

Additional Guidance on Ethical Matters for Members in Business

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Scope and status

On 2 July 2004, the Council of the Institute of Chartered Accountants in England and Wales agreed that members in business should regard the guidance below as good practice. 'Members in business', referred to as 'Members' throughout this guidance, refers to non-practising members, which includes members in industry, commerce, charities, financial services and the public sector. Members in practice may also find this guidance helpful in dealing with ethical issues other than with clients.

As part of their membership obligations, members must adhere to the fundamental principles and duty of confidentiality set out in the Guide to Professional Ethics in Statement 1.200 'Introduction and Fundamental Principles' and Statement 1.205 'Conflicts of Interest and Confidential Information' and reiterated in Statement 1.220 'Guidance on Ethical Matters for Members in Business'. Members are encouraged also to follow the additional good practice guidance set out below, which Council believes will be helpful in resolving ethical dilemmas. Failure to follow the additional guidance may not, of itself, make a member liable to disciplinary action but a member may be called upon to justify any departure from the guidance.

The guidance below has been prepared in collaboration with other member bodies of the Consultative Committee of Accountancy Bodies. It is based on proposed revisions to the Code of Ethics of the International Federation of Accountants (IFAC) and it is anticipated that the substance of this additional guidance will be included in a future update to Statement 1.220 when IFAC completes its revisions.

The objective of this guidance is to provide ethical advice to members to assist them in discharging their professional obligations, by setting out the fundamental principles to which they should adhere and considering the ethical conflicts that can arise in business situations. Members should be aware of the possibility of conflicts of interest arising in relation to their activities and should seek to ensure that any such conflicts are addressed at the earliest opportunity. Where members are uncertain as to how they should respond to a problem they should take early advice from those charged with the governance of the organisation or the Institute's Ethics Advisory Service.

The case studies included in the appendix to this guidance are intended for illustrative purposes only, indicating how this guidance might be applied in a number of example situations. The case studies are not an integral part of this guidance but should be read in conjunction with it.

SECTION 1 Introduction

1.1 Members are engaged in an executive or non-executive capacity in such areas as commerce, industry, the public and service sectors (including public sector audit bodies), education, the not for profit sector, regulatory bodies or professional bodies.

1.2 Investors, creditors, employers and other sectors of the business community, as well as governments and the public at large, may all rely on the work of members. Members may be solely or jointly responsible for the preparation and reporting of financial and other information, which both their employing organisations and third parties may rely on. They may also be responsible for providing effective financial management and competent advice on a variety of business-related matters including reviewing internal controls.

1.3 Members may be salaried employees, directors (whether executive or non-executive), owner managers, consultants, partners, volunteers or others engaged in one or more employing organisation. The legal form of the relationship with the organisation in which they are engaged has no bearing on the ethical responsibilities incumbent on members.

1.4 Members have a responsibility to further the legitimate aims of their employing organisation. This statement does not seek to hinder members from properly fulfilling that responsibility, but considers circumstances in which conflicts may arise with their duty to comply with the fundamental principles.

1.5 In some cases, members working in the public sector may, by law or public expectation, need to maintain a degree of independence greater than that normally expected of an employee, and where this applies the guidelines should be interpreted accordingly.

1.6 Members often occupy senior positions within employing organisations. The more senior they become, the greater will be their ability and opportunity to influence events, practices and attitudes. Members in such positions are expected, therefore, to encourage an ethics-based culture in their employing organisations.

1.7 A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. Therefore, the member's responsibility is not exclusively to satisfy the needs of an employer. The term 'public interest' relates to matters of legitimate public concern, not public curiosity. Public concern extends to the concerns of clients, government, financial institutions, employers, employees, investors, the business and financial community and others who rely upon the objectivity and integrity of the accounting profession to support the propriety and orderly functioning of commerce.

SECTION 2 Fundamental principles

Fundamental principle 1 – 'Integrity'

A member should behave with integrity in all professional and business relationships. Integrity implies not merely honesty but fair dealing and truthfulness. A member's advice and work must be uncorrupted by self-interest and not be influenced by the interests of other parties.

Fundamental principle 2 – 'Objectivity'

A member should strive for objectivity in all professional and business judgements. Objectivity is the state of mind which has regard to all considerations relevant to the task in hand but no other.

Fundamental principle 3 – 'Competence'

A member should undertake professional work only where he has the necessary competence required to carry out that work, supplemented where necessary by appropriate assistance or consultation.

Fundamental principle 4 – 'Performance'

A member should carry out his professional work with due skill, care, diligence and expedition and with proper regard for the technical and professional standards expected of him as a member.

Fundamental principle 5 – 'Courtesy'

A member should conduct himself with courtesy and consideration towards all with whom he comes into contact during the course of performing his work.

The fundamental principles are considered further in Statement 1.200 *Introduction and Fundamental Principles* and Statement 1.220 *Guidance on Ethical Matters for Members in Business* (www.icaew.co.uk/membershandbook).

SECTION 3 Framework approach

3.1 The environment in which members operate may give rise to specific threats to compliance with the fundamental principles. This guidance provides a framework to assist members to identify, evaluate and respond to threats to compliance with the fundamental principles. If identified threats are other than clearly insignificant members must implement safeguards to eliminate the threats or reduce them to an acceptable level so that compliance with the fundamental principles is not compromised. This guidance offers a wide range of examples of safeguards dealing with a variety of circumstances in which threats may arise. Members should use the framework to address ethical issues surrounding their work at an early stage such that the likelihood for the need for disassociation at some later stage is reduced.

3.2 The following sections are intended to illustrate the application of the fundamental principles and the types of safeguards that can be implemented. These sections are not intended to be, nor should they be interpreted as, an exhaustive list of all circumstances experienced by members that may create threats to compliance with the fundamental principles. Consequently, it is not sufficient for members merely to comply with the examples; rather, they should apply the principles to the particular circumstances they face.

Threats to compliance with the fundamental principles

3.3 Compliance with the fundamental principles may potentially be threatened by a broad range of circumstances. Many threats fall into the following categories:

- self-interest;
- self-review;
- advocacy;
- familiarity;
- intimidation.

These threats are discussed more fully below.

The self-interest threat

3.4 Self-interest threats may occur as a result of the financial or other interests of members or of immediate or close family members. Other examples of circumstances that may create self-interest threats for members include, but are not limited to:

- loans or guarantees;
- incentive arrangements;
- concern over employment security;
- commercial pressure from outside the employing organisation;
- interest in transactions with the company.

The self-review threat

3.5 Examples of circumstances that may create self-review threats include, but are not limited to:

- business decisions or data being subject to review and justification by the same person responsible for making those decisions or preparing that data;
- an analyst, or member of a board, or audit committee, being in a position to exert direct and significant influence over the financial reports.

