Business wishes to make a report in the public interest of certain reprehensible or systemic misconduct associated with their organization. In these circumstances the Member may become a whistleblower. This is generally described as an officer or an employee of an entity who, whether anonymously or not, wishes to or makes a report in connection with certain reportable conduct and wishes to be protected against reprisals in doing so.

Comment [RA 3]: JS para 5.6, 5.7

12.4 Reportable conduct usually includes illegal, dishonest, corrupt, fraudulent, unethical or other serious improper conduct, which may cause financial or non financial loss, to the organisation and is in the public interest to report.

Comment [RA 4]: JS para 5.8

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12.5 Sometimes whistleblowing may be the subject of internal company policy. In circumstances where a Member in Business is considering disclosing information in the public interest, the Member should attempt to follow any relevant internal whistleblowing guidelines of the Employer.

Comment [RA 5]: JS para 5.9, 5.10

¹ AUSTRAC is Australia's anti-money laundering and counter-terrorism financing regulator and specialist financial intelligence unit

12.6 In Australia, numerous statutes including the *Corporations Act 2001*, provide whistleblowers with legal protection and a specific process to follow when disclosing information about a breach of the law by their organisation to an external party. In general, whistleblowers will only qualify for this protection if:

- the whistleblower is an officer, employee or contractor of the company about which the Member wants to report; and
- the whistleblower identifies themselves (anonymous reports are not protected); and
- the report is made by them to an acknowledged entity such as a regulator, company auditor, a director, secretary or senior manager of the company; and:
- the report is made in good faith; and
- the whistleblower had reasonable grounds for their belief; and
- they have followed the processes for such disclosure as outlined in the law; and
- they have complied with relevant Privacy legislation.

If the Member does not satisfy the requirements above, whistleblower protection may not be available.

12.7 Whether a member is relying on whistleblowing legislation or policies within their organisation to disclose information that would, under normal circumstances, result in a breach of their professional obligation of confidentiality therefore, they should follow the relevant process exactly and also be cognisant of their additional legal obligations under the *Privacy Act 1988* when doing so.

12.8 In addition to these requirements, where the Member is employed by a government entity or the public service, the Member should also refer to any Public Service Legislation to which they are bound, prior to disclosing confidential information.

12.9 If the Employer's internal procedures do not deal with the matter, Members should, amongst other things, consider the following:

- a) Requirements under National and State Privacy laws such as the *Privacy Act 1988 (Cth)* and the *National Privacy Principles*;
- b) Legal or regulatory constraints and obligations on disclosure;
- c) Whether members of the public are likely to be adversely affected by the disclosure or non-disclosure of the information;
- d) The gravity of the matter, such as the size and extent of likely financial loss;
- e) The possibility or likelihood of repetition;
- f) The reliability and quality of the information available;
- g) The reasons for the Employer's unwillingness to disclose matters to the relevant authority;
- h) When the Employer gives authorisation to disclosure information, whether or not the interests of all parties, including third parties whose interests might be affected, could be harmed;
- h) Whether or not all the relevant information is known and has been substantiated. Where the situation involves unsubstantiated or incomplete information, and conclusions, professional judgment should be applied to determine the appropriate type of disclosure to be made, if any. The Member in Business requires a reasonable belief that wrongdoing has occurred, before disclosure can be made;
- i) The type of communication that is expected and to whom it is addressed. In particular, Members should be satisfied that the parties to whom the communication is addressed are appropriate recipients; and
- j) The possible implications of disclosure for the Member and their reputation.

12.10 Members should accordingly take due care before communicating confidential information to others, both within and external to the organisation, including due consideration of the legal ramifications of disclosure under National and State laws. Thus, prior to disclosing confidential information under any circumstances, the Member in Business is encouraged to obtain legal advice and/or consult their Professional Body as to their duties and obligations.

12.11 Examples that address whistleblowing are included in Case Studies 15 - 17.

Comment [RA6]: JS para 2

Comment [RA7]: JS para 2

Comment [RA 8]: JS para 5.11, 13

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Comment [RA 9]: JS para 5.12

Comment [RA10]: JS para 3

Comment [RA 11]: JS para 12

Deleted: 12.3 . Members should take due care when communicating relevant facts to others, both within and external to the organization, relating to known or suspected criminal, fraudulent or other corrupt activities. Whistleblowing has legal ramifications which are addressed in the *Corporations Act 2001*, the *AML/CTF Act 2006*, the *Criminal Code Act 1995* and relevant state based whistleblower protection legislation. Thus, prior to disclosing confidential information, the Member should consider obtaining legal advice and/or consulting their Professional Body.

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Comment [RA12]: JS para 10

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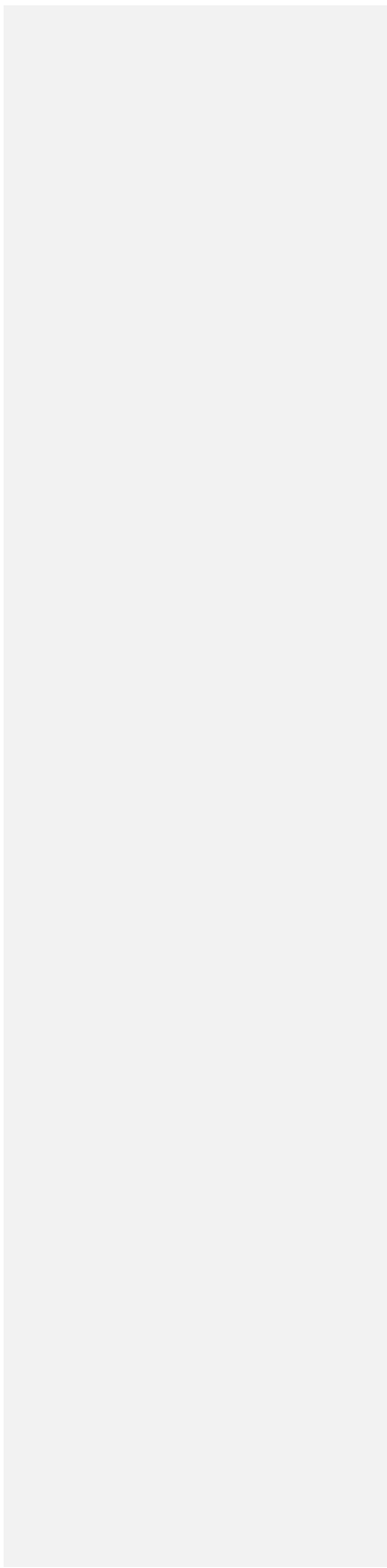
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13. Case Studies

No	Title	Issues Discussed
1	Significant personal expenses claimed as company expenses	Potential conflicts
2	Council rates	Potential conflicts
3	Inappropriate small expense claim	Potential conflicts
4	Unlicensed software	Potential conflicts
5	Incorrect reporting of financial information	Preparation and reporting of information
6	Inappropriate capitalisation of research and development costs	Preparation and reporting of information
7	Inappropriate contractor claims	Preparation and reporting of information
8	Loss leaders or divisional failure?	Preparation and reporting of information
9	Satisfying the bank's lending criteria	Preparation and reporting of information Financial interests of a Member
10	Valuing share options	Acting with sufficient expertise
11	Personal financial interest in a proposal	Financial interests
12	Inducements for non-disclosure of information	Inducements
13	Earnings management	Inducement
14	Tender bids	Inducement
15	Non-disclosure to auditors and corrupt business practices	Whistleblowing
16	Inappropriate expense claims lodged by the CEO	Whistleblowing
17	Deceitful doctor	Whistleblowing

Introduction

Case studies have been presented to illustrate the application of a structured approach to the resolution of ethical issues. The Member in Business should read the Case Studies whilst referring to the Conceptual Framework approach in Section 4, to gain an understanding of the process that should be adopted when faced with ethical conflicts in the workplace. The Case Studies are not intended to be conclusive but rather provide a framework that leads the Member to a course of action that is consistent with the principles and requirements of the Code and this Guidance Note.

