This version of the ethics learning programme is for reference only. Students must complete the online version, accessible via their dashboard, icaew.com/dashboard.

# 05. Considerations for Professional Accountants in Practice

After studying this module you will be able to:

- apply the theory of the ICAEW Code of Ethics to a given public practise situation;
- identify which ethical principles and threats apply to a particular scenario; and
- advise on the most appropriate safeguards or course of action to address the ethical threats in a particular situation

# Considerations for Professional Accountants in Practice

1. Overview
2. Accepting professional appointments
3. Second opinions
4. Fees, gifts and hospitality
5. Advertising and marketing
6. Custody of client assets
7. Ethical considerations in a corporate finance context
8. Ethical considerations in an insolvency practitioner context
9. Ethical considerations in a tax context
10. Ethical considerations in an audit and review context
11. Review

© ICAEW 2014

# 5.1.1 Overview

The first four modules of this learning programme have covered the principles and rules of the ICAEW Code of Ethics.

Sections B and C of the Code cover some of the potential situations that you could find yourself in. Although the Code makes the distinction between accountants working in practice and business, many of the principles and rules are identical.

This module will focus on the examples provided in the ICAEW Code of Ethics that relate to accountants in public practice, in particular:

- professional appointments;
- second opinions;
- fees, gifts and hospitality;
- agencies;
- advertising;
- corporate finance practitioner considerations;
- insolvency practitioner considerations;
- tax practitioner considerations; and
- assurance practitioner considerations.

VIDEO – Applying ethics to real life situations

© ICAEW 2014

# 5.1.2 Overview

**Learning outcomes**

After studying this module you will be able to:

- apply the theory of the ICAEW Code of Ethics to a given public practice situation;
- identify which ethical principles and threats apply to a particular scenario; and
- advise on the most appropriate safeguards or course of action to address the ethical threats in a particular situation.

© ICAEW 2014

# 5.2.1 Accepting professional appointments

Reputation is fundamental to the accountancy profession. Consequently there may be some clients that your firm may not want to be associated with, such as those who have previously been involved in dishonesty, illegal activities, or misleading financial reporting.

Before accepting a new client or new work you should consider whether acceptance would create any threats to compliance with the fundamental principles.

If it is not possible to reduce ethical threats to a manageable level then you should decline the engagement.

Before accepting a new piece of work, consider the following questions.

- Are you or your firm sufficiently competent to perform the engagement?
- Does the firm have sufficient time and resources to diligently perform the work required?
- Does the firm have an appropriate understanding of the nature and operations of the client's business, its key staff, and the scope of the work required?
- Are there any relevant regulatory or reporting requirements that will have to be complied with?
- Will the advice of an expert be required?
- Would being associated with the client in question cause a reputational threat to your firm?

**Real-life example: Portsmouth FC**

When Trevor Birch of PKF was appointed as the administrator of Portsmouth Football Club in February 2012, UHY Hacker Young argued that he should not have been given the role due to a conflict of interest arising from previous audit and due diligence work that PKF had carried out on the club.

HMRC argued that UHY's appointment would create a conflict of interest in itself as they are already administrators of Portsmouth FC's holding company.

Mr Justice Norris considered the issues, including ICAEW's Code of Ethics, and ruled that there was no conflict of interest.

At the time HMRC, which was owed around £2m in unpaid taxes by Portsmouth, said in a statement that it welcomed Birch's arrival and that UHY, given their previous roles with the various Portsmouth football clubs, would itself have created a conflict of interest.

© ICAEW 2014

# 5.2.2 Accepting professional appointments

**Contacting existing accountants**

There is usually a good reason why a client decides to replace their accountant. And there is usually a perfectly valid reason - on either the client or accountant's side - for the accountant to resign from an engagement. Nevertheless the incoming accountant has a responsibility to investigate why the previous accountant is resigning before they can accept any work from the new client.