The advocacy threat

3.6 It is natural for members to advocate their employer's position and there is nothing improper in this provided this does not result in misleading information being given. There could be circumstances, however, where this may not be acceptable and these include but are not limited to:

- commenting publicly on future events in particular circumstances having made assertions without sufficient support;
- where information is incomplete.

The familiarity threat

3.7 Examples of circumstances that may create familiarity threats include, but are not limited to:

- a person in a position to influence financial or non-financial reporting or business decisions having an immediate or close family member who is in a position to benefit from that influence;
- long association with business contacts influencing business decisions;
- acceptance of gifts or preferential treatment, unless the value is clearly insignificant.

The intimidation threat

3.8 Examples of circumstances that may create intimidation threats include, but are not limited to:

- threat of dismissal or replacement of the member or a close or immediate family member over a disagreement about the way in which financial and performance information is to be reported;
- a dominant personality attempting to influence the decision making process, for example with regard to the awarding of contracts or presentation of financial information or by controlling relations with auditors or oversight bodies.

3.9 Members may also find that specific circumstances give rise to other threats to compliance with one or more of the fundamental principles. In all professional and business relationships, members should always be on the alert for such circumstances and threats.

Safeguards to offset the threats

3.10 The examples given below are only intended to be illustrative and alternative action may need to be considered depending on the circumstances.

3.11 Safeguards that may eliminate or reduce to acceptable levels the threats faced by members fall into three broad categories:

- safeguards created by the profession, legislation or regulation;

- safeguards in the work environment;
- safeguards created by the individual.

3.12 Examples of safeguards created by the profession, legislation or regulation include, but are not restricted to:

- educational, training and experience requirements for entry into the profession;
- continuing professional development requirements;
- corporate governance regulations;
- professional standards;
- professional or regulatory monitoring and disciplinary procedures;
- external review by a legally empowered third party of the reports, returns, communications or information produced by a member.

3.13 Safeguards in the work environment include, but are not restricted to:

- the employing organisation's systems of corporate oversight or other oversight structures;
- the employing organisation's ethics and conduct programmes;
- recruitment procedures in the employing organisation emphasising the importance of employing high calibre competent staff;
- strong internal controls;
- appropriate disciplinary processes;
- leadership that stresses the importance of ethical behaviour and the expectation that employees will act in an ethical manner;
- policies and procedures to implement and monitor the quality of employee performance;
- timely communication of the employing organisation's policies and procedures, and any changes to them, to all employees;
- the provision of appropriate training and education to employees;
- policies and procedures to empower employees to communicate to senior levels any ethical issues that concern them. This includes informing employees of the procedures open to them.

3.14 Safeguards created by the individual include, but are not restricted to:

- Continuing Professional Development, including keeping up to date with technical and ethical requirements;
- keeping records of contentious issues and approach to decision making;
- maintaining a broader perspective on how similar organisations function through establishing business relationships with other professionals;
- using an independent mentor;
- maintaining contact with legal advisers and professional bodies.

3.15 Certain safeguards may increase the likelihood of identifying or deterring unethical behaviour. Such safeguards, which may be created by the accounting profession, legislation, regulation or an employing organisation, include, but are not restricted to:

- effective, well publicised complaints systems operated by the employing organisation, the profession or a regulator, which enable colleagues and employers to draw attention to unprofessional or unethical behaviour;

- an explicitly stated duty to report breaches of ethical requirements.

3.16 The nature of the safeguards to be applied will vary depending on the circumstances. In exercising their judgment, members should consider what a reasonable and informed third party, having knowledge of all relevant information, including the significance of the threat and the safeguards applied, would conclude to be unacceptable.

SECTION 4 Application of framework approach in ethical dilemma resolution

4.1 Members have a professional obligation to comply with the fundamental principles. There may be times, however, when their responsibilities to an employing organisation and their professional obligations to comply with the fundamental principles are in conflict. Ordinarily, members should support the legitimate and ethical objectives established by their employers and the rules and procedures drawn up in support of those objectives. Nevertheless, where compliance with the fundamental principles is threatened, members must consider their response to the circumstances.

4.2 As a consequence of their responsibilities to their employing organisation, members may find themselves under pressure to act or behave in ways that could directly or indirectly threaten compliance with the fundamental principles. Such pressure may be explicit or implicit; it may come from supervisors, managers, directors or other individuals within the employing organisation. Members may find themselves under pressure to:

- act contrary to law or regulation;
- act contrary to technical or professional standards;
- facilitate unethical or unlawful earnings management strategies;
- lie to, or otherwise intentionally mislead (including misleading by keeping silent) others, in particular:
 - (i) those acting as auditors to the employing organisation; or
 - (ii) regulators.
- issue, or otherwise be associated with, a financial or non-financial report that materially misrepresents the facts, including statements in connection with, for example:
 - (i) the financial statements;
 - (ii) tax compliance;
 - (iii) legal compliance; or
 - (iv) reports required by regulators.

4.3 The significance of threats arising from such pressures, such as intimidation threats, should be evaluated and, if they are other than clearly insignificant, safeguards should be considered and applied as necessary to reduce them to an acceptable level. Safeguards that might mitigate such pressures include:

- obtaining advice where appropriate from within the employing organisation, an independent professional advisor or a relevant professional body;

- the existence of a formal dispute resolution process within the employing organisation;
- seeking legal advice.

4.4 When initiating an ethical dilemma resolution process, members should consider the framework below:

- gather the facts and identify the problem;
- define the fundamental principles involved;
- identify the affected parties;
- identify who should be involved in the conflict resolution process;
- consider courses of action and associated consequences;
- decide on a course of action;
- evaluate your course of action;
- implement the course of action.

4.5 When resolving an ethical dilemma, it may be in the member's best interest to document the substance of the issue and details of any discussions held or decisions taken, concerning that issue.

4.6 Members may find it useful to discuss the ethical conflict issue within the organisation with the following parties:

- immediate superior;
- the next level of management;
- a corporate governance body, for example, the audit committee;
- other departments in the organisation which include, but are not limited to, legal, audit and human resources departments.

4.7 In addition, members may wish to consult the Ethics Advisory Services in the Institute which may be able to provide guidance on ethical issues without breaching confidentiality (*www.icaew.co.uk/ethicsadvice*). They may also consider seeking legal advice.

4.8 If, after exhausting all relevant possibilities, the matter remains unresolved, members should, where possible, disassociate themselves from the matter. They may also consider whether, in the circumstances, it is appropriate to withdraw from the specific project or in extreme circumstances resign from the organisation in which they are engaged.