Case Studies are fictitious and any similarities to actual events or circumstances are merely coincidental.

CASE STUDY 1 – Significant personal expenses claimed as company expenses

Potential Conflicts

Case outline

Alex is the finance manager (Member in Business) of an organisation is concerned that the Chief Executive has been making frequent interstate trips to Perth and charging expenses to the company. The trips and the activities undertaken appear to have only partial relevance to the company's activities. Alex is aware of the fact that the Chief Executive recently moved from Perth and still has a number of close family members residing there.

Alex discusses the issue with the Chief Executive who explains that there is a verbal understanding with the Chairman of the company who is aware of the nature and purpose of the visits.

Fundamental principles of the Code

Integrity

Would processing the payments without an adequate explanation or supporting documentation be seen as being honest and fair? Would it be considered legal and acceptable to taxation authorities?

Objectivity

How will the Member in Business demonstrate the Member's objectivity, actual or perceived, from the chief executive?

Professional competence and due care

How can allowing the expense payments to be processed without adequate explanation and supporting documentation be seen as acting with due skill, care and diligence?

Professional behaviour

How should the Member in Business proceed so as not to discredit himself or herself?

Ethical decision-making approach

Identify relevant facts

Has the Member in Business discussed the matter adequately to ensure the facts are correct? If so, is it possible to obtain support for the Chief Executive's understanding with the Chairman?

Identify affected parties

Key affected parties are the Member in Business, the Chief Executive, the Chairman and the Board. Other possible affected parties are the accounts payable department, human resources, internal audit, Australian Tax Office, audit committee, employees, shareholders and financial backers.

Determine whether a procedure of conflict resolution exists within the organisation

Consider the company's policies and procedures, applicable accounting standards, best practice and applicable laws and regulations.

Consider who should be involved in the conflict resolution process

Who should be involved in the resolution of this matter and for what reason? What is the appropriate timing of their involvement? Are there trusted colleagues with whom the Member in Business can discuss the Member's position? When do the Board and audit committee need to become involved?

Discuss the ethical dilemma with relevant parties

Does further discussion need to take place with the Chief Executive? Do the discussions need to extend to the Chairman?

Consider possible course of action

The Member in Business can discuss the issue further with his or her direct manager who may be in a position such as the Chief Financial Officer (CFO). Discussion could focus on the Member in Business obtaining clarity on the arrangement which may lead to documentary evidence supporting the understanding with the Chairman. If the issue is not resolved, the CFO and Member in Business may consider requesting evidence from the Chief Executive together and can explain that it is required to conform to the company's policies and procedures. If an appropriate response is not received, the Member in Business and CFO can request a meeting with the Chief Executive and the Chairman to clarify the issue. Where this is not successful, additional discussions with the Board, internal audit, audit committee or the external auditors may be required. All enquiries and conclusions reached should be documented by the Member in Business. Where such documentation is maintained, the Member needs to consider the legal ramifications of doing so.

The Member in Business may also consider the ethical conflict resolution processes of the Member's Professional Body.

CASE STUDY 2 – Council rates

Potential Conflicts

Case outline

Jane (Member in Business) has just been appointed as the new financial controller of XYZ Ltd after 12 months of job hunting. Her first task is to prepare the annual financial report for the year ended 30 June 2010.

Although XYZ Ltd appears solvent, when reviewing the figures, Jane notes that the company is in quite a weak cash position. She also notices that based on her limited understanding of the business, there appears to be an unusually high accruals figure. On discussion with the Managing Director (MD) Jane finds that the balance relates to 4 years of unpaid Council rates. Further discussions reveal that the company has not received a rates notice since the [breakup](#) of the council and rezoning of the company premises, 4 years ago.

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Jane is concerned about this matter and discusses it further with the Managing Director who becomes annoyed. He does not consider this to be a significant issue due to the fact that it is the council's mistake and not the company's. The company has been recording the amount in accordance with accounting and professional standards and that is the extent of the company's obligation. He then goes on to make it clear that the company's interests should be put first, particularly when the issue impacts the business' cash flow. Further if the

APES GN 40 Ethical Conflicts in the workplace - Considerations for Members in Business

company were to pay 4 years of back rates, its cash flow position would be severely weakened which may lead to potential job losses.

Fundamental principles of the Code

Integrity

How does the Member in Business maintain her integrity when she is being asked to undertake a course of action which she clearly has doubts about?

Objectivity

How would the Member in Business maintain her objectivity given that her Employer is operating under difficult economic conditions and has the added pressure of possibly disagreeing with her boss whom she hardly knows?

Confidentiality

Is there any basis on which the Member in Business could make disclosures given the Employer obviously believes that the company's non-payment of rates is confidential information.

Professional behaviour

How is the public interest served if this type of corporate behaviour is ignored?

Ethical decision-making approach

Identify relevant facts

Are there any other reasons why the company has not received a bill for rates? Can the Member in Business continue to merely accrue an estimate for the rates bill for the year? If not, does she go back to the Managing Director and advise that the company should contact the local council and inform them of the situation? Is there a supportive environment for open discussion of practical dilemmas without a recriminatory or 'blame' culture?

Identify affected parties

Key affected parties are the Member in Business, the Managing Director, the other directors, the company's employees, the shareholders (if different from the directors), the local council and the general public.

Determine whether a procedure of conflict resolution exists within the organisation

Consider the company's policies and procedures and applicable accounting standards.

Consider who should be involved in the conflict resolution process

Who should be involved in the resolution of this matter and for what reason? What is the appropriate timing of their involvement? Does the Member in Business have trusted colleagues with whom the Member can discuss the Member's position? Is there anyone else within the company that the Member should speak to regarding this matter? Are the other directors aware of this issue? Has the Member in Business discussed the matter with the board?

Discuss the ethical dilemma with relevant parties

Do further discussions need to be held with the Managing Director or extend to other members of the Board?