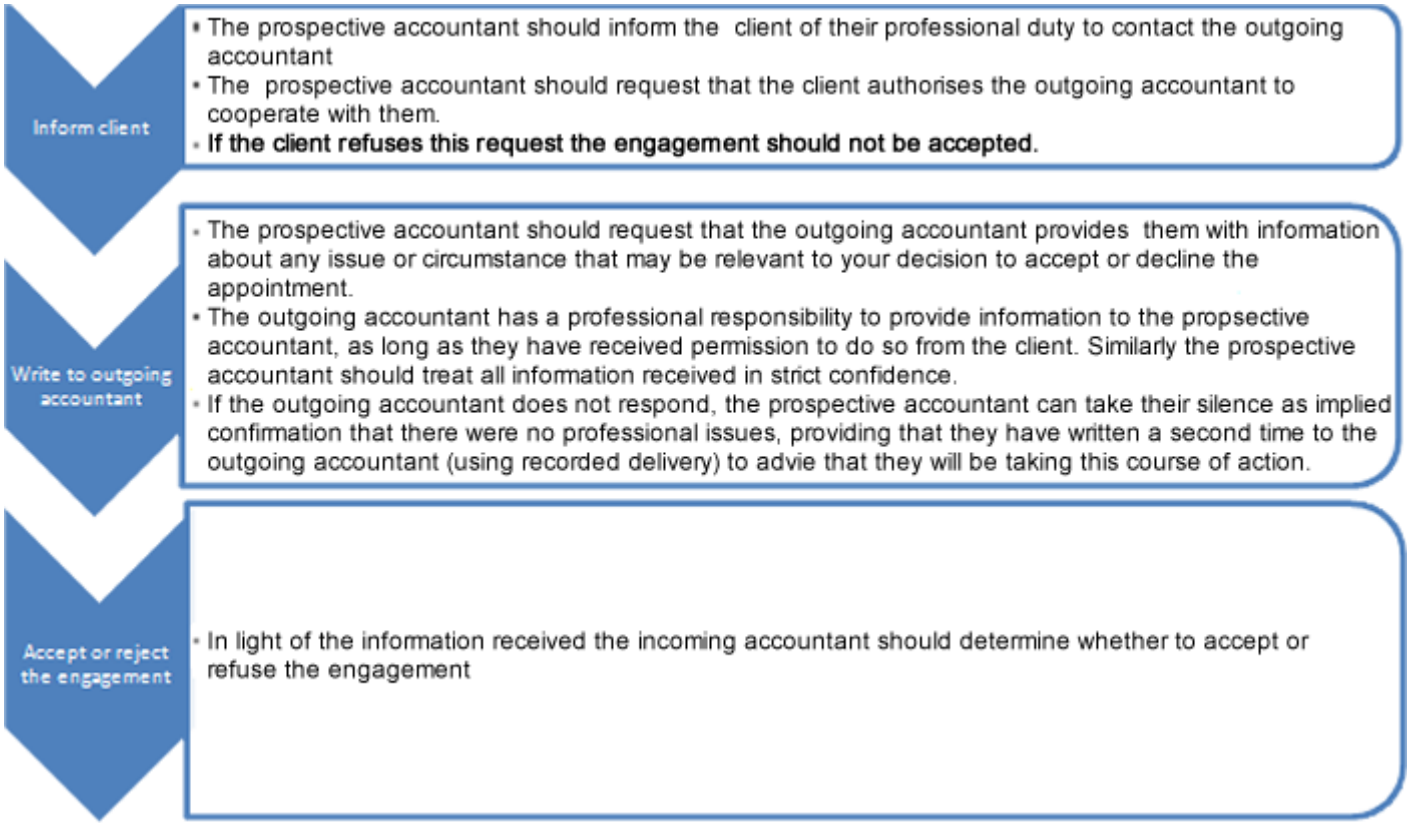
If you are the prospective accountant, you should follow this procedure:

**Money Laundering**

Money laundering is not specifically covered in this syllabus but it is a consideration that you must think about before accepting a new engagement. For example, a key procedure at the acceptance stage is to check the identity of new clients, and their directors, before accepting the engagement.