4.9 To assist members to determine an appropriate course of action when faced with a situation which could threaten their compliance with the fundamental principles the following sections (preparing and reporting of information; acting with sufficient expertise; financial information; inducements and disclosing confidential information) give examples of specific areas of activity which could give rise to ethical dilemmas and the action which could be taken in response. This is not a comprehensive list of examples but aims to cover the key areas most likely to be encountered by members.

Illustrative case studies of how the guidance might be applied in example situations is given in the appendix to this guidance.

SECTION 5 Preparation and reporting of information

5.1 Members are often involved in the preparation and reporting of information that may either be made public or used by others inside or outside the employing organisation. Such information may include but is not limited to financial or management information, for example, financial statements, management discussion and analysis, and the management letter of representation provided to the auditors as part of an audit of financial statements. Members should prepare or present such information fairly, honestly and in accordance with relevant professional standards so that the information will be understood in its context. Members should maintain information for which they are responsible in a manner that:

- describes clearly the true nature of business transactions, assets or liabilities;
- classifies and records information in a timely and proper manner; and
- does not materially misrepresent the facts.

5.2 Threats to compliance with the fundamental principles, for example self-interest or intimidation threats to objectivity, competence and performance, may arise where members may be pressurised (either externally or by the possibility of personal gain) to allow themselves to be associated with misleading information or to become associated with misleading information through the actions of others.

5.3 Accordingly, members should not be associated with reports, returns, communications or other information where they believe that the information:

- contains a materially false or misleading statement;
- contains statements or information furnished recklessly;
- omits or obscures information required to be included where such omission or obscurity would be misleading.

5.4 The significance of such threats will depend on factors such as the source of the pressure and the degree to which the information is, or may be, misleading. The significance of the threats should be evaluated and, if they are other than clearly insignificant, safeguards should be considered and applied as necessary to reduce them to an acceptable level. Such safeguards might include consultation with superiors within the employing organisation, for example, the audit committee or other body responsible for governance, or with a relevant professional body.

5.5 Where it is not possible to reduce the threat to an acceptable level, members should refuse to remain associated with information they consider is or may be misleading. Should they be aware that the issuance of misleading information is either significant or persistent, they should consider informing appropriate authorities in line with the guidance in Section 9. They may also wish to take legal advice or consider resignation.

SECTION 6 Acting with sufficient expertise

6.1 The fundamental principles of competence and performance require that members should only undertake tasks for which they have, or can obtain, sufficient specific training or experience. They 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.

6.2 Circumstances that may threaten the ability of members to perform their duties with the appropriate degree of competence and performance include:

- insufficient time for properly performing or completing the relevant duties;
- incomplete, restricted or otherwise inadequate information for performing the duties properly;
- insufficient experience, training and/or education;
- inadequate resources for the proper performance of the duties.

6.3 The significance of such threats will depend on factors such as the extent to which members are working with others, their relative seniority in the business and the level of supervision and review applied to their work. The significance of the threats should be evaluated and, if they are other than clearly insignificant, safeguards should be considered and applied as necessary to reduce them to an acceptable level. Safeguards that may be considered include:

- obtaining additional advice or training;
- ensuring that there is adequate time available for performing the relevant duties;
- obtaining assistance from someone with the necessary expertise;
- consulting, where appropriate, with:
 - (i) superiors within the employing organisation;
 - (ii) independent experts;
 - (iii) a relevant professional body, such as the Institute.

6.4 Where threats cannot be eliminated or reduced to an acceptable level, members should refuse to perform the duties in question, making clear their reasons for doing so.

SECTION 7 Financial interests

7.1 Members may have financial interests that could, in certain circumstances, give rise to threats to compliance with the fundamental principles. For example, self-interest threats to objectivity or duty of confidentiality may arise through the existence of the motive and opportunity to manipulate price sensitive information in order to gain financially. Examples include situations where the member or an immediate or close family member:

- holds a significant direct or indirect financial interest in the employing organisation and the value of that financial interest could be directly affected by decisions made by the member;
- is eligible for a profit related bonus and the value of that bonus could be directly affected by decisions made by the member;
- holds, directly or indirectly or may qualify for, share options in the employing organisation, the value of which could be directly affected by decisions made by the member.

7.2 Members should be alert to the threats inherent in holding or trading capital instruments in the employing organisation. If threats are other than clearly insignificant, safeguards should be considered and applied as necessary to reduce them to an acceptable level. Such safeguards might include:

- disclosure of all relevant interests, and of any plans to trade in relevant shares to those charged with the governance of the employing organisation, in accordance with any internal policies;
- consultation, where appropriate, with superiors within the employing organisation;
- consultation, where appropriate, with those charged with the governance of the employing organisation or relevant professional bodies;
- internal and external audit procedures;
- up-to-date education on ethical issues and the legal restrictions and other regulations around potential insider trading.

7.3 Members should neither manipulate information nor use privileged information for personal gain.

SECTION 8 Inducements

Receiving offers of inducements

8.1 Members may find themselves in situations where they or immediate or close family members are offered inducements intended to encourage unethical behaviour. Inducements may take various forms, including gifts, hospitality, preferential treatment and inappropriate appeals to friendship or loyalty.

8.2 Offers of inducements may create threats to compliance with the fundamental principles. When they or their immediate or close family members are offered inducements, members should consider the situation carefully. Self-interest threats to objectivity or the duty of confidentiality may arise where offers are made in an attempt to unduly influence actions or decisions, encourage illegal or dishonest behaviour or obtain confidential information. Intimidation threats to objectivity or the duty of confidentiality may arise if an offer of an inducement, whether accepted or declined, is followed by threats to make that offer public and damage the reputation of either the member or an immediate or close family member.

8.3 The significance of such threats will depend on the nature, value and intent behind the offer. When offers of inducements which a reasonable and informed third party, having knowledge of all relevant information, would consider insignificant are made in an open manner, then members may conclude that the offers are made in the normal course of public relations without the specific intent to influence decision making or to obtain information. In such cases, they may generally conclude that there is no significant threat to compliance with the fundamental principles.

8.4 If evaluated threats are other than clearly insignificant, members should not accept inducements. As the real or apparent threats to compliance with the fundamental principles do not merely arise from acceptance of inducements but, sometimes, merely from the fact of the offer having been made, additional safeguards should be adopted. Members should assess the risk associated with all such offers and should:

- where such offers have been made, immediately inform higher levels of management or those charged with governance of the employing organisation;
- consider whether it is appropriate to inform third parties of the offer – for example, a professional body or the employer of the individual who made the offer; members should, however, consider seeking legal advice before taking such a step;
- advise immediate or close family members of relevant threats and safeguards where they are potentially in positions that might result in offers of inducements, for example as a result of their employment situation;
- consider whether it is appropriate to inform higher levels of management or those charged with governance of the employing organisation where immediate or close family members are employed by competitors or potential suppliers of that organisation.

