

Obtaining Professional Work



The Code of Ethics and Conduct is set out in section 3 of the *ACCA Rulebook*. This covers specific areas in which ACCA regulates its members, and includes various sections that are relevant to a new practice seeking additional business from new and existing clients.

This factsheet has no regulatory status. It is issued for guidance purposes only, and in the event of any conflict between the content of this factsheet and the content of the *ACCA Rulebook*, the latter shall at all times take precedence. Therefore, this factsheet should not be regarded by a member as a substitute for familiarising himself or herself with the appropriate regulations or, where necessary, obtaining specific advice concerning a specific situation.

Introduction

The Code of Ethics and Conduct is binding on the practising member of ACCA, and any partner or member of staff in an ACCA practice. Some of the most important areas of the Code of Ethics and Conduct, from the point of view of a practitioner seeking to increase the size of the practice, are discussed below. These include advertising and publicity, changes in professional appointments, money laundering considerations, clients' monies, and fees.

Advertising and publicity

Subject to the rules which follow, members may seek publicity for their services and achievements, and may advertise their services and products, in any way they think fit.

There is a general requirement that the medium of advertising and other forms of promotion used should not reflect adversely on the member, ACCA or the accountancy profession. Neither the content nor the presentation should:

- (a) bring ACCA into disrepute or bring discredit to the member, firm or the accountancy profession;
- (b) discredit the services offered by others, whether by claiming superiority for the member's or firm's own services or otherwise;
- (c) be misleading, either directly or by implication;
- (d) fall short of any local regulatory or legislative requirements (such as the requirements of the United Kingdom Advertising Standards Authority's Code of Advertising and Sales Promotion), notably as to legality, decency, clarity, honesty and truthfulness.

An advertisement should be clearly distinguishable as such.

Promotional material may contain any factual statement the truth of which a member is able to justify, but it should not make unflattering references to, or unflattering comparisons with, the services of others. Members are also reminded that any promotional activity should be carried out in accordance with any relevant legislation and should not amount to harassment of the recipient.

Reference to fees

Where reference is made in promotional material to fees, the basis on which those fees are calculated should be clearly stated. Care should be taken to ensure that any

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reference to fees does not mislead the reader as to the precise range of services and time commitment that the reference is intended to cover.

Members may make comparisons in promotional material between their fees and the fees of other accounting practices, whether members or not, providing that any such comparison does not give a misleading impression. When making comparisons, members must ensure that they pay appropriate attention to relevant codes or legislation. The following conditions should normally be met by *all* members, and conform with the EC Directive on Comparative Advertising (97/55/EC):

- (a) The material should compare services meeting the same needs or intended for the same purpose.
- (b) The material should objectively compare one or more material, relevant, verifiable and representative features of those services, which may include fees.
- (c) It should not create confusion in the marketplace between the advertiser and a competitor or between the advertiser's trade marks, trade names, other distinguishing marks, goods or services and those of a competitor.
- (d) It should not discredit or denigrate the trade marks, trade names, other distinguishing marks, goods, services, activities or circumstances of a competitor.
- (e) For products with designation of origin, it should relate in each case to products with the same designation.
- (f) It should not take unfair advantage of the reputation of a trade mark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products.

- (g) It should not present goods or services as imitations or replicas of goods or services bearing a protected trade mark or trade name.

(The danger of giving a misleading impression is particularly pronounced when constraints of space limit the amount of information which can be given.)

Promotional material which is based on the offer of percentage discounts on existing fees is permitted, and a member may offer a free consultation at which levels of fees will be discussed.

Introductions

Generally, a member may, in return for the introduction of a client, give or offer a commission, fee or reward to any third party. However, this would be inappropriate for those firms concerned with insolvency business (although there may be an arrangement between an insolvency practitioner and a bona fide employee, whereby the employee's remuneration is based, to some extent, on introductions obtained through the efforts of the employee).

Similarly, those members carrying out exempt regulated activities in the United Kingdom and firms which carry on investment business in the Republic of Ireland should exercise particular caution and should refer to regulation 5 of the Designated Professional Body Regulations 2001 and regulation 5 of the Irish Investment Business Regulations 1999 respectively.

Changes in professional appointments

Section 3.12 of the Code of Ethics and Conduct sets out various requirements concerning professional appointments, including changes in appointments. An accountant who is asked to accept an appointment to perform any professional work must, save where the client has not previously had an accountant acting for him or her

in respect of such work, request the prospective client's permission to communicate with the existing accountant. If such permission is refused by the prospective client, the appointment should be declined. Where permission is granted, the duty to communicate with the previous accountant applies even if that other accountant is not a member of ACCA or is not qualified at all.