For guidance on money laundering considerations and procedures refer to the ICAEW website: icaew.com/moneylaundering

© ICAEW 2014




ICAEW has been advised that outgoing accountants who provide information to prospective accountants are likely to be protected by UK law against any defamation action that a client may seek to take, even if the statements are untrue, as long as they sincerely believed the information to be true and are not reckless. If you have any doubt about what should be disclosed to prospective accountants you should always seek legal advice first.

From the prospective accountant's side, to protect themselves against future legal action they should try to always ensure that the outgoing accountant provides information in writing.

© ICAEW 2014

# 5.3.1 Second opinions

**Hypothetical situations**

Because of the nature of your work, you will sometimes be asked for your views and opinions. In such situations you need to exercise caution as even an informal comment could lead to legal action - there are many court cases in the past where this has happened!

If you express opinions orally, you should always confirm them in writing as soon as possible after giving the opinion.

In situations where you give an opinion on a hypothetical situation you should make it clear that your opinion has been given in the context of that hypothetical situation only.

**Hedley Byrne & Co Ltd v Heller and Partners Ltd (1964)**

Hedley Byrne wanted to check the financial position and creditworthiness of a new customer Easipower Ltd. They asked Easipower's bank, Heller & Partners Ltd, for an opinion. Heller replied in a letter that was headed,

"without responsibility on the part of this bank".

It said that Easipower was,

"considered good for its ordinary business engagements".

The letter was sent free of charge. Easipower subsequently went into liquidation and Hedley Byrne lost a significant amount of money. Hedley Byrne sued Heller & Partners for negligence, claiming that the information was given negligently and misleading. Heller & Partners argued there was no duty of care owed regarding the statements, and in any case liability was excluded.

**Judgment**

The court ruled that there was "sufficient proximity" for Heller & Partners to owe Hedley Byrne a duty of care when giving this opinion. The only reason that Heller & Partners were not made to pay damages was because of the disclaimer that they had put on the top of their letter.

© ICAEW 2014

# 5.3.2 Second opinions

When you are asked to give a second opinion relating to a piece of work that another firm is, or has already been, engaged on you should take the following steps.

- Evaluate whether accepting the work would create any threats eg, professional competence if the circumstances or set of facts are different to those faced by the original professional accountant.
- Seek the client's permission to contact the other accountancy firm and then write to them to ascertain all of the facts of the original engagement.
- Refuse the engagement if the client does not give their permission or if all of the facts cannot be ascertained.

**Second opinions**

There are many situations where you may be asked to provide a second opinion, in respect of matters such as specialist tax advice, valuations, and disputes. When giving an opinion you must be very careful to record in writing any assumptions that you are making, and any variable factors involved in your opinion.

© ICAEW 2014

# 5.4.1 Fees, gifts and hospitality

**Fees**

Most professional accountants and firms work within a commercial framework. There are no rules concerning how much you can charge for an engagement, but you should ensure that you are complying with the fundamental ethical principles when quoting fees.

For example there is nothing to stop one firm undercutting another firm's quote, but a professional competence issue arises if the fee is so low that it does not cover the level of work required to perform the engagement to a professional standard.

To comply with the ethical principles, you should make clients aware of your fees at the earliest possible opportunity. There should be no "hidden" fees or nasty surprises when they receive the bill for your work.

The ICAEW Code of Ethics recommends that fees should be calculated in reference to:

- the seniority of the professionals involved;
- hours spent on the engagement;
- the degree of risk and responsibility involved;
- the importance and priority of the work; and
- expenses incurred.