Offering inducements

8.5 Members may find themselves in situations where they are expected to, or are under other pressure to, offer inducements to suborn the judgement of another individual or organisation, influence a decision-making process or obtain confidential information.

8.6 Such pressure may come from within the employing organisation, for example, from a colleague or superior. It may also come from an external individual or organisation suggesting actions or business decisions that would be advantageous to the employing organisation and, by extension, the member, can be influenced improperly.

8.7 Threats to compliance with the fundamental principles may arise in the following circumstances:

- a member experiences pressure from within the employing organisation to offer an inducement to suborn the judgment of another individual or organisation, influence a decision-making process or obtain information;

- a third party outside the employing organisation asks a member for an inducement that might influence favourable business decisions or actions.

8.8 Members should not offer inducements that a reasonable and informed third party, having knowledge of all relevant information, would consider to have an improper influence on the professional judgment of those with whom the accountants have a professional or business relationship.

8.9 Where the pressure to offer an unethical inducement comes from within the employing organisation, members should follow the principles and guidance regarding ethical dilemma resolution set out in this document.

SECTION 9 Disclosing confidential information

9.1 Members should observe the duty of confidentiality. Confidentiality is the duty to keep private another person's information given or obtained in confidence. The duty of confidentiality is not only to keep information confidential, but also to take all reasonable steps to preserve confidentiality. Members should not disclose confidential information acquired or received in the course of their work unless they have a right or obligation to do so or they have received informed consent from their employer to whom the duty of confidentiality is owed.

Statement 1.205 "*Conflicts of Interest and Confidential Information*" (www.icaew.co.uk/membershandbook) considers the duty of confidentiality in further detail.

9.2 The possession of confidential information may give rise to specific threats to confidentiality in certain circumstances. For example, the non-disclosure of confidential information in a member's possession may threaten compliance with the fundamental principles when members:

- are required by law to disclose information to the appropriate public authorities or suspected infringements of the law that come to light, for example, in connection with anti-money laundering or anti-terrorist legislation;
- are required to produce documents or other provision of evidence in the course of legal proceedings;
- are permitted by law to disclose and are authorised by the organisation in which they are engaged;
- believe that confidential information should be disclosed in the public interest, for example, where the employing organisation has committed, or proposes to commit, a crime or fraudulent act;
- have a professional duty or right to disclose, when not prohibited by law:
 - (i) to comply with technical standards and ethics requirements;
 - (ii) to protect the professional interests of a member in legal proceedings;

- (iii) to comply with the quality review of a professional body such as the Institute;
- (iv) to respond to an inquiry or investigation by the Institute or a regulatory body.

Whistle blowing

9.3 Where required by law to disclose confidential information, for example as a result of anti-money laundering or anti-terrorist legislation, or in connection with legal proceedings involving either themselves or their employing organisation, members should always disclose that information in compliance with relevant legal requirements.

9.4 Members should take care when communicating relevant facts to others relating to known or suspected money laundering or terrorist activities. Under the Proceeds of Crime Act 2002, the Money Laundering Regulations 2003 and the Terrorist Act 2000, it is a criminal offence to 'tip off' a money launderer or terrorist. For further discussion, refer to the Institute's money laundering guidance (www.icaew.co.uk/moneylaundering). Members should also consider obtaining legal advice and/or consulting the Ethics Advisory Services in the Institute before making any disclosure (www.icaew.co.uk/ethicsadvice).

9.5 In some circumstances, members may consider disclosing information outside the employing organisation, when not obligated to do so by law or regulation because they believe it would be in the public interest. When considering such disclosure, members should, where appropriate, follow the internal procedures of the employing organisation in an attempt to rectify the situation. If the matter cannot be resolved within the employing organisation, members should consider the following:

- legal constraints and obligations;
- whether members of the public are likely to be adversely affected;
- the gravity of the matter, for example the size of the amounts involved and the extent of likely financial damage;
- the possibility or likelihood of repetition;
- the reliability and quality of the information available;
- the reasons for the employing organisation's unwillingness to disclose matters to the relevant authority.

9.6 In deciding whether to disclose confidential information, they should also consider the following points:

- when the employer gives authorisation to disclose information, whether or not the interests of all the parties, including third parties whose interests might be affected, could be harmed;
- whether or not all the relevant information is known and substantiated, to the extent it is practicable. When the situation involves unsubstantiated facts, incomplete information or unsubstantiated conclusions, professional judgment should be used in determining the type of disclosure to be made, if any;

- 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;
- the legal or regulatory obligations and the possible implications of disclosure for the member.

9.7 Before making such disclosure, members should obtain legal advice as to their duties and obligations in the context of their professional and business relationships, and possible protection under the Public Interest Disclosure Act 1998.

SOURCES OF ADVICE

A member who is in doubt as to their ethical position or duty of confidentiality may seek advice from the Ethics Advisory Services in the Institute by e-mail *ethics@icaew.co.uk* or phone 01908 248258. The Ethics Advisory Services is available to all members and is a confidential service free from the duty to report misconduct. Further information on the Ethics Advisory Services can be found at *www.icaew.co.uk/ethicsadvice*.

A member who needs advice on the Money Laundering Regulations 2003 can contact the Institute by e-mail *moneylaundering@icaew.co.uk* or phone 01908 248320. The money laundering helpline provides advice on general issues concerning the regulations or specific issues, which can be discussed anonymously.

APPENDIX – CASE STUDIES**CONTENTS**

Introduction

Ethical dilemma resolution framework

Case studies

1. Unsupported expenses
2. Incorrect reporting of financial information
3. Non-disclosure to auditors
4. Acting without sufficient expertise
5. Personal financial interest in a proposal
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7. Inducements for non-disclosure of information
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Introduction

Members may encounter situations where their responsibilities to the employing organisation and their professional obligations to comply with the fundamental principles are in conflict. These dilemmas are rarely clear cut and members can be faced with a difficult decision as to the best course of action in such circumstances.

This appendix contains a number of case studies designed to illustrate to members the thought processes that might be followed in applying the principles-based ethical guidance to their situation. The case studies deal with a few specific scenarios, unlike the more general circumstances in the ethical guidance. The case studies set out to establish the principles which are in danger of being breached, factors, which could be considered when resolving the particular ethical dilemma, and indicate a possible course of action for the member in order to deal with the situation in a professional manner.

Members should bear in mind that the appearance of a conflict could be as damaging as the existence of an actual conflict and should therefore take the necessary steps to address this. The guidance for members is predicated on perceived as well as actual threats to compliance with the fundamental principles as presumed by a reasonable and informed third party having knowledge of all relevant information.

