



The Five Fundamental Ethics Principles: Time for Evaluation?

ICAEW welcomes the opportunity to comment on the *The Five Fundamental Ethics Principles: Time for Evaluation?* published by ICAS on 4 January 2016, a copy of which is available from this [link](#).

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MAJOR POINTS

1. We believe that moral courage is an important quality and one that certainly merits discussion. We therefore applaud ICAS in their efforts to refresh thinking on ethical behaviour in this regard. However, we believe the approach adopted by ICAS to addressing it in the IESBA code of ethics (the code) is flawed, and would result in unintended consequences. For reasons explained in the detailed comments below, we have concerns with the definition suggested by ICAS and the proposed amendments to the five existing fundamental principles. In particular, we do not believe that moral courage should be a sixth fundamental principle, and that any discussion of moral courage in the Code of Ethics should remain outside the fundamental principles and the definitions thereon, possibly in pre-ambles.

RESPONSES TO SPECIFIC QUESTIONS

Q1: Are the current five fundamental ethics principles still fit for purpose?

2. Yes. We have seen no evidence to suggest that they are not. One of the inherent characteristics of a principles based approach is that future proofing is built in.

Q2: Should there be a new principle of “Moral Courage”, or is moral courage inherent within the other principles?

3. Moral courage is not only inherent in applying the other principles (particularly integrity and professional behaviour) but a pre-requisite characteristic for ethical behaviour. In considering a framework for ethical decision making an individual could be said to be already displaying moral courage, consideration of the fundamental principles is a later step within the framework itself.
4. We agree with CS Lewis that “Courage is not simply *one* of the virtues but the form of every virtue at the testing point”.¹ It is a quality that underpins the existing principles rather than being one in its own right. It may therefore be entirely appropriate for the Code to discuss moral courage as precedent to the fundamental principles.
5. We believe there is also a risk that an additional principle may dilute focus on the existing five which are critical to the approach taken by the code. The introduction of additional principles may also have a dilutive effect on the existing ones.

Q3: If moral courage is considered to be inherent within the other principles should it nevertheless be highlighted within the description of one of the other principles, such as integrity?

6. No. If highlighted within the description of another principle, such as integrity, it would then become a disciplinary offence to lack it. This is considered further in paragraph 7 below.

Q4: Do commentators agree with the ICAS definition of “Moral Courage” as per the suggested sixth principle?

7. The proposed definition seems to incorporate elements of other principles such as integrity and objectivity, as well as professional scepticism. It therefore does not come across as a new, standalone principle but a means to an end. It may not always be required (for example if a situation requiring it were never encountered) and therefore one may never have to display it, but then by definition the absence of it would be a breach of such a principle. It is also difficult to see how it would be possible to determine that someone lacked it. It would be reasonable to suggest that someone who does not show competence is incompetent, but less reasonable to suggest that to not show moral courage is to be an immoral coward.

¹ CS Lewis – The Screwtape Letters 1942

8. It is reasonable to suggest that adherence to the existing fundamental principles is achievable through learned behaviours, whereas moral courage suggests a characteristic more inherent to the individual – again, a means to an end. As such it may come easier to some than others.
9. Considering each element of the definition in turn we have the following comments:

Professional scepticism – this is already well understood as part of professional competence and due care and objectivity.

To challenge others who are behaving inappropriately – “not turning a blind eye” is a component of integrity. However, if it is pulled out separately, it needs to be put in context to avoid the suggestion that accountants have an obligation to act as a corporate policeman, no matter how trivial the inappropriate behaviour. If it is left as an (undefined) element of integrity, the accountant can use their judgement as to when it is necessary to challenge, taking account of the seriousness of the situation and all the other circumstances.

Resist the exploitation of professional opportunity for private benefit rather than the public interest - imposing a specific obligation to consider the public interest is unreasonable as for any given situation different parties will have a different view of what the public interest is. The obligation to consider public interest rests with the profession as a whole which will take into account the public interest in developing codes and standards. The MG Rover appeal tribunal took the approach that the public interest responsibility of an individual professional accountant is an obligation to act in accordance with the fundamental principles around which the GPE (and the Code) have always been structured². ICAEW [proposed guidance on the public interest aspects of the Code](#) takes the same approach.