© ICAEW 2014

# 5.4.2 Fees, gifts and hospitality

**Contingent fees**

To mitigate against financial self-interest threats you should never have contingent payments (eg, on achieving a certain profit figure) as part of your fee for assurance engagements.

**Fee disputes**

You should always provide clients with sufficient information so that they can understand the basis on which your fee has been calculated. This includes any significant variations from the original quoted fee.

Overdue fees or disputes may compromise your objectivity. In such circumstances you should always take reasonable steps to resolve the dispute before carrying out further professional work for the client. These steps include discussing the dispute with the client and, if necessary, using ICAEW's fee arbitration services.

**Commissions and referrals**

During the course of acting for a client there may be situations where you are approached by a third party, such as a supplier or another accountancy firm, to refer them to clients in exchange for commission.

It's normally acceptable to enter into such arrangements, as long as you are open and honest with your client(s) about the relationship, including the full amount that the professional services firm will receive.

You may also pay referral fees to obtain a new client from other accountancy firms who are unable to provide a specialist service required. Again in this situation both firms should disclose to the client concerned any arrangements to pay referral fees to one another and obtain their permission to refer them.

**Real-life scenario**

You are working on an internal audit engagement for a client. An estimated fee was given before the engagement started but the client's finance team is extremely busy preparing for the year-end and as a result there have been long delays in getting you the information that you need. Consequently you have spent many more hours at the client's site than originally anticipated, and you have increased your final fee to reflect this.

Your discussions with the client's financial director about the higher-than-expected fees do not go well. He cannot see why it has taken your firm so long to complete the work and is refusing to agree to the proposed fee increases.

To help avoid such situations it is a good idea to agree with the client in advance when they will provide you with requested information, and to record delays as they happen. This gives you an objective basis if you need to increase your fee above the original quotation. Delays should also be reported to the client immediately when they happen.

In this situation you should try to agree a compromise with the financial director. If the issue can't be resolved this way then you should seek arbitration through a third party.

© ICAEW 2014

# 5.4.3 Fees, gifts and hospitality

**Gifts and hospitality**

Part of being a chartered accountant involves establishing a good working rapport with clients, and as such you may sometimes be offered gifts or hospitality as a thank you.

There may be a self-interest or familiarity threat if you accept gifts or hospitality which are significant to you.

If a gift is clearly trivial, such as a company tie or a reasonably priced bottle of wine, then there is no issue. However if the gift could be perceived as material to the individual, such as a very expensive bottle of wine, then you should consider whether you can accept it without compromising your objectivity.

**Real-life example**

You are a trainee working on the audit of a high-end fashion retailer. While attending a stock count you are invited by the financial controller to use the staff shop, where the client's staff can purchase items at a price equivalent to 40% of their usual high street value.

You should consider whether using the shop might be viewed externally as compromising your objectivity. High-end fashion items tend to be very valuable, so a discount of up to 60% on the high street price may be seen to be a gift which is material to the individual.

Which of the following might be construed as material to an accountancy trainee?

1. A meal at a restaurant paid for by the client
2. A trip to the theatre
3. A loan at commercial rates

**A meal out paid for by the client**

Usually it would be OK to accept a meal at a reasonably-priced restaurant. However it is always best to check with your line manager first.

**A trip to the theatre**

In monetary terms a trip to the theatre is unlikely to be regarded as material. However going to the theatre with a client could raise questions about whether a familiarity threat exists.

**A loan at commercial rates**

If the client is offering a service which it offers in its normal course of business at market rates then there is no gift being made. If the client does not normally offer loans then this may be regarded as a material gift.

© ICAEW 2014

# 5.5.1 Advertising and marketing

Unlike some other industries, you have to be quite careful when you market your services to the general public. The golden rule that you must adopt when advertising is to not discredit the profession in any way. This includes making subjective claims which cannot be substantiated such as “the best in town”.

The ICAEW Code of Ethics recommends that firms observe the following when comparing themselves with their competitors.