Consider possible course of action

The Member in Business could try to use her interpersonal skills in a non-confrontational way to offer to find a solution to the underlying problem. She may consider explaining the potential consequences to the Managing Director if the error is discovered by the council. There may be interest or penalties imposed on the company which may impact on the company's good reputation. If at some future date there are plans to sell the company – any due diligence is likely to discover this non-payment of rates which could easily impact on a potential sale. Given all of this, the Member could also highlight the need for the company to get legal advice on its obligations. The Member in Business could also ask the Managing Director to consider the company's moral obligation to the local community. All enquiries and conclusions reached should be documented by the Member in Business. Where such documentation is maintained, the Member needs to consider the legal ramifications of doing so.

To resolve the problem, the Member in Business could suggest asking the local council to agree to a payment plan. It is unlikely that the council would want XYZ Ltd to go out of business potentially resulting in unemployment for a number of members of the community.

CASE STUDY 3 – Inappropriate small expense claim

Potential conflicts

Case outline

After several months of job searching, Jeremy (Member in Business) secured a position as a financial accountant with a sales company. The company is very small with only 12 employees, most of whom work in the sales area. Given the size of the company, there are very few formally documented policies and procedures in place. Two days before the completion of Jeremy's 3 month probationary period and formal performance review, Jeremy's supervisor, who is also a senior sales person, tells him that he incurred \$175 expense entertaining a client the previous evening. He requests a cheque reimbursement and submits receipts from a restaurant and bar to support the amount. At the end of the day, the supervisor's wife comes to the office to surprise her husband and drive him home. Jeremy overhears the wife talking to another employee about what a wonderful night she had last evening with her husband at dinner and at the bar.

Key fundamental principles and duties

Integrity

Can the Member in Business overlook the information he overheard and maintain his integrity?

Objectivity

How will the Member in Business manage the conflict between integrity and his desire to secure his job at the company at the completion of his probationary period?

Professional behaviour

Can the Member in Business ignore the information acquired and still satisfy the principle of professional behaviour?

Ethical decision-making approach

Identify relevant facts

Does the Member in Business have all of the facts? Can he discuss the nature of the expense further with the supervisor? What is the Member in Business's specific role in relation to expense claims and reimbursement? Is there an internal process for querying and reviewing expense claims?

Identify affected parties

The key affected parties are the Member in Business and the supervisor. Other possible affected parties are the supervisor's wife, the Australian Tax Office and other employees.

Determine whether a procedure of conflict resolution exists within the organisation

Consider the company's policies and procedures, applicable accounting standards, best practice and applicable laws and regulations.

Consider who should be involved in the conflict resolution process

Who should be involved in the resolution of this matter and for what reason? What is the appropriate timing of their involvement? Does the Member in Business have trusted colleagues with whom the Member can discuss his position?

Discuss the ethical dilemma with relevant parties

Can further discussions be held with the supervisor to clarify the Member's understanding? Does the Member in Business need to discuss the issue with anyone else in the company?

Consider possible course of action

The Member in Business may consider further discussions with the supervisor to clarify his understanding of the evening. He may approach such discussions in a non-confrontational manner and explain that he needs a complete understanding of the expense in order to appropriately classify it for financial reporting and taxation purposes. The Member in Business could highlight the implications of allowing inappropriate expense claims to continue such as Australian Tax Office investigations and potentially fines. Where this approach is unsuccessful the Member in Business may need to initiate discussions with another manager within the company to assist in resolution of the problem.

CASE STUDY 4 – Unlicensed software

Potential conflicts

Case outline

Jamie (Member in Business) is a young accountant with qualifications in Accounting as well as in Information Technology. Jamie has recently been hired as an accounting assistant by a medium-sized retail company and is looking forward to the challenges the work force presents. On his first day at work, the financial controller hands Jamie a copy of Microsoft 2000 and asks him to install the software on 25 computers around the office. The financial controller states that the new software is required in order for Jamie to perform his accounting role. Jamie is about to commence the installation when he asks the financial controller if the company holds the licence for the software. The financial controller laughs and says Jamie has a lot to learn. He explains that the purchase of a licence would result in unnecessary expenditure with no added benefit to the company.

Key fundamental principles and duties

Integrity

Can the Member in Business overlook the fact that the company does not have the appropriate licences to use the software and maintain his integrity?

Objectivity

How will the Member in Business manage the conflict between integrity and his desire to secure his job at the company at the completion of his probationary period?

Professional behaviour

Can the Member in Business ignore the information acquired and still satisfy the principle of professional behaviour?

Ethical decision-making approach

Identify relevant facts

Can the Member in Business discuss the matter further with the financial controller?

Identify affected parties

The key affected parties are the Member in Business, the financial controller and the company.

Determine whether a procedure of conflict resolution exists within the organisation

Consider the company's policies and procedures and applicable laws and regulations.

Consider who should be involved in resolution

Who should be involved in the resolution of this matter and for what reason? What is the appropriate timing of their involvement? Is there someone else within the organisation with which the Member can discuss his position?

Discuss the ethical dilemma with relevant parties

Can further discussions be held with the financial controller to explain the risks of breaching copyright? Does the Member in Business need to discuss the issue with anyone else in the company?

Consider possible course of action

The Member in Business may consider further discussions with the financial controller to highlight the importance of obtaining a licence for use of the product. The Member in Business could highlight advantages such as support from the software provider and the tax deductible nature of the expense.

CASE STUDY 5 – Incorrect reporting of financial information

Preparation and Reporting of Information

Case outline

Robyn (Member in Business) is the financial accountant in a company and is preparing the quarterly management accounts. Robyn's immediate manager is a very forceful, domineering individual and Robyn has accepted his views over the last two years on the level of work in progress. The manager has instructed the Robyn to report a 100% increase in work in progress during the current quarter. The year-end draft financial statements show that the company has only just met its business plan financial targets.

New evidence subsequently becomes available to suggest that something is clearly wrong and the work in progress had not increased at anywhere near the rate advised by Robyn's manager.

Fundamental principles of the Code

Integrity

Can the Member in Business show that the accounts are true and fair without amending them?

Objectivity

Given the manager is a forceful and intimidating individual, how would the Member in Business maintain the Member's objectivity?

Professional competence and due care

Have the draft accounts been prepared in accordance with reporting requirements including applicable accounting standards, laws and regulations, and Professional Standards?

Professional behaviour

How should the Member in Business proceed so as not to discredit themselves or the Company?

Ethical decision-making approach

Identify relevant facts

Do other balances and analyses provide evidence that work in progress is incorrectly stated? For example, cost of sales analytical review, margin analysis and cash flows.

Identify affected parties

The Member in Business and the Member's immediate manager are the key affected parties. Others that may be affected include other levels of management, recipient of the management accounts, users of the financial accounts, finance, purchasing, accounts payable, human resources, internal audit, audit committee, board, external auditors, shareholders, financial backers and the taxation office.

Determine whether a procedure of conflict resolution exists within the organisation

Consider the company's policies and procedures, applicable accounting standards, best practice and applicable laws and regulations.