The case studies are additional to the best practice guidance and should be read in conjunction with it. However, ultimately it is the requirements of the Statements in the Guide to Professional Ethics, particularly 1.200 *Introduction and Fundamental Principles* and 1.205 *Conflicts of Interest and Confidential Information*, considered further in 1.220 *Guidance on Ethical Matters for Members in Business* that must be applied to the particular circumstances.

Ethical dilemma resolution framework

In applying the fundamental principles, members may encounter problems in resolving an ethical dilemma. A number of dilemma resolution models have been published. In essence, the steps they suggest can be summarised as follows:

- Gather the facts and identify the problem. In order to identify the problem, the member should establish the known facts of the situation and any limitations. Facts may not be easily or readily available. Therefore, the member may find it helpful to obtain more background information by:
 - referring to the organisation’s policy, procedures, code of conduct and previous history;
 - discussing the matter with parties internal and external to the organisation. For example trusted managers and colleagues.
- Define the fundamental principles involved. The member should refer to the ethical guidance detailed in the guidance in order to establish which fundamental principles are affected by the situation.
- Identify the affected parties. The member should consider affected parties ranging from individuals, organisations to society. The parties to be considered include, but are not limited to, employees, employers, shareholders, consumers/clients, investors, government and the community at large.
- Identify who should be involved in the conflict resolution process. The member needs to consider which parties should be involved, in what role and at what stage of the conflict resolution process. For example, the member may need to consider when it would be appropriate to refer to external sources for help, such as the Institute.
- Consider courses of action and associated consequences. In considering courses of action, the member may consider the following:
 - the organisation’s policies, procedures and guidelines;
 - applicable laws and regulations;
 - universal values and principles adopted by society;
 - long term and short term consequences;
 - symbolic consequences;
 - private and public consequences.
- Decide and evaluate your course of action. The member should determine the best course of action consistent with the fundamental principles. When assessing the suggested course of action, a member should consider the following:
 - Have all consequences associated with the course of action been discussed and evaluated?
 - Is the suggested course of action enduring from an ethical perspective?
 - Would I apply a similar course of action to a similar situation?
 - How would you feel if details of the suggested course of action were disclosed to peers, family and friends?
- Implement the course of action and monitor the progress, as appropriate.

When resolving an ethical dilemma, it may be in the member's best interest to document the substance of the issue and details of any discussions held or decisions taken concerning that issue.

Case studies

The case studies below provide examples of work place dilemmas that could arise in the areas of activity described in sections 4 to 8 of the guidance. The studies are intended for illustrative purposes only and should be read in conjunction with the guidance.

The possible course of action included in the case studies below may differ according to a variety of variables, including but not limited to: industry sector, size of business, seniority, organisation structure, role and culture.

| |
|---|
| Case Study 1 Unsupported expenses |
| Case outline |
| <p>You are the Finance Director (FD) of an organisation. You become concerned that the Chief Executive is making frequent overseas trips and charging the expense to the organisation. The relevance of the destinations and the nature of the activities undertaken appear to have only partial relevance to your organisation's activities.</p> <p>You raise your concerns with the Chief Executive, who gives assurances that the nature and purpose of these trips is covered by an 'understanding' with the organisation's Chairman. This is not evidenced in writing, and no further justification for the expenses is forthcoming.</p> |
| Key fundamental principles and duties |
| <p>Integrity – Would processing the payments without adequate explanation be seen as being honest and fair by others?</p> <p>Objectivity – How will you be able to demonstrate your independence, actual or perceived, from the Chief Executive?</p> <p>Performance – How can allowing the expense payments to be processed without adequate explanation be seen as acting with due skill, care and diligence?</p> <p>Courtesy – How should you proceed so as not to discredit yourself?</p> |

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| Case Study 1 Unsupported expenses (continued) |
| Discussion |
| <p><i>Identify relevant facts:</i> Consider the business’ policies, procedures and guidelines, accounting standards, best practices, code of ethics, applicable laws and regulations. Is it possible to obtain details or documentation of the “understanding” between the Chief Executive and the Chairman? Have you discussed the matter directly with the Chief Executive and /or Chairman to ensure you have the real facts?</p> <p><i>Identify affected parties:</i> Key affected parties are you, the Chief Executive and the Board. Other possible affected parties are the expense processing department, human resources, internal audit, tax department, Audit Committee, employees, shareholders and financial backers.</p> <p><i>Who should be involved in resolution:</i> Consider not just whom should be involved, but also for what reason and timing of their involvement. Have you thought of contacting the Institute for advice and guidance? Do you have trusted colleagues with whom you can discuss your position? At what point will you consider involving the Board and the Audit Committee?</p> |
| Possible course of action |
| <p>Discuss the issue further with the Chief Executive and ask for details of the trip or documentary evidence of this ‘understanding’ between the Chief Executive and the Chairman. During this discussion, explain to the Chief Executive the reasons why this information is needed, for example, to conform with the organisation’s policies, procedures and guidelines. Explain to the Chief Executive that it may be necessary to ensure that the contentious items are included in a P11D, and argued as a deductible expense with the Revenue. If the Chief Executive will not provide the necessary information, explain to her that the matter will have to be discussed with the Chairman, and you will set up a meeting with all three of you.</p> <p>If no satisfactory response is obtained from the Chief Executive and the Chairman, next steps could include discussion with the Board, internal audit, Audit Committee and external auditors.</p> <p>During the resolution process, it may be helpful to document your involvement, the substance of the discussions held, who else was involved, what decisions were made and why.</p> |

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| Case Study 2 Incorrect reporting of financial information |
| Case outline |
| <p>You are a reporting accountant in a company. Your immediate manager is a very forceful, domineering individual and you have accepted his views over the last two years on the level of work in progress. He has given you specific assurances that w-i-p has increased by 200% during the current reporting period, and instructed you to report this level in the monthly management accounts. The year end draft financial accounts show that the organisation has only just met its business plan financial targets.</p> <p>Evidence then becomes available (which you were not aware of when the draft accounts were produced) to indicate that something is clearly wrong and the work in progress had not increased at anywhere near the rate advised by your manager.</p> |
| Key fundamental principles and duties |
| <p>Integrity – Will you be able to demonstrate that the accounts are true and fair without re-drafting?</p> <p>Objectivity – How would you maintain your objectivity given that your immediate manager is a forceful, perhaps intimidating individual?</p> <p>Performance – Are the draft accounts prepared in accordance with technical and professional standards?</p> <p>Courtesy – How should you proceed so as not to discredit yourself?</p> |
| Discussion |
| <p><i>Identify relevant facts:</i> Consider the business' policies, procedures and guidelines, accounting standards, best practices, code of ethics, applicable laws and regulations. Is the evidence that work in progress is incorrectly stated supported by other documentation, for example, analytical review of cost of sales, margins and cashflows?</p> <p><i>Identify affected parties:</i> Key affected parties are you and your immediate manager. Other possible affected parties are the next levels of management, recipients of the management accounts and the financial accounts, finance, purchasing, accounts payable, human resources, internal audit, Audit Committee, Board, external auditors, shareholders and financial backers.</p> <p><i>Who should be involved in resolution:</i> Consider not just whom should be involved, but also for what reason and timing of their involvement. Have you thought of contacting the Institute for advice and guidance? Have you discussed the matter with your immediate line manager in light of all the</p> |