That the comparisons:

- are objective and not misleading;
- relate to the same services;
- are factual and verifiable; and
- do not discredit the practice or services of others.

**Question**

What is wrong with this advert?

**ZXY Accountants LLP**

The best accountancy firm in Europe.

No job too big or small, call us now on 0800 67 68 69.

*Quote “ZXY ADVERT” to receive an extra 25% discount on your quote fee*.

This advert is not acceptable for a professional accountancy firm under the ICAEW Code of Ethics.

Claiming to be the best accountancy firm in Europe is an unsubstantiated claim which cannot be judged against any criteria, so therefore could be misleading. If the firm has won an external award, however, it is acceptable to mention it in advertising.

To say “no job is too big or small” might create a potential threat to professional competence. ZXY should judge whether they have the ability and resources to perform each engagement.

Offering discounts could create a professional competence threat as the fee may not reflect the work required for the engagement.

© ICAEW 2014

# 5.6.1 Custody of client assets

When permitted to do so by law a professional accountancy firm can sometimes be in a position where they assume custody of clients' assets.

In these situations there is potentially a self-interest threat to professional behaviour and objectivity. If you hold client assets you should:

- keep such assets separate from personal or firm assets;
- use these assets only for the purpose for which they are intended;
- at all times be ready to account for those assets and any income, dividends, or gains generated, to any persons entitled to this information; and
- comply with all relevant laws and regulations relevant to the holding and accounting for such assets.

© ICAEW 2014

# 5.7.1 Ethical considerations in a corporate finance context

The term “corporate finance activities” covers a wide range of activities including valuations, mergers and acquisitions, and financing. Because it covers so many areas all of the threats to the fundamental ethical principles apply.

Alongside ethics there are a number of corporate finance codes and regulations that you should follow, such as the City Code on Takeovers & Mergers. You should make it clear to your clients that you have to follow these regulations.

You can access these regulations for the UK by clicking on the link below:

www.thetakeoverpanel.org.uk/

© ICAEW 2014

# 5.7.2 Ethical considerations in a corporate finance context

**Advocacy**

Generally, if you are performing non-assurance work the advocacy threat is not significant. Because a lot of corporate finance work involves the advancing of a client's position, the advocacy threat may not apply.

However if an assurance client is subject to a takeover bid then it becomes a threat if you are asked to act as a nominated or corporate adviser, or sponsor. As a general rule you should never underwrite or promote the shares of your audit clients.

You can provide general corporate finance advice to an assurance client if it is in the best interests of the client. In such situations it is important that you don't make decisions on behalf of management, to avoid a self-review threat.

**Conflicts of interest**

Conflicts of interest can arise when your firm is asked to act for two or more clients involved in the same transaction. In such situations you should follow the usual conflict of interest procedures (covered in Module 4). The duty of confidentiality applies to all corporate finance engagements.

**Published information**

In corporate finance transactions information that you have prepared may sometimes be placed in the public spotlight. You must always take responsibility for anything published under your name, as long as you consented to it being published.

Before performing any work you should always agree with the client that it will not be shared with a third party without prior consent.

**Real-life example**

You agree to provide a financial summary document for a client's prospectus ahead of a share issue. You agree that this document can be made available to the general public. On the company's website you discover that they have only included a section of your report. Is this an issue?

Unless you have agreed in advance with the client that they can publish parts of your report this might be an issue as the section published may not present a full picture of the company's position.

© ICAEW 2014

# 5.8.1 Ethical considerations in an insolvency practitioner context

If you are an insolvency practitioner, the main additional consideration for you is to ensure that you comply with insolvency legislation.

Insolvency is principally governed by statute and secondary legislation and in many cases is subject ultimately to the control of the Court. Where circumstances are dealt with by statute or secondary legislation, you must comply with such provisions. You must also comply with any relevant judicial authority relating to your conduct and any directions given by the Court.