Consider who should be involved in the conflict resolution process

Who should be involved in the resolution of this matter and for what reason? What is the appropriate timing of their involvement? The Member in Business may discuss the matter with their immediate line manager given the available evidence and possible consequences. Can the Member in Business discuss the matter with other affected parties such as the recipients of the management and financial accounts? What is the appropriate timing for such discussions?

Discuss the ethical dilemma with relevant parties

Does further discussion need to take place with the immediate manager? Do discussions need to extend to more senior levels of management?

Consider possible course of action

The Member in Business may corroborate the facts with other available documentation such as cost of sales calculations, previous stock counts and other financial information. The appropriate course of action such as undertaking a stock count can then be discussed with the Member in Business's immediate line manager. If the manager's response is not what the Member in Business considers appropriate, the matter may then be discussed with recipients of the management and financial accounts and the next level of management. Other steps could include, where appropriate, discussion with the senior management, internal audit, audit committee, the Board and external auditors.

In the case of a small business, the Member in Business may not have the ability to hold the detailed discussions suggested above. In this case, the main course of action would be to corroborate the facts and report in line with statutory requirements. The Member in Business may discuss the requirements with the line manager using facts as the basis for this discussion.

The Member in Business can also consider the ethical conflict resolution processes of the Member's Professional Body.

CASE STUDY 6 – Inappropriate capitalisation of research and development costs

Preparation and Reporting of Information

Case outline

Nathan is the finance director (Member in Business) of ABC Ltd has become aware of a \$1.5million investment in relation to a research and development (R&D) project. This project has not been properly assessed and appears to have little success criteria. The company's policy on R&D clearly states that such costs are deferred only where it is reasonable to expect a successful outcome and an associated revenue stream - a policy that is consistent with the *Income Tax Assessment Act* research and development provisions.

Nathan approaches his long time good friend, Doug, the project leader, about the costs incurred and receives a response that there is no problem because he will provide some numbers that will keep the auditors happy.

It is only 1 week before the financial year-end and writing off the \$1.5m at such a late stage would result in significant difficulties with the Board for Nathan. His relationship with Doug will also be compromised as he would be placed in a very precarious position with the Board.

Fundamental principles of the Code

Integrity

How does the Member in Business maintain their integrity with the project manager, the Board and the auditors?

Objectivity

How does the Member in Business remain objective as to the true nature of the research and development expenditure and their appropriate accounting treatment?

Professional behaviour

How does the Member in Business proceed in order to not discredit themselves?

Ethical decision-making approach

Identify relevant facts

Can the Member in Business retain the Member's integrity without bringing the matter to the Board's attention? Should the Member in Business discuss the matter further with Doug prior to taking the matter to the Board? What information will the Member in Business disclose to the auditors?

Other points to consider include whether there is a supportive environment for open discussion of practical dilemmas or is there a recriminatory or 'blame' culture in the company? Is there a problem with the company's internal controls in relation to the correct treatment of expenditure on R&D? Have similar incidences occurred in the past? Is there any commercial pressure on Doug to defer expenditure items inappropriately?

Identify affected parties

The main affected parties are the Member in Business, Doug, the directors, the company's employees and the shareholders (if different from the directors).

Determine whether a procedure of conflict resolution exists within the organisation

Consider the company's policies and procedures, applicable accounting standards, best practice and applicable laws and regulations.

Consider who should be involved in the conflict resolution process

Who should be involved in the resolution of this matter and for what reason? What is the appropriate timing of their involvement? Are there trusted colleagues with whom the Member in Business can discuss his position?

Discuss the ethical dilemma with relevant parties

Does further discussion need to take place with Doug? Do discussions need to be held with other levels of management and the Board?

Consider possible course of action

Commercial pressures on Doug may be forcing him to defer this expenditure. However, transparent reporting may require write-off of the \$1.5million. Initially the Member in Business may need to have further discussions with Doug to obtain a more comprehensive understanding of the project and its current status. The Member in Business should explain to Doug the potential implications of inappropriate treatment of the \$1.5m. Such implications would include a qualified audit report and its impact on the company. In addition, capitalisation of the costs is inconsistent with the requirements of the *Income Tax Assessment Act's* research and development provisions. This may lead to penalties and other negative consequences under the Act. If this approach fails then the Member in Business will have to approach the Senior Management, Chief Executive or the Board and explain the situation and work through how this issue can be resolved.

CASE STUDY 7 – INAPPROPRIATE CONTRACTOR CLAIMS

Preparation and reporting of information

Case outline

APES GN 40 Ethical Conflicts in the workplace - Considerations for Members in Business

William (Member in Business) is employed as the financial accountant in a medium-sized engineering firm. The firm specialises in the development and design of steel frames and pumps used to purify oil. Due to the fluctuation in demand the company maintains only a small permanent workforce with at times, up to 65% of the labour provided by external contractors.

William developed an innovative accounting system that analysed project costs against the work done and in doing so, found a significant fraud in contractor claims on his company. He incorporated the variances into his monthly report and approached the engineering manager with his findings. The engineering manager was clearly agitated by William's findings. He stated that William's job was to pay employees and creditors, and meet statutory requirements, and project reporting was the responsibility of project cost engineers.

Key fundamental principles and duties

Integrity

Can the Member in Business overlook his findings and maintain his integrity?

Objectivity

Knowing that something may be wrong, how can the Member in Business maintain his objectivity?

Professional behaviour

How should the Member in Business proceed?

Ethical decision –making approach

Identify relevant facts

Does the Member in Business have all of the facts? Is the new accounting system he developed performing a correct analysis? Can the results of the system be substantiated in an alternative way? Are there are other costs associated with employing contractors that may not have been taken into consideration (costs such as relocation costs)? Can the Member in Business discuss the matter further with the engineering manager or other recipients of his monthly report?

Identify affected parties

The key affected parties are the Member in Business, the contractors, the engineering manager and the company itself. Other possible affected parties are the tax office.

Determine whether a procedure of conflict resolution exists within the organisation

Not applicable for this case study.

Consider who should be involved in resolution

Who should be involved in the resolution of this matter and for what reason? What is the appropriate timing of their involvement? Does the Member in Business have trusted colleagues with whom the Member can discuss his position?

Discuss the ethical dilemma with relevant parties

Can further discussions be held with the engineering manager? Do discussions need to be held directly with the contractors in question?

Consider possible course of action

The Member in Business may consider approaching the contractor in question with his findings and request a refund of excess money paid. He would also then need to approach the relevant project cost engineer with the outcome so that the project can be appropriately costed. The Member in Business would also need to consider the fraudulent implications that arise from deceitful billing practices and determine whether any further sort of legal or other action is required. All enquiries and conclusions reached should be documented by the Member in Business. Where such documentation is maintained, the Member needs to consider the legal ramifications of doing so.

CASE STUDY 8 – LOSS LEADERS OR DIVISIONAL FAILURE?