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| <p>Case Study 2 Incorrect reporting of financial information (continued)</p> |
| <p>available evidence and possible consequences? Can you discuss the matter with recipients of the management and financial accounts? At what point will you consider involving other affected parties?</p> |
| <p>Possible course of action</p> |
| <p>Check the relevant facts by corroborating with other available documentation, for example, cost of sales calculations, margins, previous stock counts and other financial information. Discuss the matter with your immediate line manager as to appropriate course of action, for example, undertaking a stock count.</p> <p>If you feel that your manager’s response is not appropriate, discuss the matter with recipients of the management and draft financial accounts and the next level of management. Next steps could include discussion with the senior management, internal audit, Audit Committee, the Board, external auditors or other actions indicated in internal whistleblowing procedures.</p> <p>During the resolution process, it may be helpful to document your involvement, the substance of the discussions held, who else was involved, what decisions were made and why.</p> |

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| <p>Case Study 3 Non-disclosure to auditors</p> |
| <p>Case outline</p> |
| <p>You are employed as an Accounting Systems Manager. During your work you overhear a Financial Controller in one department, who said that she had not been disclosing certain things to the auditor. You don’t know whether to believe this but are uneasy, as the culture appears to be one of ‘getting away with as much as possible’. In addition, you have heard that a bribe was paid to an overseas company to secure work. You are uneasy about the situation and worried that a poor relationship with your line manager may prevent you from exploring the accuracy of the statements given to you.</p> |
| <p>Key fundamental principles and duties</p> |
| <p>Integrity – Can you overlook the financial controller’s comments, the culture and the bribe allegedly paid to the overseas company and still demonstrate integrity?</p> <p>Objectivity – Knowing that something may be wrong, how can you maintain your objectivity?</p> <p>Courtesy – How should you proceed so as not to discredit yourself?</p> |

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| Case Study 3 Non-disclosure to auditors (continued) |
| Duty of Confidentiality – Is there any basis in which you could or should make disclosures? |
| Discussion |
| <p><i>Identify relevant facts:</i> Consider the business' policies, procedures and guidelines, accounting standards, best practices, code of ethics, applicable laws and regulations. Can you corroborate the facts further with documentation or discussion with relevant parties? Do you have an internal process for whistle blowing? What steps have you taken to understand money laundering legislation and the Public Interest Disclosure Act?</p> <p><i>Identify affected parties:</i> Key affected parties are you, the financial controller, the employee raising allegations about a bribe, line manager and auditor. Other possible affected parties are employees, next level of management, internal audit, Audit Committees, the Board, shareholders and financial backers.</p> <p><i>Who should be involved in resolution:</i> Consider not just whom should be involved, but also for what reason and timing of their involvement. Have you thought of contacting the Institute for advice and guidance? Do you have trusted colleagues with whom you can discuss your position? At what point will you consider involving your line manager, next level of management, the Board and the Audit Committee?</p> |
| Possible course of action |
| <p>Check the relevant facts and discuss the matter with your immediate line manager. If you feel that the response by the line manager is not satisfactory, next steps may be to discuss the matter further with the next level of management, internal audit, Audit Committee and the Board.</p> <p>If you have suspicions or evidence of money laundering, contact the Institute or the Money Laundering Helpline and/or take legal advice.</p> <p>During the resolution process, it may be helpful to document your involvement, the substance of the discussions held, who else was involved, what decisions were made and why.</p> |

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| Case Study 4 Acting without sufficient expertise |
| Case outline |
| Your employer has put you in charge of a project, which you consider requires detailed actuarial knowledge. You are uneasy about doing the work given that you do not possess the necessary expertise and are uncertain about what to say to the employer. |
| Key fundamental principles and duties |
| Competence – Do you have the necessary skills and experience to undertake the work? Courtesy – How should you proceed so as not to bring discredit yourself? |
| Discussion |
| <i>Identify relevant facts:</i> Consider the business’ policies, procedures and guidelines, accounting standards, best practices, code of ethics, applicable laws and regulations. Can you demonstrate your lack of expertise in this area, the potential impact on the organisation and pension fund and offer alternatives? Can you make reference to the Institute’s professional values and disciplinary process? <i>Identify affected parties:</i> Key affected parties are you and your employer. Other possible affected parties are the auditors, employees, human resources, pensioners, shareholders and financial backers. <i>Who should be involved in resolution:</i> Consider not just whom should be involved, but also for what reason and timing of their involvement. Have you thought of contacting the Institute for advice and guidance? Do you have trusted colleagues with whom you can discuss your position? At what point will you consider involving the next level of management and human resources? |
| Possible course of action |
| Discuss your concern of lack of actuarial knowledge with your employer and suggest clearly defining the scope of the project and a course of action for addressing issues such as lack of actuarial knowledge, for e.g., employing a person with the necessary expertise. During the discussion focus on the potential consequences to the business, pension fund and you personally, of undertaking this project. Explain that employing a person with the necessary expertise does not remove your obligation to ensure that the work is conducted in accordance with accounting standards, laws and regulations. |

Case Study 4 Acting without sufficient expertise (continued)

If your employer does not agree to the suggested course of action, it may be appropriate to discuss the matter with the next level of management. If the response from management is not satisfactory, it may be necessary to involve internal audit, Audit Committee, Pension and/or Investment Committee and the Board.

During the resolution process, it may be helpful to document the substance of the discussions held, who was involved, what decisions were made and why, and your involvement.

Case Study 5 Personal financial interest in a proposal**Case outline**

You have been appointed Finance Director (FD) to a public sector organisation, which has major difficulty attracting and retaining skilled staff. The Board has asked you to draw up a benefits package to assist in overcoming this problem. You are told that your entitlement to benefits will be in accordance with the new scheme. You conduct appropriate research and conclude that a significant increase in the whole range of benefits is required in order to achieve the Board's objective.

Key fundamental principles and duties

Integrity – How will you manage your personal interest with the need to be true and fair?