You should take particular care to identify the existence of threats which exist before, or at the time of, taking an insolvency appointment or which, at that stage, you reasonably expect might arise during the course of such an insolvency appointment.

Examples of potential threats that might affect your work in insolvency include:

- acting in an advisory capacity for a creditor of an entity;
- an individual within the practice having a close relationship with any individual who has a financial interest in the insolvent entity; and
- being threatened with litigation.

You should take reasonable steps to evaluate any threats to compliance with the fundamental principles that you have identified.

In particular, you should consider what a reasonable and informed third party, having knowledge of all relevant information including the significance of the threat, would conclude to be acceptable.

**Real-life example: Insolvency**

A member was fined and severely reprimanded by ICAEW for improperly suggesting that the directors of a company of which he was administrator award themselves a bonus in the hope they would then pay his pre-appointment fees.

© ICAEW 2014

His pre-appointment fees should have been the subject of an engagement letter when he was first called in, explaining how much and when they would become payable.

ICAEW's tribunal concluded that he had turned a blind eye to the ethics of his actions in the belief that he was entitled to be paid these fees.

© ICAEW 2014

# 5.9.1 Ethical considerations in a tax context

As with any other type of engagement, you should always consider the threats to the fundamental ethical principles before accepting a piece of tax work.

Taxation services comprise a broad range of services, including:

- tax return preparation;
- tax calculations for the purpose of preparing the accounting entries;
- tax planning and other tax advisory services; and
- helping to resolve tax disputes.

Tax engagements can fall into either assurance or non-assurance engagements. When considering whether to accept tax work you should always consider the threats that might compromise your objectivity and reputation.

© ICAEW 2014

# 5.9.2 Ethical considerations in a tax context

**Fees**

Tax consultancy is often the most lucrative source of income for a professional services firm. It may sometimes be tempting to adopt a contingent fee basis for tax engagements, for example one based on the size of the reduction in the client's tax liability. Although not prohibited directly by the Code, you should consider whether this is an appropriate basis for a fee, as there may be a self-interest threat.

© ICAEW 2014

# 5.9.3 Ethical considerations in a tax context

**Confidentiality**

When a client's tax affairs are investigated by a regulatory body, such as HMRC in the UK, you may find yourself in a situation where you are asked to submit information to the regulatory body. This may create a threat to your duty of confidentiality.

In such situations you should always first get your client's permission to disclose the information. An important exception to this rule is if the regulator is conducting a money laundering investigation.

If the client does not give their permission to disclose the information then you should consider whether you are required by law to break your duty of confidentiality. For example HMRC in the UK has legal powers to obtain information.

Generally, if you are unsure you should seek legal advice first.

© ICAEW 2014

# 5.9.4 Ethical considerations in a tax context

**Providing tax services for an assurance client**

Performing certain tax services for assurance clients can create ethical threats, particularly self-review and advocacy threats.

The significance of these threats will depend upon:

- the role that the client plays in the assessment of their tax liabilities in a jurisdiction;
- the complexity of the relevant tax regime and the level of judgement required by the client;
- the particular characteristics of the engagement; and
- the level of tax expertise in the client.

In situations where ethical threats are created, your firm may consider using safeguards to help mitigate the threat to an acceptable level.

Examples of such safeguards include:

- using professionals who are not members of the audit team to perform or advise on the service;
- obtaining advice on the service from an external tax professional; or
- obtaining advice from the tax authorities.

Click on each of the tabs below to find out whether the tax service in question is likely to create ethical threats for an accountancy firm which provides assurance services to the same client:

**Preparing tax returns**

Tax return preparation services involve helping clients with their tax reporting obligations by drafting and completing information, including the amount of tax due (usually on standardised forms) which must be submitted to the applicable tax authorities.

Tax returns are subject to whatever review or approval process the tax authority deems appropriate. Accordingly, providing such services does not generally create a threat to independence if management takes responsibility for the returns, including any significant judgements made.