Preparation and reporting of information

Case outline

Rebecca (Member in Business) is the accountant for the processed foods division of a manufacturing company. Rebecca's role involves the preparation of financial reports determined by corporate management to assist in the assessment of the team's performance. When preparing the regular financial reports Rebecca noticed some products appeared to have experienced lower sales in the last quarter. With further analysis she found that there was a significant number of products that were sold at a net financial loss with some sold at below prime cost.

The company structure means that Rebecca reports to the divisional manager as opposed to the head office Chief Financial Officer. On reporting her results the divisional manager was agitated and advised Rebecca that her financial reports are not acceptable and inconsistent with general commercial practice. The manager then performed his own analysis of the division's products and concluded that all products were sold at positive margins. He did not provide Rebecca with any details of his study.

Key fundamental principles and duties

Integrity

Can the Member in Business overlook her findings and maintain her integrity?

Objectivity

Knowing that something may be wrong, how can the Member in Business maintain her objectivity?

Professional behaviour

How should the Member in Business proceed?

Ethical decision –making approach

Identify relevant facts

Does the Member in Business have all of the facts? Does she need to consider other issues such as the overall profitability of the division and the necessity to produce complementary items to support profit leaders? Can the Member in Business discuss the matter further with the divisional manager?

Identify affected parties

The key affected parties are the Member in Business, the divisional manager and the company itself.

Determine whether a procedure of conflict resolution exists within the organisation

Not applicable for this case study.

Consider who should be involved in resolution

Who should be involved in the resolution of this matter and for what reason? What is the appropriate timing of their involvement? Does the Member in Business have trusted colleagues with whom the Member can discuss her position?

Discuss the ethical dilemma with relevant parties

Can further discussions be held with the divisional manager? Do discussions need to be held with the head office CFO?

Consider possible course of action

The Member in Business may consider discussing the matter further with the divisional manager. She may approach the issue in a non-confrontational way by requesting that the manager provide her with feedback on what she did not consider as part of her analysis. Alternatively the Member in Business may approach the head office CFO directly to discuss the issue. All enquiries and conclusions reached should be documented by the Member in Business. The Member in Business should also ensure that she maintains a copy of her analysis.

CASE STUDY 9 – Satisfying the bank’s lending criteria

Preparation and Reporting of Information, Financial interests of a Member

Case outline

Sandra is the Chief Financial Officer (Member in Business) of a medium to large company. It is November and the Chief Executive Officer (CEO) has just returned from a meeting with the company’s bankers and calls Sandra into her office to discuss the results of negotiations. The CEO explains that the company requires a significant capital injection in order to modernise its manufacturing equipment. This will enable the company to secure a large on ongoing order from China which will result in all employees of the company receiving sizeable Christmas bonuses.

The CEO explains to Sandra that the lending criteria of the bank requires that the company demonstrate an adequate current and strong projected cash flow as well as a profitability level that will enable repayments of the loan to be made from an early date. The CEO has told the bank that the company is in a strong position. However, Sandra knows that the company will not satisfy the bank’s criteria. The CEO has promised that Sandra (CFO) will deliver a financial report to the bank within 3 business days. The CEO tells Sandra that it is up to her to decide the contents of the report.

Fundamental principles of the Code

Integrity

How does the Member in Business maintain her integrity with the CEO and the bank?

Objectivity

How does the Member in Business remain objective as to the company’s financial status?

Professional behaviour

How does the Member in Business proceed in order to not discredit themselves?

Ethical decision-making approach

Identify relevant facts

Can the Member in Business retain the Member’s integrity without reporting false information to the bank. Should the Member in Business discuss the matter further with the CEO prior to presenting their report? What information will the Member in Business disclose to the bank?

Identify affected parties

The main affected parties are the Member in Business, the bank, the CEO and the company’s employees and the shareholders.

Determine whether a procedure of conflict resolution exists within the organisation

Consider the company’s policies and procedures, applicable accounting standards, best practice and applicable laws and regulations.

Consider who should be involved in the conflict resolution process

Who should be involved in the resolution of this matter and for what reason? What is the appropriate timing of their involvement? Are there trusted colleagues with whom the Member in Business can discuss her position?

Discuss the ethical dilemma with relevant parties

Does further discussion need to take place with the CEO? Do discussions need to be held directly with the bank?

Consider possible course of action

Commercial pressures and the potential for personal financial gain by the Member in Business may encourage her to produce a report that satisfies the bank’s criteria however this would be materially misrepresenting the company’s position. To produce such a report may actually

jeopardise future borrowing activities of the company with this and other banks. The Member in Business may have additional discussions with the CEO to explain the future implications of providing a report to the bank which misrepresents the company's position.

CASE STUDY 10 – Valuing share options

Acting with Sufficient Expertise

Case outline

Olivia's Employer has requested that the Olivia (Member in Business) perform a valuation of share options. Olivia is not comfortable with the work as she does not have the required expertise to value options, and is uncertain about what to say to her Employer.

Fundamental principles of the Code

Professional competence and due care

Does the Member in Business have the necessary skills and experience to undertake the work?

Professional behaviour

How should the Member in Business proceed so as not to discredit the Member or the company?

Ethical decision-making approach

Identify relevant facts

Can the Member in Business demonstrate the Member's lack of expertise in this area and the potential impact on the company and offer alternatives?

Identify affected parties

The Member in Business and the Employer are the key affected parties. Other parties that may be affected include the auditors, employees, human resources, shareholders and financial backers.

Determine whether a procedure of conflict resolution exists within the organisation

Consider the company's policies, procedures and guidelines, accounting standards, best practices, applicable laws and regulations.

Consider who should be involved in the conflict resolution process

Who should be involved in the resolution of this matter and for what reason? What is the appropriate timing of their involvement? Are there trusted colleagues with whom the Member in Business can discuss the Member's position?

Discuss the ethical dilemma with relevant parties

Does further discussion need to take place with the Member in Business's manager? At what point will the Member in Business consider involving the next level of management?

Consider possible course of action

The Member in Business should discuss the Member's concern about the lack of knowledge to value share options with their immediate manager. The Member in Business can suggest clearly defining the scope of the project and a course of action for addressing issues such as lack of knowledge or expertise. An appropriate course may be for example, employing a person with the necessary expertise. The focus during the discussion should be on the potential consequences to the business. The Member in Business can explain that employing a person with the necessary expertise does not remove the Member's own obligation to ensure that the work is conducted in accordance with applicable accounting standards, laws and regulations. If the Member in Business does not consider their manager's reaction to be satisfactory, it may be appropriate to discuss the matter with the next level of management. If this response is not satisfactory, the Member in Business may need to involve internal audit, the audit committee, pension and/or investment committee or the Board. Note that the substance of all discussions held, who was involved, what conclusions were reached and why,

and the Member's involvement should all be documented by the Member in Business. When doing so, the Member in Business should consider whether there are legal implications of maintaining such documentation.

The Member in Business can also consider the ethical conflict resolution processes of the Member's Professional Body.

