



IESBA Exposure Draft: 'Proposed Revisions to the
Code Pertaining to the Offering and Accepting of Inducements'

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INTRODUCTION

ICAS is a professional body for more than 21,000 world class business men and women who work in the UK and in more than 100 countries around the world. Our members have all achieved the internationally recognised and respected CA qualification (Chartered Accountant). We are an educator, examiner, regulator, and thought leader.

Almost two thirds of our working membership work in business; many leading some of the UK's and the world's great companies. The others work in accountancy practices ranging from the Big Four in the City to the small practitioner in rural areas of the country.

We currently have around 3,000 students striving to become the next generation of CAs under the tutelage of our expert staff and members. We regulate our members and their firms. We represent our members on a wide range of issues in accountancy, finance and business and seek to influence policy in the UK and globally, always acting in the public interest.

ICAS was created by Royal Charter in 1854. The ICAS Charter requires its Boards to act primarily in the public interest, and our responses to consultations are therefore intended to place the public interest first. Our Charter also requires us to represent our members' views and to protect their interests, but in the rare cases where these are at odds with the public interest, it is the public interest which must be paramount.

The ICAS Ethics Board has considered the IESBA Exposure Draft: 'Proposed Revisions to the Code Pertaining to the Offering and Accepting of Inducements' and I am pleased to forward their comments.

Any enquiries should be addressed to Ann Buttery, ICAS Head of Ethics.

Key Points

We are generally supportive of the general direction of the IESBA proposals outlined in the above Exposure Draft.

We believe the explanation of the umbrella term of "inducements" and related examples, provided in paragraph 250.4 A1, would be helpful to users of the Code. We also welcome the "binary" approach adopted by IESBA to help address the dilemmas which could be encountered with inducements.

However, we note the following points which we believe IESBA should seek to address:

1. *Definition of "improper influence"*

We note that there is no distinction between "improper influence" and "influence". In practical application, we believe that there may be difficulty in determining at what point "influence" crosses the line to being "improper influence". We recognise that this is judgemental, but it is an important judgement to make. There is therefore a need to explicitly acknowledge this judgement, and not be silent on it.

2. *Offer or acceptance of an inducement that is "trivial and inconsequential" if it is made with improper intent*

We agree with the IESBA's view, stated in paragraph 24 of the Explanatory Memorandum, that there should be no exceptions when it is believed that an inducement is made with improper intent, however we note that the proposed new paragraphs R250.7 and R250.8 do not explicitly state that even inducements which are "trivial and inconsequential" are not permitted if there is improper intent. For increased transparency, we believe that it would be beneficial to the users of the Code for these paragraphs to make an explicit statement in this regard.

3. *Inducements with no intent to improperly influence behaviour – addressing a threat by simply not offering or accepting an inducement*

For increased transparency, we believe that it would be beneficial to the users of the Code for an explicit statement to be made within paragraph 250.11 A3 to state that threats can also be addressed if the professional accountant simply does not offer or accept the inducement.

4. *Format of consultation*

We note that the format of IESBA's consultations can be verbose. In order to make the consultations easier for interested parties to understand the key matters, the preamble could be more succinct.

Responses to the Specific Questions

Proposed Section 250

1. Do respondents support the proposals in Section 250? In particular, do respondents support the proposed guidance to determine whether there is an intent to improperly influence behaviour, and how it is articulated in the proposals?

We are supportive of the general thrust of the proposals but highlight a number of concerns with regards to the current proposed content.

a. *Definition of "improper influence"*

We note that there is no distinction between "improper influence" and "influence". In practical application, we believe that there may be difficulty in determining at what point "influence" crosses the line to being "improper influence". We recognise that this is judgemental, but it is an important judgement to make. We believe it would be helpful to explicitly acknowledge this judgement, and not be silent on it.

b. *Real Life Practicalities*

The proposals do not acknowledge the way people behave in real life. For example, timing is important - if a gift arrives just before a contract is completed that could be viewed as being intended to improperly influence, and therefore inappropriate. Similarly, an inducement being offered in advance – but not being given until after the decision has been taken - can also be influential. The outcome of the influence or hospitality is important.

c. *Definition of trivial*

Also, what is "trivial"? It is all relative – something could be trivial to one person, but not to another.

d. *Creeping Influence*

There is also a need to consider "creeping" influence. We acknowledge that the first bullet of paragraph 250.9 A1 notes "The nature, frequency and value of the inducement" as a factor to consider. However, we believe there needs to be more emphasis on being aware that "creeping influence" could be a potential issue.

For example, if one member of a team receives a gift, that might be considered "trivial and inconsequential"; however, if every member of the team receives a gift, that could potentially be influential, and inappropriate.

There is a need for professional accountants to have a broader perspective, and not just to look at events in isolation.

- e. *Offer or acceptance of an inducement that is “trivial and inconsequential” if it is made with improper intent*

Paragraph 24 of the Explanatory Memorandum states the following: “The IESBA deliberated whether it is acceptable to offer or accept an inducement that is “trivial and inconsequential” if it is made with improper intent. The IESBA noted that academic research indicates that even a gift having little intrinsic value might still affect the recipient’s behaviour. On this basis, the IESBA proposes that as a matter of principle no exceptions should be made in this regard.”