**Preparing tax calculations for accounting entries**

This work usually involves the preparation of current and deferred tax liabilities (or assets) for a client that will be used to help prepare their financial statements.

If you will then be auditing these financial statements, a self-review threat is likely to exist.

**Tax planning**

Tax planning work usually involves advising a client on how to structure its affairs in a tax-efficient manner or advising on the application of a new tax law or regulation.

A self-review threat may be created if the advice will affect matters to be reflected in the financial statements.

**Tax disputes**

© ICAEW 2014

An advocacy or self-review threat may be created if the firm represents an assurance client in the resolution of a tax dispute, for example if the firm provides evidence on behalf of the client for a court case.

© ICAEW 2014

# 5.10.1 Ethical considerations in an audit and review context

An assurance engagement is any engagement in which you provide a professional opinion to intended users (eg, shareholders) of a subject matter (eg, financial statements), which has been produced by a responsible party (eg, the client), based on some appropriate criteria.

When you are performing an assurance engagement, such as audits and reviews, it is vital that you are independent. This includes:

- independence of mind

*A state of mind that allows you to express a conclusion without being affected by influences that affect professional judgement.*

- independence in appearance

*The avoidance of actions that could raise questions about the independence of the audit or review team.*

© ICAEW 2014

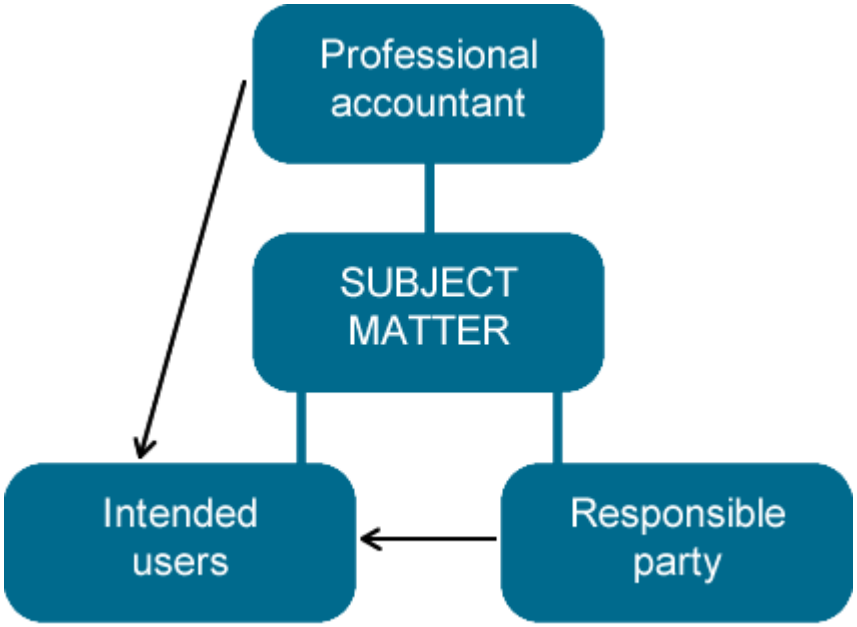
# 5.10.2 Ethical considerations in an audit and review context

Before accepting assurance work you should perform checks to make sure that all ethical threats have been mitigated by safeguards. These checks would include consideration of the following questions.

- Does the firm have access to the necessary knowledge and resources to carry out the engagement to an acceptable standard?
- Does the firm or any member of the assurance team have any direct or indirect financial interest in the client?
- Do any of the team, or their immediate families, have a close business relationship with the client?
- Has a loan or guarantee been made?
- Does the firm provide any other services to the client already that may compromise their objectivity?

If the answer to any of the above questions is “yes” then you should apply safeguards until the threat is reduced to an acceptable level including, as a last resort, refusing the engagement.

In the case of statutory audits, independence from the client is required both during the engagement period and the period covered by the financial statements.