CASE STUDY 11 – Personal financial interest in a proposal

Financial Interests

Case outline

Stella has been appointed finance director to a public company which has difficulties attracting and retaining skilled staff. Stella's first task from the Board is to develop a benefits package to assist the company in overcoming this problem. Her own entitlement to benefits will also be in accordance with the new scheme. Based on extensive research and analysis, Stella concludes that in order to achieve the Board's objective, a significant increase in the whole range of benefits is required.

Fundamental principles of the Code

Integrity

In view of the Member in Business's personal interest, how will the Member in Business ensure that the Member's honesty remains unquestionable?

Objectivity

How will the Member in Business remain unbiased, and consider only the relevant facts, despite Member in Business's personal interest in the benefits package?

Professional competence and due care

Does the Member in Business have all the necessary skills to draw up such a package?

Professional behaviour

How should the Member in Business proceed so as not to discredit the Member's behaviour?

Ethical decision-making approach

Identify relevant facts

Consider the business's policies, procedures and guidelines, accounting standards, best practices, applicable laws and regulations. Is the information used for assessing the potential new benefits package independent? Who else has been involved in the proposal for the new benefits package?

Identify affected parties

The Member in Business and the Board are the key affected parties. Others that may be affected include employees, human resources, shareholders and financial backers.

Determine whether a procedure of conflict resolution exists within the organisation

Consider the company's policies and procedures, applicable accounting standards, best practice and applicable laws and regulations.

Consider who should be involved in the conflict resolution process

Who should be involved in the resolution of this matter and for what reason? What is the appropriate timing of their involvement? Does the Member in Business have trusted colleagues with whom the Member can discuss the Member's position? Has the Member in Business discussed the matter with the Board and/or human resources?

Discuss the ethical dilemma with relevant parties

Do further discussions need to take place with the Board or the directors individually prior to undertaking the task?

Consider possible course of action

Prior to explaining the findings to the Board, it may be advisable that the Member in Business informs the Board how the Member approached the project and who else was involved in the process (such as human resources). The Member in Business should document the substance of all discussions held, who was involved, what conclusions were reached and why, including the Member's involvement. When maintaining such documentation, the Member should consider the legal implications of doing so. When it is time to propose the new benefits package, the Member in Business should declare the Member's conflict of interest. Findings should be presented to the Board by human resources or another independent party.

CASE STUDY 12 – Inducements for non-disclosure of information

Inducement

Case outline

John, a Member in Business has been with his current employer for 8 months. However, things have not turned out well and he is moving on. John has significant concerns about the business conduct of the company, and believes there may be issues that require disclosure to the auditors or the regulator. A compromise agreement is currently being negotiated in which John will not receive a settlement if he reports any concerns, whereas if he agrees to a gagging clause then there will be a substantial payoff.

Fundamental principles of the Code

Integrity

What does the Member in Business need to do to demonstrate his integrity? How far does the Member in Business need to go?

Objectivity

How will the Member in Business manage the conflict between financial benefit and integrity?

Confidentiality

Is there any basis on which the Member in Business could make disclosures?

Ethical decision-making approach

Identify relevant facts

Are the Member in Business's concerns based on facts and does the member have relevant facts to back the Member's concerns? Are all the facts available or only a selection? Can the rest be established? Have any steps already been taken to try to resolve the Member's concerns? Have these steps been documented?

Identify affected parties

The Member in Business and the Employer are the key affected parties. Other parties that may be affected are the regulator, auditor and the public, as well as Member in Business's family.

Determine whether a procedure of conflict resolution exists within the organisation

Given the nature of the dilemma, there may not be an internal conflict resolution process available. The Member in Business can also consider the ethical conflict resolution processes of the Member's Professional Body.

Consider who should be involved in the conflict resolution process

Who should be involved in the resolution of this matter and for what reason? What is the appropriate timing of their involvement? Does the Member in Business have trusted colleagues with whom the Member can discuss his position? Can the Member speak with his Employer about his concerns? Has the Member in Business made full disclosures to the Member's solicitor, and received advice? Has the Member in Business discussed the matter with his family? Are there any external organisations that the Member in Business can contact such as public authorities?

Discuss the ethical dilemma with relevant parties

Do any additional discussions need to be held with the Member's current Employer?

Consider possible course of action

There are two issues that need to be resolved:

1. how to address the matters of concern
2. how to achieve a satisfactory financial settlement.

Given the nature of the dilemma, the Member in Business should take advice early and often. The Member in Business needs to establish whether the facts support his concerns. If so, he needs to decide if there is a basis for disclosure and if so, what the value and consequences of that disclosure might be for the Member and the Member's family, the Employer, the industry and the profession. If the evidence available is considered sufficient, the Member in Business may resist the gagging clause, and argue for the concerns raised to be documented and considered by those charged with governance of the company. The Member in Business should always ensure the member's family is aware of the Member's concerns and actions, and their implications, without revealing confidential information.

The Member in Business may find it helpful to document the substance of all discussions held, who was involved, the conclusions reached and why, and the Member in Business's involvement. When doing so, legal implications of maintaining such documentation need to be considered by the Member.

CASE STUDY 13 – Earnings Management

Inducement

Case outline

Phil (Member in Business) is the accountant in a family business. The business has encountered some operating difficulties and associated financial difficulties. Subsequently a bank and a venture capitalist have invested and acquired over 35% of the company's shares. However, no board seats have been made available to the purchasers. The ongoing support of the bank and venture capitalist are dependent on the company's performance figures.

The Managing Director tells Phil that if he produces the 'right' figures he will receive a significant Christmas bonus and a 1% share option. The company is secretive, and as little information as possible is being given to the auditors and the investors.

Phil is preparing the quarterly management accounts and on review of the balances, believes that some figures are being 'massaged'. Phil has tentatively raised his concerns with the father and son Chairman and Chief Executive. Phil is then told that if he pursues the matter or fails to produce the 'right' figures, his bonus and share options will be forfeited.

Key fundamental principles and duties

Integrity

It is possible to support the business without being involved in reporting potentially misleading information?

Objectivity

How can the Member in Business avoid his professional judgment being influenced by the financial interest?

Professional behaviour

How will the Member in Business manage relationships with the affected parties?

Ethical decision-making approach

Identify relevant facts

Consider the business's policies, procedures and guidelines, accounting standards, applicable laws and regulations. The facts need to be double checked with a focus on significant figures in the accounts and their underlying assumptions. The Member should consider whether the nature of the family business and its apparent secrecy means that he is not in possession of material facts.

Identify affected parties

The Member in Business, the family business, professional advisers, bankers and venture capitalists are the key affected parties. Others that may be affected are the Member in Business's own family and the profession.

Consider who should be involved in the conflict resolution process

Consider who should be involved in the resolution of this matter and for what reason? What is the appropriate timing of their involvement? Are there trusted colleagues or friends with whom the Member can discuss his position? Can the Member's Professional Body provide advice and provide assistance?

Discuss the ethical dilemma with relevant parties

Do further discussions need to take place with the Chairman and the Chief Executive?