Objectivity – How will you manage your personal interest in the benefits package with the need to remain unbiased and consider only the relevant facts?

Competence – Do you have all the necessary skills to draw up such a package?

Courtesy – How should you proceed so as not to discredit yourself?

Discussion

Identify relevant facts: Consider the business' policies, procedures and guidelines, accounting standards, best practices, code of ethics, 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?

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| <p>Case Study 5 Personal financial interest in a proposal (continued)</p> |
| <p><i>Identify affected parties:</i> Key affected parties are you and the Board. Other possible affected parties are employees, human resources, shareholders and financial backers.</p> <p><i>Who should be involved in resolution:</i> Consider not just whom should be involved, but also for what reason and timing of their involvement. Have you thought of contacting the Institute for advice and guidance? Do you have trusted colleagues with whom you can discuss your position? Have you discussed the matter with the Board and/or human resources?</p> |
| <p>Possible course of action</p> |
| <p>Before explaining your findings to the Board, it may be advisable to tell the Board how you approached the project and who else was involved, for example, human resources. You should declare your conflict of interest and not vote on the proposal for the new benefits package. It may be advisable to involve human resources or another independent party to present the findings to the Board. During the presentation, demonstrate how your findings were arrived at and who else was involved in the project.</p> <p>During the resolution process, it may be helpful to document the substance of the discussions held, who was involved, what decisions were made and why, and your involvement.</p> |

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| <p>Case Study 6 Inappropriate business practices</p> |
| <p>Case outline</p> |
| <p>You have recently accepted a new, and better-paid, job and are due to start in a week. At interview, the company explained its charging system. On reflection it appears that customers are charged inflated rates that exceed agreed fixed prices. You are beginning to feel uncomfortable, and worry that you might be doing the wrong thing accepting this position.</p> |
| <p>Key fundamental principles and duties</p> |
| <p>Integrity – If your assessment is accurate, should you associate yourself with this kind of practice? How can you withdraw with integrity?</p> <p>Objectivity – How can you overcome the risk that that your self-interest (better pay/career opportunities) will cause you to accept the role, despite your concerns?</p> <p>Courtesy – How should you proceed so as not to discredit yourself?</p> |

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| Case Study 6 Inappropriate business practices (continued) |
| Discussion |
| <p><i>Identify relevant facts:</i> Do you have facts, or could you have misunderstood the charging scheme? Do you have supporting evidence (from, e.g., employees of your potential employer)? Did you explore this problem area during the interview? Can you discuss it at this stage?</p> <p><i>Identify affected parties:</i> Key parties affected are you, and the prospective employer. Other possible parties affected are your current employer (e.g., if you have resigned), and your family (who may be affected by whether you accept or decline the new job).</p> <p><i>Who should be involved in resolution:</i> Consider not just whom you should involve, but also why and when. Can your Institute provide help and advice? Are there trusted colleagues with whom you can discuss your position? Can you talk with the prospective employer about your concerns?</p> |
| Possible course of action |
| <p>Check out your <i>facts</i>. Arrange an informal talk with a sales person to explain their practices again. Consider whether what you learn supports your initial views. Discuss remaining concerns with a trusted colleague (take care not to reveal confidential information). Consider whether you will be able to influence the business practices of the company. Discuss your concerns with the new employer and ask whether they can help resolve this issue with you. If this seems unlikely, and you wish to withdraw, consider taking legal advice (e.g., through the CAB), and withdraw from the role. At all times keep your family aware of your concerns, approach, and possible implications.</p> <p>During the resolution process, it may be helpful to document the substance of the discussions held, who was involved, what decisions were made and why, and your involvement.</p> |

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| Case Study 7 Inducements for non-disclosure of information |
| Outline of the case |
| <p>You have been with your employer less than a year but things have not turned out well and you are moving on. You have some grave concerns about business conduct, and believe there may issues which should be disclosed (to auditors or the regulator). You are negotiating a compromise agreement, and you have been led to understand that if you report any concerns you will not receive a settlement, whereas if you agree to a gagging clause then you will receive a substantial payoff.</p> |

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| Case Study 7 Inducements for non-disclosure of information (continued) |
| Key fundamental principles and duties |
| <p>Integrity – How far do you need to go to demonstrate your integrity?</p> <p>Objectivity – How will you manage the conflict between financial benefit and integrity?</p> <p>Duty of Confidentiality – Is there any basis on which you could make disclosures?</p> |
| Discussion |
| <p><i>Identify relevant facts:</i> Do you have the facts to back up your discomfort? Do you have all the facts, or only a selection, and can you get to the rest? What steps have you already taken to try to resolve your concerns, and are they documented? Do you understand how to use PIDA to obtain protection?</p> <p><i>Identify affected parties:</i> Key affected parties are you and the employer. Other possible affected parties are the regulator, auditor, and the Public, as well as your family.</p> <p><i>Who should be involved in resolution:</i> Consider not just whom you should involve, but also why and when. Can your Institute provide help and advice? Are there trusted colleagues with whom you can discuss your position? Can you talk with the prospective employer about your concerns? Have you made full disclosures to your solicitor, and received advice? Have you discussed the matter with your family?</p> |
| Possible course of action |
| <p>Try to keep the issues clear. One is how to deal with the issues of concern, the second is achieving a satisfactory financial settlement. Take advice early and often. It is key to establish whether the facts support your concerns. If so, you must judge if there is a basis for disclosure – your Institute can advise you – and whether PIDA can provide any protection to you (Public Concern at Work can provide confidential advice). If there is a basis, you need to determine what the value and consequences of that disclosure might be for you, your family, the firm, the industry and the profession. Resist the gagging clause, and argue for your concerns about the company’s behaviour to be documented and considered by the executive body. Ensure that your family is at all times aware of your concerns, actions and implications, but take care not to reveal confidential information.</p> |

Case Study 7 Inducements for non-disclosure of information (continued)

During the resolution process, it may be helpful to document the substance of the discussions held, who was involved, what decisions were made and why, and your involvement.

Case Study 8 Earnings management**Outline of the case**

You are the Financial Controller in a family business, though in reality think you would be considered to be the finance director. After some financial difficulties a bank and a venture capitalist have invested and acquired over 33% of the shares, but no Board seats. The continuing support of the Bank and Venture Capitalist are dependent on performance figures being achieved. You have been told that if you put in the “right” figures you will get a large bonus and 1% share option.

The company is secretive, and as little information as possible being given to the auditors and the investors. You believe that some figures may be being ‘massaged’. You have tentatively raised your concerns with the Father and Son Chair and Chief Executive. You have been told that if you pursue the matter and/or fail to put in the right figures you will lose the bonus and share option.

