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Dear Iain

Consultation on guidance on aspects of the ICAEW Code of Ethics

This letter sets out the comments of the Financial Reporting Council in response to the above consultation paper. The consultation questions you have asked are broad in scope, relevant and practical, and we hope that the responses you receive, including our own, will be useful in finalising the guidance and any relevant changes to the Code of Ethics.

Overall, we believe your members will find much useful guidance in the material for identifying areas of practice which may give rise to public interest issues.

Public interest

The guidance maintains a degree of flexibility which is appropriate given that the public interest is a dynamic concept. We do not advise that you seek to define the public interest. However, the guidance could be made more relevant by expanding on the characteristics of public interest issues and those they may affect. This is the approach in the FRC's regulatory philosophy document.

We also believe that the guidance could be enhanced to make it more practically focused and to promote a mindset of doing the right thing rather than not doing the wrong thing.

In particular we believe the guidance should recognise that under the threats and safeguards approach, in connection with each of the fundamental principles, the need for robust safeguards is likely to increase when the public interest is heightened, and that in some circumstances no safeguard would adequately mitigate the threat.

While we appreciate that some reference to the MG Rover tribunal (MGR) as a catalyst for the guidance may be appropriate in the background section of the consultation paper, MGR does not have the force of judicial precedence, and it involved a particular set of circumstances. We suggest that any reference to MGR in the pre-amble to the finalised guidance should therefore be limited and caveated. You may also wish to consider whether additional examples may be helpful to members, and more representative of situations they may identify, such as obligations under the Public Interest Disclosure Act 1998, and money laundering requirements.

Application

The draft guidance could be clearer on whether it applies to member firms as well as to individual members. Furthermore, none of the examples in the draft guidance relate to members in business, implying a limitation in its scope. Our understanding is that, like the Code, the guidance should be applicable to members in practice and in business.

Documentation

A more robust approach to documentation is required than that in the draft guidance. It is not sufficient just to encourage members to document the reasoning and other evidence supporting the evaluation of threats and safeguards – indeed, limiting the requirement in this way may well expose members to a greater level of risk.

Code or guidance?

We believe that the identification of public interest issues, and the practical steps to be considered when potential issues arise, should be included in the Code rather than in separate guidance. The Code does, after all, include specific practical steps in respect of ethical conflict resolution and we suggest that in respect of public interest matters it should be consistent with that approach.

Consistency

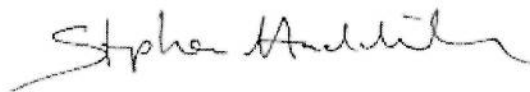
We were pleased to see that the CCAB bodies are seeking to ensure that the final guidance provides a common basis for interpreting their Codes but it is unclear to us whether each of the other CCAB bodies will endorse or issue the finalised guidance in its own right or whether the finalised guidance will be issued on a common basis, possibly by the CCAB itself. The issue of the guidance by the CCAB bodies would send members the message of a consistent and united approach to public interest issues.

We have made further observations in response to the questions in the consultation paper in the Appendix to this letter.

Next steps

We should be pleased to discuss this letter further and work with you as you consider the consultation responses, and our Board Committees would welcome a roundtable discussion with you.

Kind regards



Stephen Haddrill

Appendix: Response to Consultation Questions on Guidance on aspects of the ICAEW Code of Ethics

Public interest responsibility of accountants

Q1 Do you agree with the interpretation given of the requirements in the Code that the individual member's public interest responsibility as regards ethical behaviour is to comply with the spirit as well as the letter the Code? If not, what do you consider the public interest responsibility of an individual member to be and how should this be defined?

R 1 We agree that professional accountants should be guided by the spirit of the Code and not merely by its letter and note that this is set out in paragraph 1.6 of Section 1 of the Code. We also note, however, that although section 1.4 of the background to the consultation refers to the need to adhere to the spirit as well as the letter of the code, there is no such statement in the draft guidance itself. Our view is that this omission should be corrected to re-enforce the link between a member's consideration of the Code and the guidance in this respect.

There is also some sense that the guidance is written in the spirit of encouragement not to do the wrong thing rather than to do the right thing .

Q 2 What, if any, additional safeguards or other actions should members practically take, over and above those suggested in the draft guidance:

- a) When in doubt as to whether an action would discredit the profession?
- b) To avoid association with activities that are likely to bring the profession into disrepute?
- c) When the public would be likely to be interested in the outcome of the service or activity?

R 2 As noted in the body of this response our view is that the draft guidance does not take a sufficiently action orientated approach to the matters identified in a), b) and c) above. There will, undoubtedly, be additional safeguards and actions that members can take, but in the context of this response our view is that others, including members who face these issues in practice, will be better placed to provide details of such safeguards and actions.

Q 3 A number of illustrative examples of considerations that might apply are given in the draft guidance. Are these helpful? Are there additional examples that could usefully be included to illustrate the issues discussed, or other aspects of the draft guidance note in section 3.1 where additional discussion would be helpful?

R3 We agree that the illustrative examples in paragraph 20 are helpful, but in addition to describing each situation it would be useful if each example included possible practical actions that a member might consider taking in such situations. On the understanding that the guidance is applicable to members in business as well as members in practice our view is that there should be examples that cover the former as well as the latter.

Q4 Notwithstanding its intention, do you think that the draft guidance note in section 3.1 is inconsistent with the Code's requirements for members? If so, in what way?

No obvious inconsistencies are apparent to us. In respect of consistency we note that paragraphs 3 -5 of section 3.1 of the draft guidance stress the principles based approach to

professional ethics (para 3); how public interest responsibilities are taken into account when setting the detailed requirements of the Code (para 4) and that the guidance highlights the matters to consider to apply the public interest commitment that the Code is required to meet (para 5). Paragraph 4 of section 3.1 further points out the Code includes requirements to 'override confidentiality in certain circumstances, ensure transparency where necessary and consider reasonable and informed public perception, based on knowledge at the time', thus identifying circumstances in which strict compliance with the principles may not be appropriate. We would also re-emphasise that we see no inconsistency between the principles based approach in the Code and the issue of detailed practical guidance which sets out possible action steps when public interest issues are identified.

Q5 No change in the wording of the current Code itself is envisaged as necessary to clarify the issues discussed in the draft guidance. Do you believe there should be amendments to clarify the current position, and if so, what changes would you propose?

R 5 Please see the body of this letter.

Q6 Looking forward to future evolution of the Code, do you think that there are issues in respect of the matters addressed by the draft guidance note in section 3.1 that the accountancy profession should consider when evaluating potential future changes? If so, what?

R 6 Please see the body of this letter.

Identifying and managing conflicts

Q7 Do you have any comments on the draft guidance in section 3.2?

R 7 Our responses to questions 1, 2, 3 and 4 above apply. Our comments on documentation in the body of this letter are applicable to paragraph 28 of section 3.2.

Determining the basis of charging fees

Q8 Do you have any comments on the draft guidance in section 3.3?

R 8 Our responses to questions 1, 2, 3 and 4 above apply. Our comments on documentation in the body of this letter are applicable to paragraph 22 of section 3.3.