Consider possible course of action

The Member in Business may approach the Chairman and Chief Executive and explain the long term implications of reporting inaccurate figures. He could focus discussions on the need to address the underlying business issues and the best way to address them to increase the long-term value of the company. Prior to having this discussion, the Member in Business may prepare realistic figures for presentation and explain the importance of presenting these for the company and the Member's professional standing.

During the resolution process, Member in Business should document the substance of all discussions held, who was involved, what conclusions were reached and why, and the Member's involvement. Note that the legal implications of maintaining such documentation need to be considered.

CASE STUDY 14 – Tender bids

Inducement

Case outline

Paula (Member in Business) is a recently qualified professional accountant working in the accounting department of a property investment firm. The company is selling a piece of land and have stipulated that bids have to be submitted via email by 5pm of a specified date. All tender bids are to be considered as confidential. Paula is the initial point of contact for the tender bids. A few tender bids have been received prior to the deadline but not as many as initially anticipated.

At 4:30pm Paula receives a call from an anonymous prospective buyer who informs Paula that he is willing to pay a premium of 20% above the highest bid received by 4:55pm, provided he is informed beforehand of the highest bid received. The caller explains that in this way, all parties benefit. A higher fee is received for the land, the buyer does not have to make an unnecessarily high bid and Paula will be rewarded by the buyer for her hard work. He continues to explain that this type of activity is common in this industry and implies without naming names that other more senior personnel within the Member's firm have taken advantage of these very generous financial terms in the past and would expect Paula to do the same.

Key fundamental principles and duties

Integrity

Can the Member in Business retain the Member's integrity if the Member in Business distorts the tender process? How does the Member in Business deal with the caller's allegations about more senior personnel within the Member's company?

Objectivity

The Member in Business needs to consider the interest of all of the other parties involved in the tender process.

Confidentiality

How could one justify divulging confidential information to the callers in the interest of maximising the selling price of the land?

Professional behaviour

How does the Member in Business ensure that she handles the client's allegations sensitively and professionally. Particularly given that the Member has no knowledge of the accuracy of the allegations made by the caller?

Ethical decision-making approach

Identify relevant facts

Consider any further information the Member in Business may require to make a decision.

Identify affected parties

Key affected parties are the Member in Business, the caller, the partners and staff in the Member's firm, the bank, other creditors and other prospective buyers.

Determine whether a procedure of conflict resolution exists within the organisation

Consider the company's policies, procedures and guidelines, best practices, applicable laws and regulations.

Consider who should be involved in the conflict resolution process

Consider who should be involved in the resolution of this matter and for what reason? What is the appropriate timing of their involvement? The first issue is does the Member in Business immediately raise this with someone senior before the caller phones back? Secondly, when the caller does phone back does the Member transfer the call to someone more senior, does

the Member get someone more senior to listen in to the conversation or does the Member merely deal with the caller?

Discuss the ethical dilemma with relevant parties

Does the Member in Business need to hold discussions with more senior members of the company?

Consider possible course of action

From the given information, the company may benefit financially if the information is divulged, however this is not certain as a late bid from another prospective buyer may yet be received prior to the deadline. However the Member in Business needs to ensure that a fair tender process is held despite the short-term commercial pressure. The Member in Business also needs to ensure that any actions taken are within the confines of the law.

CASE STUDY 15 – Non--Disclosure to auditors and corrupt business practices

Whistle blowing

Case outline

Sarah (Member in Business) is newly employed as an accounting systems manager and recently heard a rumor that the company recently paid a bribe to win overseas work. She has also noticed that the company culture appears to be that everyone has an attitude of getting away with as much as possible. Sarah goes to make her morning cup of coffee where she overhears a discussion with a divisional accountant about the fact that certain information had not been disclosed to the auditors. Sarah has not yet developed a strong working relationship with her line manager and as yet is not sure that he will be supportive of her comments and desire to explore the accuracy of statements made.

Key fundamental principles and duties

Integrity

Can the Member in Business overlook the divisional accountant's comments, [her impressions of organisational](#) culture and the bribe allegedly paid to the overseas company and still demonstrate integrity?

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Objectivity

Knowing that something may be wrong, how can the Member in Business maintain [her](#) objectivity?

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Confidentiality

On what basis could or should the Member in Business make disclosures?

Professional behaviour

How should the Member in Business proceed so as not to discredit herself or the company?

Ethical decision-making approach

Identify relevant facts

Consider the business's policies, procedures and guidelines, accounting standards, best practices, applicable laws and regulations. Can the facts be corroborated with documentation or discussion with relevant parties? Is there [an](#) internal process for whistleblowing? Has the Member in Business taken the appropriate steps to understand her rights and responsibilities legally?

Identify affected parties

The Member in Business, the divisional accountant, the employee raising allegations about the bribe, the line manager and the auditor are the key affected parties. Other parties that may be affected are the company's other employees and where present, internal audit, the audit committee, the board, shareholders and financial backers.

Determine whether a procedure of conflict resolution exists within the organisation

Consider the company's policies and procedures and applicable laws and regulations.

Consider who should be involved in resolution

Who should be involved in the resolution of this matter and for what reason? What is the appropriate timing of their involvement? Has the Member in Business considered contacting the Member's Professional Body for advice and guidance? Does the Member in Business have trusted colleagues with whom she can discuss her position? At what point will the Member in Business consider involving her line manager, the next level of management, the Board and the audit committee?

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Discuss the ethical dilemma with relevant parties

Do further discussions with the divisional accountant need to take place? Similarly, do additional discussions need to be held with the employee raising bribery allegations?

Consider possible course of action

Prior to taking any course of action, the Member in Business should reflect on the decision making process in paragraph 4.2, including alternative courses of action and the consequences of each. In doing so, the Member in Business also needs to consider whether her actions can be reasonably justified and explained to third parties and how those actions reflect on the organisation's reputation and her own as a member of the accounting profession.

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The Member in Business may consider checking the facts and discussing the matter with her immediate line manager. If the Member in Business feels that the response from the line manager is not satisfactory, the next step may be to discuss the matter further with the next level of management, internal audit, the audit committee or the board. _____

The Member's suspicions or rumors of criminal or corrupt activity are not sufficient for her to form a reasonable basis that wrongdoing has occurred. However, if there is evidence of wrongdoing, the Member in Business may contact her Professional Body and consider obtaining legal advice. During the resolution process, it may be helpful to document the Member in Business's involvement in the resolution of the matter, the substance of all discussions held, the names of others involved, the decisions made by her and the basis for those decisions. When doing so, the Member always needs to keep the legal considerations of doing so in mind.

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CASE STUDY 16 – Inappropriate expense claims lodged by the CEO

Whistle blowing

Case outline

Crystal, the financial controller (Member in Business) of the Australian division of an international company was reviewing the expense claims of senior management when she became aware of a claim from the Chief Executive Officer that was contrary to local tax laws. On further investigation, she found that this was not an isolated incident and claims of a similar nature added up to a significant amount. All claims were approved by the same international manager.

Key fundamental principles and duties

Integrity

Can the Member in Business overlook the Chief Executive Officer's expense claim and maintain the Member's integrity?