Key fundamental principles and duties

Integrity – Can you support the business without being involved in potentially misleading information?

Objectivity- How can you avoid your financial interest influencing your professional judgement?

Courtesy – How will you manage relationships with the affected parties?

Discussion

Identify relevant facts: Consider the business’ policies, procedures and guidelines, accounting standards, applicable laws and regulations. Double check your facts, including forecast figures and the assumptions underlying them. Consider whether the culture of secrecy means that you are not in possession of material facts and challenge the management if necessary.

Identify affected parties: Key parties are you, the family, professional advisers, bankers and venture capitalists. Other possible affected parties are your family, the Institute and the profession.

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| <p>Case Study 8 Earnings management (continued)</p> |
| <p><i>Who should be involved in resolution:</i> Consider not just whom you should involve, but also why and when. Are there trusted colleagues or friends with whom you can discuss your position? Can your Institute provide advice and assistance? Have you discussed the matter with your family?</p> |
| <p>Possible course of action</p> |
| <p>Discount the short-term financial benefits on offer. Prepare a range of forecasts for the family, and impress on them the implications of short-term manipulation in the long term. Encourage the family to focus on the underlying business issues, and address them to enhance long-term value. Draw up realistic figures for presentation, and explain how your professional standing demands that these be presented. Do not become involved in manipulation, and do not allow your name to be associated with figures not prepared by you. Consider whether the values of the organisation are consistent with your own, and if necessary your employment options.</p> <p>During the resolution process, it may be helpful to document the substance of the discussions held, who was involved, what decisions were made and why, and your involvement.</p> |

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| <p>Case Study 9 Disclosing personal information</p> |
| <p>Outline of the case</p> |
| <p>You are the Finance Director (FD) of a district council. The Chairman of the finance committee approaches you asking to see all the information the housing benefits section of your department hold about the financial and personal affairs of a councillor.</p> <p>The chair of the finance committee insists on seeing this information (saying he will not disclose the source), even though he cannot identify any legitimate reason. The Chairman is not willing for you to contact the councillor about this.</p> |
| <p>Key fundamental principles and duties</p> |
| <p>Integrity – Would the actions proposed be fair and honest? Would there be any breaches of trust?</p> <p>Objectivity – Where is the boundary between your duty to the employer and that to the claimant? How do you avoid being brought into political wrangling that could compromise you in the future?</p> |

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| Case Study 9 Disclosing personal information (continued) |
| Duty of Confidentiality – Are there proper grounds for disclosing the information? |
| Discussion |
| <p><i>Identify relevant facts:</i> Consider the business' policies, procedures and guidelines, accounting standards, applicable laws and regulations. Relevant facts may include allegations of fraud or impropriety on the part of the councillor, whether in the public domain or not.</p> <p><i>Identify affected parties:</i> Key affected parties are the Chairman and the Councillor. Other possible affected parties are the committee the Chairman represents, political allies and opponents of the two core parties, those responsible for the administration of Housing Benefit, and the officer responsible for Data Protection.</p> <p><i>Who should be involved in resolution:</i> Consider not just whom you should involve, but also why and when. You and Chairman must engage effectively. Other parties may need to be drawn in depending on the facts, but may include Data Protection officers, housing benefits officers, legal officers and Internal Audit representatives. It is possible that senior council figures may need to support to you in resisting the Chairman.</p> |
| Possible course of action |
| <p>Try to get the request formalised in memorandum form, with reasons appended, and maintain a file of related correspondence. If this is not forthcoming, ensure that notes are made and kept off site. Impress on the Chairman the duty of confidentiality and legal implications associated with the request, if necessary with the help of specialist or legal knowledge. Refer the Chairman to public domain information, if any, but deny access to other information. Try to establish whether there is a basis for investigating the councillor, e.g., for reasons of suspected impropriety, and the reasons why the councillor should not be asked for consent. Determine whether in the light of those reasons, internal or external investigation may be appropriate, and who by; and whether or not it is appropriate to inform the councillor of the request and any follow-up actions.</p> <p>During the resolution process, it may be helpful to document the substance of the discussions held, who was involved, what decisions were made and why, and your involvement.</p> |

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| Case Study 10 Transfer of funds to an offshore account |
| Outline of the case |
| <p>You work as an interim Finance Director. You are not an Executive Director, do not attend board meetings and don't appear as a Director on the Companies House register. A newly appointed director paid a substantial sum of money into the company to save it from financial collapse. The new director asked you to transfer several thousands of pounds into an off-shore account. When an explanation was sought the director told you that the sum was to pay for work. However no invoice or supporting documents were offered. You received a memorandum instructing you to make the payment and confirmation that the transaction was to pay for legitimate expenses. You conclude that as you are an employee you cannot refuse in the absence of evidence that you are being asked to commit a crime or other irregularity. You therefore make the payment but express concern to the Chief Executive and Chairman. Shortly after challenging the director you are informed your interim role could not continue due to financial difficulties.</p> <p>An Insolvency Practitioner who has been appointed as administrator has contacted you. He is seeking details from you.</p> |
| Key fundamental principles and duties |
| <p>Integrity – Were the actions you took, and would any conversation with the liquidator be, unfair, untruthful or dishonest in any way?</p> <p>Objectivity – Where is the boundary between your duty to the former employer and the Insolvency Practitioner?</p> <p>Duty of Confidentiality – Are there proper grounds for disclosing the information?</p> |
| Discussion |
| <p><i>Identify relevant facts:</i> Consider the business' policies, procedures and guidelines, accounting standards, applicable laws and regulations. Of particular relevance might be POCA, and provisions relating to 'furthering, concealing, aiding, abetting' money laundering. Have you made records of how you attempted to deal with the offshore payment, and the responses?</p> <p><i>Identify affected parties:</i> Key affected parties are you, the investor/ director, the Administrator and creditors. Other possible affected parties are the Institute and profession as a whole, as well as your family.</p> |

Case Study 10 Transfer of funds to an offshore account (continued)

Who should be involved in resolution: Consider not just whom you should involve, but also when and why. Take advice early and often from your Institute, and if necessary from a lawyer.

Possible course of action

You will normally be able to co-operate openly with an administrator, but you should ask for an explicit statement from the Administrator of the authority under which he is requesting the information. On receipt, consider seeking legal advice, unless you are very familiar with the law and your duties in respect of it. Open a dialogue with the administrator, and try to establish the scope of the enquiry. If there is any suggestion of potential action against you for wrong-doing, seek further legal advice and continue your discussions under legal guidance. Ensure that you keep a record of all interactions with the administrator.

During the resolution process, it may be helpful to document the substance of the discussions held, who was involved, what decisions were made and why, and your involvement.