Members who are asked to replace another accountant (or who are considering tendering for an engagement) should consider whether such an engagement would threaten compliance with the Fundamental Principles. Any threats should be evaluated, and this might require direct communication with the existing accountant. Therefore, communication with the existing accountant is not just a matter of professional courtesy. Its main purpose is to enable members to ensure that there has been no action by the client which would, on ethical grounds, preclude the member from accepting the appointment, and to establish, after considering all the facts, whether the client is someone for whom the member would wish to act.

ACCA's Code of Ethics and Conduct states: "The prospective accountant should write to the existing accountant requesting all the information which ought to be made available to enable the prospective accountant to decide whether or not to accept the appointment." (Any information provided by the existing accountant should be provided honestly and unambiguously.)

If the existing accountant does not reply to this request for information, or fails to supply a satisfactory reply, the prospective accountant should send a further letter by recorded delivery service. This letter should state that, unless a reply is received within a stated period, the prospective accountant will assume that there are no matters of which they should be aware and, at the end of the stated period, will proceed to accept the appointment.

If the prospective accountant is unable to communicate with the existing accountant through the above means,

information about any possible threats should be sought by other means, such as through telephone contact with the existing accountant, enquiries of third parties, or background investigations on senior management or those charged with governance of the client.

Prospective accountants are specifically required to try to find out the reason for the change of accountants. They should be careful that, by accepting an appointment, they are not assisting a client to act improperly or unlawfully.

Once the new accountant has been appointed, the former accountant should ensure that all books and papers belonging to the client that are in their possession are promptly transferred (unless they claim to exercise a lien or other security over them). Section 3.13 of the Code of Ethics and Conduct provides further guidance relating to legal ownership of, and rights of access to, books, files, working papers and other documents. In addition, section 3.12 provides an explanation of the "reasonable transfer information", which is required to be provided by the former accountants, to the new accountants, free of charge.

Additional professional work

Members may be asked to undertake work that is complementary or additional to the work of existing accountants who are not being replaced or superseded. Such circumstances may give rise to potential threats to professional competence and due care resulting from, for example, a lack of complete information. Safeguards against such threats will usually include notifying the existing accountant of the proposed work. Therefore, before accepting such work, members should communicate with the existing accountants to advise them of the general nature of the proposed engagement.

It is only in exceptional circumstances that members may not be required to communicate with the existing accountants. Members should consult with the Advisory

Services Section of ACCA (tel: +44 (0)20 7059 5920) to check whether, in their particular circumstances, they may dispense with the usual communication procedure.

Letters of engagement

Letters of engagement are mandatory. On accepting an appointment, the practitioner must send the client a letter of engagement. This forms the basis of a contractual relationship between the practitioner and the client.

A properly worded letter of engagement establishes the framework in which the client relationships are managed. It should set out the work that is to be performed and the basis on which the fees will be levied. (It is rarely worthwhile suing a client for non-payment of fees if you do not have a letter of engagement in place.)

Many practitioners now limit their liability for work done by an appropriately worded clause in the letter of engagement. The liability cap should be discussed and agreed with the client at the start of the assignment.

Another area that is strongly recommended to be included in a letter of engagement is that of dispute resolution. Whilst a client should be informed that they have the right to approach ACCA if a dispute cannot be resolved satisfactorily, in the first instance, the engagement letter should explain the firm's internal disputes resolution procedure. In particular, it should identify the person within the firm that the client should contact in the event that he or she is dissatisfied with the service received.

To assist practitioners in drafting appropriate letters for a variety of engagements, ACCA has produced, in partnership with PCP Limited, a series of template engagement letters, available on CD-ROM. This can be ordered from ACCA Connect (tel: +44 (0)141 582 2000; fax: +44 (0)141 582 2222; email: publications@accaglobal.com).

Money laundering considerations

Before agreeing to act for a client, members should consider whether acceptance of the new relationship would create any threats to compliance with the Fundamental Principles (see separate factsheet entitled 'Code of Ethics and Conduct' which can be downloaded from ACCA's website at www.accaglobal.com/members/professionalstandards). For example, potential threats to integrity may arise due to questionable issues associated with the client, its owners, its management or its activities. Where it is not possible to reduce any identified threats to an acceptable level, members should decline to enter into the client relationship.

Client issues that could threaten compliance with the Fundamental Principles include client involvement in illegal activities. In addition, members must observe their specific responsibilities in respect of the money laundering legislation in their regions, as failure to follow legislative requirements may be a criminal offence leading to a fine and/or imprisonment.

Section 3.8 of the Code of Ethics and Conduct (in the *ACCA Rulebook*) sets out the specific responsibilities of members, as well as explaining the background to, and requirement for, these regulations. Given the serious consequences of prosecution for money laundering offences, members are advised to take legal advice whenever they are uncertain as to their conduct.

Internal controls and policies

A firm should develop policies and procedures for identifying clients, keeping appropriate records and reporting suspicions. These are discussed in more detail below. However, a significant control over the firm's compliance with money laundering regulations is the quality of staff training.