We agree with IESBA’s view in the above paragraph that there should be no exceptions when it is believed that an inducement is made with improper intent, however we note that the proposed new paragraphs R250.7 and R250.8 do not explicitly state that even inducements which are “trivial and inconsequential” where there is or is perceived to be improper intent are not permitted. For increased transparency, we believe that it would be beneficial to the users of the Code for these paragraphs to make an explicit statement in this regard.

- f. *Inducements with no intent to improperly influence behaviour – addressing a threat by simply not offering or accepting an inducement*

Paragraph 28 of the Explanatory Memorandum states the following: “Notwithstanding the above proposed guidance, the IESBA believes that threats can also be addressed if the professional accountant simply does not offer or accept the inducement. As this option is always available to the professional accountant, consistent with eliminating the circumstances creating the threats under the conceptual framework, the IESBA does not believe there is a need to explicitly state it in the Code.”

We agree that generally threats can also be addressed if the professional accountant simply does not offer or accept the inducement. However, for the sake of completeness and to highlight this option to users, we disagree with IESBA’s proposal not to include wording to this effect in the Code. Rather we believe that, for increased transparency, there is a need to explicitly state this within paragraph 250.11 A3 the Code as a reminder to professional accountants.

- g. *Professional Behaviour – Definition*

Paragraph 250.3 states:

“Section 250 sets out requirements and application material relevant to applying the conceptual framework in relation to the offering or accepting of inducements that does not constitute non-compliance with laws and regulations. This section also requires a professional accountant to comply with relevant laws and regulations when offering or accepting inducements.”

We question whether the requirement to comply with relevant laws and regulations originates from the “Non-compliance with laws and regulations (NOCLAR)” sections of the Code. Rather, we believe it more properly originates from the fundamental principle of “Professional Behaviour” i.e.

“Professional Behaviour - To comply with relevant laws and regulations and avoid any conduct that discredits the profession.”

We also believe that this further highlights the crucial importance of the fundamental ethics principles.

- h. *Example (c) in paragraph 250.11 A1*

Example (c) in paragraph 250.11 A1 states the following:

“(c) *Intimidation threats*

- *A professional accountant accepts hospitality that would be perceived to be inappropriate were it to be publicly disclosed.”*

We believe this is an example of a situation where the level of threat is so great that there is no need for any further consideration – i.e. a professional accountant should not accept hospitality “that would be perceived to be inappropriate were it to be publicly disclosed.”

We believe this example therefore needs to be revised to better reflect a situation where reference would be required to the conceptual framework. For example: “A professional accountant is offered hospitality, the quantitative value of which is not significant, but the nature is such that it might be perceived to be inappropriate were it to be publicly disclosed.”

This amended example would also serve to highlight that factors other than quantitative factors should be taken into consideration when determining whether a threat exists, and the appropriate action to be taken.

i. Safeguard – Donation to Charity

Paragraph 250.11. A3 notes the following safeguard:

“Donating the inducement to charity after receipt and appropriately disclosing the donation, for example, to those charged with governance or the individual who offered the inducement.”

We question whether this example is actually a safeguard. It is questionable whether this actually removes the threat as the professional accountant has still accepted the inducement and could possibly choose the charity which is to benefit which of course may have some association with a related party.

j. Pre-emptive Safeguard

Paragraph 250.11. A3 notes the following safeguard:

“Registering the inducement, whether offered or accepted, in a log monitored by senior management or those charged with governance for the purposes of transparency.”

We also believe that there is a need for a “pre-emptive” safeguard rather than just a “reactive” safeguard i.e. seeking consent from an appropriate individual prior to offering or accepting the inducement, as well as registering an inducement after it has been received.

k. Awareness of Inducements where Immediate or Close Family Members are involved

In terms of possible inducements being offered or accepted by immediate or close family members, there appears to be a presumption that the professional accountant would be aware of such a situation, this need not necessarily be the case. We question whether the content in paragraph R250.12/R250.13 needs to specifically state that the professional accountant only needs to act upon potential threats that have come to his or her attention, and does not need to specifically enquire of immediate or close family members as to their personal business (which may in and of itself breach confidentiality).

l. Trivial and Inconsequential

We also believe that there would be merit in including a statement to the effect that inducements offered or accepted which are trivial and inconsequential, and where there is no improper intent, can be offered or accepted.

Proposed Section 340

2. Do respondents agree that the proposed provisions relating to inducements for PAPPs should be aligned with the enhanced provisions for PAIBs in proposed Section 250? If so, do respondents agree that the proposals in Section 340 achieve this objective?

We re-iterate our points made at Question 1 above.

Additionally, in a group situation, if the inducement was to come from, for example, a director of another company within a group, which is not the client of the firm, would this be within the scope of the requirements of this section i.e. how is "client" defined? Would 'related parties' to the client be included within the scope of the requirements of this section?

Proposed Conforming Amendments to Independence Provisions

3. Do respondents support the restructuring changes and proposed conforming amendments in proposed Sections 420 and 906?

We re-iterate our point made at Question 1 above regarding "trivial and inconsequential".

4. Do respondents believe the IESBA should consider a project in the future to achieve further alignment of Sections 402 and 906 with proposed Section 340? If so, please explain why.

We do not believe that this should be a priority for IESBA at this point in time. The substance of the proposals applies via the need to also comply with the requirements in Section 340. The other alternative would be to reflect the content of Section 340 in Sections 402 and 906 as this would not amount to a change in substance.