Objectivity

Knowing that something may be wrong, how can the Member in Business maintain their objectivity?

Professional behaviour

How should the Member in Business proceed so as not to discredit herself or the company?

Professional competence and due care

How can allowing the expense payments to be processed when they are contrary to local tax laws be seen as acting with due skill, care and diligence?

Comment [RA15]: JS para 16

Ethical decision –making approach

Identify relevant facts

Does the Member in Business have all of the facts? Can the Member discuss the matter further with the international manager that approved the expenses? Does the Member in Business have an internal process for whistle blowing? What steps has the Member in Business taken to understand her rights and responsibilities under the relevant legal requirements?

Identify affected parties

The key affected parties are the Member in Business and the Chief Executive Officer. Other possible affected parties are the Australian Tax Office, human resources, the board and/or audit committee and other employees.

Comment [RA16]: JS para 19

Determine whether a procedure of conflict resolution exists within the organisation

Consider the company's policies and procedures, applicable accounting standards, best practice and applicable laws and regulations.

Consider who should be involved in the conflict resolution process

Who should be involved in the resolution of this matter and for what reason? What is the appropriate timing of their involvement? Does the Member in Business have trusted colleagues with whom the Member can discuss her position? Has the Member in Business discussed the matter with local management and/or human resources?

Discuss the ethical dilemma with relevant parties

Can further discussions be held with the international manager? Do discussions need to be held with the local senior management?

Consider possible course of action

Prior to taking any course of action, the Member in Business should reflect on the decision making process in paragraph 4.2, the alternative courses of action and the consequences of each. In doing so, the Member in Business needs to consider whether her decision can be reasonably justified, explained to third parties and how that decision will reflect on the organisation's reputation and her own as a member of the accounting profession. The Member in Business should document her decision making process, any discussions held with other parties or other considerations taken into account when attempting to resolve the ethical conflict.

Comment [RA17]: JS para 15

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The Member in Business may consider contacting the international manager that approved the expenses to clarify her understanding of the transactions. The Member in Business may consider quantifying the impact of the claims made by the CEO from a taxation perspective and explain the problem to the international manager using this as a basis. The Member in Business could also then highlight the local implications of allowing such claims to continue. Implications may include fines from the Australian Taxation Office and unfavourable publicity to the company. Depending on the response received, the Member may need to consider the likelihood of further assistance being provided by the international manager in relation to this wrongdoing and the impact that this may have on her actions. Enquiries of this nature, together with the details of the parties involved and reasons for any conclusions reached, should be documented by the Member in Business. The Member may also consider raising the matter with the audit committee, once she has substantiated her belief that wrongdoing has occurred.

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CASE STUDY 17 – Deceitful doctor

Whistle blowing

Case outline

Rita (Member in Business) has recently returned to the workforce following maternity leave. She is employed as a part-time accountant for a local medical practice where a number of doctors work together. In her second week on the job Rita noticed that one of the doctors appeared to forget to record the attendance of several of his patients. It is the practice's policy that all doctors contribute to the practice half of their income earned from attending patients. Rita approached the doctor who suggested it was merely an oversight and that he would amend the records by the end of the week. At the end of the week Rita noticed that the patient attendance records had not been updated so proceeded to complete the detail. On Rita's return to work the following week, she noticed that the entries she made had been erased. When she approached the doctor about this, he snapped that her job was merely to record payments and expenses and any "business" matters were best left to those with the understanding of how to run a business. Rita has serious concerns about the doctor's deceitful actions in relation to the funding of the practice and the fraudulent implications for Medicare.

Key fundamental principles and duties

Integrity

Can the Member in Business overlook the doctor's actions and maintain their integrity?

Objectivity

Knowing that something may be wrong, how can the Member in Business maintain their objectivity?

Professional behaviour

How should the Member in Business proceed so as not to discredit herself?

Professional competence and due care

How can omission of patient attendance and therefore the costs and associated revenue be seen as acting with due skill, care and diligence?

Comment [RA20]: JS para 16

Ethical decision –making approach

Identify relevant facts

Does the Member in Business have all of the facts? Is this merely a once-off or an ongoing practice by this doctor? Can she discuss the matter further with the doctor? Does the Member in Business have an internal process for whistle blowing? What steps has the Member in Business taken to understand her rights and responsibilities under the relevant legal requirements? Has the Member in Business considered the application of Privacy laws to the handling of sensitive information within the personal health records of these clients and when and how and when these records can be amended.

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Identify affected parties

The key affected parties are the Member in Business, the doctor, other associate doctors of the practice and the patients whose records are the subject of the dilemma. Other possible affected parties are the tax office and Medicare.

Determine whether a procedure of conflict resolution exists within the organisation

Given the size of the company, there may not be formal documented policies available. There may however be a doctor that has the allocated responsibility for addressing staff issues.

Consider who should be involved in resolution

Who should be involved in the resolution of this matter and for what reason? What is the appropriate timing of their involvement? Does the Member in Business have trusted colleagues with whom the Member can discuss her position? Has the Member in Business discussed the matter with any of the other doctors?

Discuss the ethical dilemma with relevant parties

Can further discussions be held with the deceitful doctor? Do discussions need to be held with other doctors? [Should she escalate matters given the doctor's previous brusque behaviour?](#)

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Consider possible course of action

[Prior to taking any course of action, the Member in Business should reflect on the decision making process in paragraph 4.2, alternative courses of action and the consequences of each. In doing so, the Member in Business needs to consider whether her decision can be reasonably justified, explained to third parties and how that decision will reflect on the organisation's reputation and her own as a member of the accounting profession. The Member in Business should document her decision making process, any discussions held with other parties or other considerations taken into account when attempting to resolve the ethical conflict.](#)

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The Member in Business may consider further discussions with the deceitful doctor to clarify her understanding of the situation. [Prior to discussions, the Member in Business may consider quantifying the impact of the doctor's behaviour and the likely impact over time.](#) She may then decide to observe what happens over a longer period of time. All enquiries and conclusions reached should be documented by the Member in Business and when doing so, the Member needs to be aware of the associated legal implications.

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Conformity with International Pronouncements

The International Ethics Standard Board for Accountants (IESBA) has not issued a pronouncement equivalent to APES GN 40.

Acknowledgements

APESB [gratefully](#) acknowledges the publications listed below which provided insights into ethical issues faced by Members in Business [and development of this Guidance Note](#). Further, some of the cases in [this](#) Guidance Note are based on [scenarios described in](#) these publications:

- Molyneaux, David 2008, *What do you do now? Ethical Issues Encountered by Chartered Accountants*, The Institute of Chartered Accountants of Scotland
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High-profile examples of poor ethical behaviour in the corporate world

The following is a bibliography of actual examples of poor ethical behaviour in the corporate world:

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Scharff, M M, July 2005, *WorldCom: A Failure of Moral and Ethical Values*, retrieved February 2011, http://findarticles.com/p/articles/mi_qa5383/is_200507/ai_n21364331/?tag=content:col1