Members should ensure that their staff receive regular training to ensure that client identification procedures are carried out correctly and that knowledge and suspicions of money laundering, criminal proceeds or terrorist financing are reported. The firm should identify to their staff a clear procedure for reporting suspected money laundering, and an individual through whom reports of suspicions can be channelled to the relevant authority.

Client identification

Subject to some minor exceptions, firms must put in place internal procedures which allow them to verify the identity of those with whom they deal in the course of business. Specifically, where firms agree to enter into business relationships with others, they must, before any work is undertaken, require the other party to produce satisfactory evidence of their identity.

In setting up the internal procedures, firms and individuals should accept that there is likely to be a greater danger of money laundering where the other party is not physically present when being identified, ie there should, ideally, be face-to-face contact with new and prospective clients. Where the firm or individual is not able to obtain satisfactory evidence of identity, it must not proceed any further with the relationship.

The *ACCA Rulebook* sets out the required procedures as follows:

- (a) Where the client is an individual, the firm must obtain independent evidence of the client's identity, such as a passport, and proof of address.
- (b) Where the client is a company or other legal entity, the firm must obtain proof of incorporation, and establish the primary business address, its registered address (where applicable), its structure, management and ownership, and the identities of those persons

instructing the firm on behalf of the entity (verifying that they are authorised to do so).

- (c) In either case, the firm must establish the identity and address of any other individuals exercising ultimate control over the client and/or who will be the ultimate beneficiaries of the work or transactions to be carried out.
- (d) The firm must establish precisely what work or transaction is desired to be carried out and to what purpose.

Reporting suspicious transactions

Where members know or suspect that funds are directly or indirectly the proceeds of crime or relate to terrorist financing, they should promptly report their suspicions to the relevant authority. In this context, members are reminded that tax evasion is a crime and that, in such cases, they may be required to make an additional report to the tax authorities. Whilst some countries may require a report to be made only where the suspicion relates to the proceeds of specific serious crimes, other countries (such as the United Kingdom) require suspicions relating to the proceeds of *any* crime to be reported.

Section 3.8 of the Code of Ethics and Conduct includes a brief section that contains guidance on recognising suspicious transactions. It also explains that members must not "tip off" a client that a report has been made, and that, in particular, ceasing to act for a client without giving any plausible explanation might tip off that client that a report has been made. However, an attempt to persuade the client not to proceed with an intended crime will not constitute tipping off.

Other matters

Documentation of the firm's policies and procedures will be useful in demonstrating the adequate training of staff. In addition, it is essential to keep records of evidence

acquired regarding the identification of new clients and internal and external reports. Subject to any local legal requirement for a longer period of retention, members should retain all client identification records for at least five years after the end of the client relationship. Records of all transactions and other work carried out should be retained for at least five years after the conclusion of the transaction.

Members faced with money laundering issues may call upon the Advisory Services Section of ACCA for confidential advice. Guidance may also be obtained from ACCA's money laundering resource on the ACCA website (www.accaglobal.com).

Clients' monies

Section 3.20 of the Code of Ethics and Conduct sets out broad requirements of members assuming custody of clients' monies or other assets, acknowledging that they should only do so when permitted by law and in compliance with any additional duties imposed (legal or otherwise). It goes on to focus on clients' monies, stating that members are "strictly accountable for all clients' monies which they receive". In this context, fees paid by clients in advance for specified professional work shall not be regarded as clients' monies.

Client bank accounts

Clients' monies should be paid, without delay, into a bank account separate from other bank accounts of the firm. Where the firm receives cheques or drafts that include both clients' monies and other monies, they should be paid initially into a client account. This is the only situation in which monies other than clients' monies may be paid into a client bank account, and once the monies have been received into the client account, the proportion that may be properly transferred to an office account should be withdrawn.

Client bank accounts may be either general accounts or accounts designated by the names of individual clients. However, *all* client accounts should include in their title the word "client". Where it is anticipated that the monies of an individual client in excess of £10,000 (or its equivalent) will be held for a period of more than 30 days, those monies should be paid into a separate designated client account. (Also, members must not retain insolvency monies in a general client account.)

The following may be withdrawn from client bank accounts:

- (a) monies properly required for a payment to or on behalf of clients;
- (b) monies properly required for or towards payment of debts due to the firm, otherwise than in respect of fees or commissions earned by the firm;
- (c) monies properly required for or towards payment of fees or commissions payable to the firm by clients for work properly carried out by the firm;
- (d) monies drawn on clients' authority or in conformity with any contract between the firm and clients.