10. An Aristotelian perspective would suggest that moral courage involves taking action, even though one might be afraid of the consequences, but there is also a significant element of deliberation and thought without which courage may become rashness. This essential element needs to be drawn out but one could argue that the code already promotes such behaviour, for example, through a principles based framework for ethical conflict resolution and guidance around documentation.
11. We welcome the desire to convey the idea of turning judgement and intention into action (with perhaps the starting point being not turning a blind eye), but a sixth principle is unnecessary to achieve this and will result in unintended consequences.

Q5: Do commentators agree with the suggested amendment to the principle of “Objectivity”, highlighting the need to ensure that professional and business judgements are ethical?

12. No. The amendment appears to introduce a somewhat circular element to the code. In order to be ethical I am required to adhere to the fundamental principle of objectivity. In order to comply with that principle as drafted by ICAS I am required to exercise ethical judgement. The purpose of the code is to define professional ethical conduct.

Q6: Do commentators agree with the suggested amendment to the principle of “Confidentiality”, to include that a professional accountant could have an “ethical right or duty to disclose” information that otherwise should be confidential?

13. As above the amendment appears to also introduce a circular element. We also think that the concept of an ethical duty to disclose is perilous, especially given that IESBA has moved away from the concept of mandatory disclosure of non-compliance with laws and regulations. We

² For example at paragraphs 70 and 72 ‘Report of the Appeal Tribunal: Deloitte & Touche and Mr Maghsoud Einollahi’ Financial Reporting Council 30 January 2015, <https://www.frc.org.uk/News-and-Events/FRC-Press/Press/2015/January/Outcome-of-appeal-by-Deloitte-Touche-and-Mr-Maghso.aspx>

already have an ethical right to override confidentiality in the public interest, since the code is drafted with public interest considerations in mind.

Q7: Should personal responsibility, ethical leadership and public interest be highlighted within the professional behaviour principle?

14. Although we believe that the notion is implicit within the code already, we welcome the introduction of personal responsibility for professionalism. However we do not believe that the responsibility to act in the public interest rests with the individual accountant, beyond complying with the code of ethics, but with the profession as a whole. This idea is dealt with in our [own consultation](#) on aspects of the Code of Ethics. The introduction of “moral obligation” presents difficulties as personal morals are conceptually distinct from professional ethics. Morals are often based on cultural notions of right and wrong, we believe that we should be transcending such notions given the code of professional ethics applies to a global profession.
15. As noted above defining public interest is difficult. It would also be counterproductive, diverting attention from the reality of the individual circumstance. Imposing such an obligation would therefore be unreasonable and unworkable.
16. The proposed definition of professional behaviour creates difficulties due to partial repetition of the term being defined in the definition itself. Including obligations to adopt the “highest standards of professionalism” and “act in a professional manner” do not help the user to understand ‘professional behaviour’ any better.

Q8: Should the fundamental principle of professional behaviour refer to ‘conduct’ rather than ‘action’ in accordance with the proposal contained within the IESBA Exposure Draft “Responding to Non-Compliance with Laws and Regulations” (May 2015)?

17. Yes.

Q9: Do the proposed amendments to the fundamental principles suggested by the ICAS Ethics Committee enhance the fundamental principles to better reflect the behaviour expected of a professional accountant in today’s world?

18. It is difficult to agree that the suggested amendments have modernising qualities. The advantage of a principles based approach is that we already have scope to adapt our reasoning to new scenarios and changing circumstances. It is an in built advantage of having a code based on such an approach. The ICAEW [proposed guidance](#) referred to above reflects this.

Q10: Should personal responsibility be highlighted within the principles?

19. Yes but not in relation to public interest (see paragraph 8). We also believe that the concept of discrediting the profession merits further exploration.

Q11: Should the fundamental principle of professional behaviour refer to ‘conduct’ rather than ‘action’ in accordance with the proposal contained within the IESBA Exposure Draft “Responding to Non-Compliance with Laws and Regulations” (May 2015)?

20. See response to Q8.

Q12: Do the proposed amendments to the fundamental principles suggested by the ICAS Ethics Committee enhance the fundamental principles to better reflect the behaviour expected of a professional accountant in today’s world?

21. See response to Q9.