© ICAEW 2014

# 5.10.3 Ethical considerations in an audit and review context

**Audit fees**

To remove the self-interest threat from auditors there are strict guidelines about how much of a firm's revenue can come from one client. To prevent over reliance an audit client's total fee, including non-audit services, should not exceed:

- 10% of a firm's revenue if the client is listed; or
- 15% of a firm's revenue if the client is not listed.

If these thresholds are close to being breached then the audit firm should inform the client and take steps to reduce their reliance, such as by reducing the level of services that they perform for that client.

As covered in section 5.4, the auditor's fee should never be dependent on the performance of the client.

An indirect financial interest is a beneficial interest in a collective investment, including vehicle, estate, trust or other intermediary over which the individual or entity has no control or ability to influence investment decisions.

An example would be an investment in the client held by a company's pension scheme, which is managed by an external provider.

© ICAEW 2014

# 5.10.4 Ethical considerations in an audit and review context

**Providing accounting services**

Accounting firms can provide services related to the preparation of accounting records and financial statements to non-listed clients where the services are of a routine or mechanical nature, as long as any self-review threat created is reduced to an acceptable level.

Examples of accountancy work that would be regarded as routine or mechanical are:

- providing payroll services based on client-originated data;
- recording transactions for which the client has determined or approved the appropriate account classification;
- posting transactions coded by the client to the general ledger;
- posting client-approved entries to the trial balance; and
- preparing financial statements based on information in the trial balance.

In these situations the accountancy firm is not making decisions on behalf of the client, but merely helping to reflect these in the financial information that the client produces.

© ICAEW 2014

# 5.10.5 Ethical considerations in an audit and review context

**Non-audit assurance**

To help ensure that the assurance process is seen as credible it is crucial that you are seen to be independent from the client even with non-audit engagements.

In some non-assurance engagements, the responsible party may not be responsible for the subject matter (eg, if the information is prepared for the client by an external consultant). When you are asked to provide assurance on information prepared under such circumstances, you must be independent of the client and the party responsible for the information.

**Real-life example**

You are working on a team at an assurance firm which has been asked to provide a professional opinion on a listed company's environmental report. This will be added to the annual report. During the initial meeting with the client you discover that the information contained within the report has been prepared by your brother, who is an external consultant.

In this situation there is a potential familiarity threat for you reviewing the information prepared by your brother. Although this is not a statutory audit engagement, the firm should consider appropriate safeguards. You should declare your relationship to your engagement team.

© ICAEW 2014

# 5.11.1 Review

This module has covered the key ethical considerations and issues for a professional accountant in practice. Professional accountants and firms should always be guided by the fundamental ethical principles when they face a situation with potential ethical threats.

The key learning points of this module are summarised below.

- Before accepting a new client or new work a professional accountant should consider whether acceptance would create any threats to compliance with the fundamental principles.
- Professional accountants should be aware of the need to exercise caution when asked to give opinions as even an informal comment could lead to legal action.
- Fees should be calculated on an objective basis, based on factors such as hours worked, level of seniority, and the degree of risk involved in the engagement.
- Gifts or hospitality which are material to the individual professional accountant should not be accepted.
- The marketing and advertising of professional services is quite acceptable, but they must comply with ethical guidance.
- A firm of professional accountants holding clients' assets should be properly accountable for them.
- Corporate finance professionals should always check whether they need to comply with additional regulations, such as the City Code on Takeovers & Mergers.
- Insolvency practitioners must comply with relevant insolvency legislation.
- When considering whether or not to accept tax engagements, professional accountants should consider potential threats to their objectivity and independence.
- With assurance engagements, being independent and being seen to be independent is of paramount importance.
- Always consult your line manager, ethics partner, or ICAEW if you are not sure what action to take.

You have now reached the end of this module. Press the 'Exit' button to close this window.

© ICAEW 2014