However, monies should not be withdrawn for or towards the payment of fees or commission to the firm unless:

- (a) the clients have been notified in writing of the intended withdrawal, and they have not disagreed; and
- (b) principals of the firm have expressly authorised the withdrawal; and
- (c) either 30 days have elapsed since the clients were notified, or the precise amounts to be withdrawn have been agreed with the clients in writing or have been determined by a court or arbitrator.

Bank charges for maintaining client accounts should be paid out of the firm's own account and not from any client account.

Maintaining records

Firms should at all times maintain records so as to show clearly the monies they have received, held or paid on account of their clients, and the details of any other monies dealt with by them through a client account, clearly distinguishing the monies of each client from the monies of other clients and from the firm's monies.

Members should maintain such records for a period of not less than six years from the date of the last transaction recorded.

Interest payable

In respect of all monies held by firms on behalf of clients, firms should pay clients interest of not less than the amount which would have been earned by way of gross interest if all monies held by the firm for clients had been kept in separate interest-bearing accounts at the small deposit rate with the bank concerned. However, this obligation may be over-riden (except in the case of trust accounts) by express written agreement between the firm and clients. For example, clients may agree to forgo sums of interest of less than, say, £10.

Fees

Section 3.18 of the Code of Ethics and Conduct specifies that the letter of engagement should "set out in detail the actual services to be performed, the fees to be charged, or the basis upon which the fees are calculated". It goes on to state that the terms of the engagement should be accepted by the client so as to minimise the risk of disputes arising. The basis of charging fees may incorporate any or all of the following:

- (a) the seniority and professional expertise of the persons necessarily engaged on the work;

- (b) the time expended by each;
- (c) the degree of risk and responsibility which the work entails;
- (d) the urgency of the work to the client;
- (e) the importance of the work to the client.

Members' other professional responsibilities in respect of fees are discussed further in the following paragraphs.

Fee quotations

The fact that an accountant may quote a fee that is lower than another is not, in itself, unethical. However, there may be threats to compliance with the Fundamental Principles arising from the level of fees quoted. For example, a self-interest threat to professional competence and due care is created if the fee quoted is so low that it may be difficult to perform the engagement in accordance with applicable technical and professional standards economically. In this situation, safeguards that may be adopted include:

- (a) ensuring that the letter of engagement makes it clear to the client precisely which services are covered by the quoted fees and the basis of the fees quoted; and
- (b) assigning appropriate time and staff to the task.

Members' attention is also drawn to the paragraphs earlier in this section which discuss references to fees in advertising and promotion.

Percentage and contingency fees

Fees on a percentage, contingency or similar basis may give rise to threats to compliance with the Fundamental Principles in certain circumstances. In order to preserve members' objectivity, fees should not be charged on a percentage, contingency or similar basis except where that basis is generally accepted practice for certain specialised

work. (Such fees must not be charged in respect of assurance engagements.)

There are circumstances, such as advising on a management buy-out or the raising of venture capital, where in some instances fees cannot realistically be charged other than on a contingency or percentage basis (because the ability of clients to pay is dependent upon the success or failure of the venture). Where this is the case, one of the safeguards suggested to preserve objectivity is to make clear in any document upon which a third party may rely the capacity in which the member has worked and the basis of their remuneration should be made clear.

Fee disputes

Members whose fees have not been paid may, in certain circumstances, exercise a lien over certain books and papers of the clients upon which they have been working. Members are referred to section 3.13 of the Code of Ethics and Conduct, Legal ownership of, and rights of access to, books, files, working papers and other documents. However, in the case of a fee dispute, members should be prepared to provide clients with reasonable explanations of the fees charged. Such explanation should be provided without charge, and should be sufficient to enable the client to understand the nature of the work carried out. Members should also take all reasonable steps to resolve speedily any disputes that arise.

If a member is about to render a fee note which is substantially different from fees rendered to the same client on earlier occasions for work which would appear to be comparable, it is good practice to explain to the client the reason for the variation. To the extent that the increased fee reflects extra work done, the reason for the extra work should be explained in writing. Alternatively, it might relate to an increase in disbursements or costs, and this also should be explained in writing.

Other matters

Section 3.16 of the Code of Ethics and Conduct also provides guidance in the areas of insolvency work, investment business and commission received on indemnity terms.

Other areas to consider

As already stated, the Code of Ethics and Conduct (within the *ACCA Rulebook*) contains regulations on several other areas that may be relevant to a particular member in practice. In this section, we have focused on those areas most relevant to obtaining new work, but the new practitioner should also be aware of the other contents of the *ACCA Rulebook*. These include specific responsibilities (such as those relating to whistleblowing), as well as a range of situations in which a practitioner may require guidance regarding compliance with the Fundamental Principles.

If a member has any doubts concerning the requirements of the Code of Ethics and Conduct, or is uncertain about how to proceed in a particular situation, he or she should refer to the *ACCA Rulebook* and/or consult the Technical Advisory Service in his or her region.

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