ETHICAL MATTERS FOR CONSIDERATION IN RELATION TO ENGAGEMENT AND DISENGAGEMENT PROCEDURES

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This helpsheet is intended to assist members in practice with ethical matters in relation to engagement and disengagement with clients. It highlights some commonly found situations and how these should be dealt with. It should be read together with the ICAS Code of Ethics.

INTRODUCTION

Issues in relation to client engagement and disengagement are increasing and are a common subject of complaint to ICAS. The most common types of complaints, are:

- a failure to respond to correspondence from the incoming accountant;
- unreasonable delays in the transfer of, or failure to supply, information to the new accountants;
- a failure to explain to the client that a right of lien has been exercised, and why this is the case;
- exercising a lien when it is not appropriate to do so.

There are significant improvements that can be made to a firm’s procedures to ensure that these issues are better dealt with.

WHAT PROCEDURES SHOULD I HAVE FOR ACCEPTANCE AND CONTINUANCE?

I have been approached to take on a new client, what matters should I consider before making a decision

You should consider whether accepting the work would create a threat to your compliance with the fundamental principles set out in the ICAS Code of Ethics. In other words, would there be any issues with the following:

- Integrity: would accepting this appointment cast any doubt over your integrity and honesty? You will need to specifically consider the integrity and honesty of the client eg are there any issues with ownership, the nature of the activities, the reputation of the client. This will obviously include anti money laundering considerations.
- Objectivity: would accepting this appointment cause you to have a conflict of interest (actual or implied), exercise bias or be subject to undue influence? The test of objectivity is the perception of a third party. Your assessment will involve reviewing the nature of your potential relationship with the client and the services provided, and considering whether these create any threats to independence such as:
  - Self interest threat: eg do you have any financial or mutual business relationships with the potential client or is this client so large that it creates significant fee dependence? What about gifts and hospitality?;
  - Self review threat: eg would there be potential conflicts in the nature of the different services being provided. For example, are you being asked to value the client’s company and audit it
thereafter, or are you being asked to act for an insolvency case when you have conducted work for the individual before?

- Advocacy threat: are you being put in a position of promoting/advocating for a client that would cast doubt on your independence to provide other services? For example, promoting the client for raising finance with investors and then conducting assurance work (such as independent accountant report, audit, due diligence);
- Familiarity threat: is there a close family or personal relationship or have you known the client well for a long time?
- Intimidation threat: eg is the client a dominant individual or can the client exercise significant influence over you due to other connections/associations?

- Professional competence and due care: do you have or can you get the necessary skills and expertise to be able to conduct the client service effectively?
- Confidentiality: would accepting this appointment cause an issue with client confidentiality eg if you were acting for two clients in the same industry how could you ensure that competitor information was kept confidential?
- Professional behaviour: have there been significant disagreements between the outgoing accountant and the client?

You should also familiarise yourself with the Fundamental Principles in Part A Sections 100-150 and on independence/objectivity covered throughout Part B of the Code of Ethics.

Where will I get this information?
Usual procedures that you may require to put in place, include:
- client acceptance checklists and re-appointment checklists to be completed for each engagement;
- anti money laundering identification and due diligence procedures;
- enquiries of third parties;
- background searches;
- professional clearance letters with the previous accountant/adviser (see below for more on this);
- discussion of client acceptance risks with other principals.

Do I have to contact the previous accountant/adviser?
Yes. The Code of Ethics advises that this should be a standard procedure before accepting an appointment so that you can identify the reasons behind the proposed change in appointment and to request disclosure of any matters that may impact on your acceptance decision. This is covered in Part B Section 210 (Professional Appointment) of the Code of Ethics.
If the client has not informed the previous accountant, then you should ask the client to write to him/her, confirming the proposed change in appointment. You can then follow this up with an enquiry letter, asking for details of any matters that may influence your decision.

**What if the client does not give permission for the outgoing accountant/adviser to communicate?**

You should carefully consider:

- the reason for this refusal and how this will impact on your decision to accept the appointment, ie is it still appropriate to accept this appointment, given the client is already denying you access to information?
- whether or not there is a good reason for denying your request? You will need to evaluate this very carefully.

If you still plan to act, determine whether it is possible to obtain information by other means such as third party inquiries, discussions with management or those charged with governance;

**What do I do if the outgoing accountant/adviser does not respond?**

If you have not heard within a reasonable time (or within the timescale set out in your original correspondence):

- you should attempt to make contact by other means, including sending a recorded-delivery letter stating that in the absence of a response within a specified time there will be an assumption that there is no information which might affect the decision to act;
- you could contact either the Practice Support department (+44 (0)131 347 0254) or Legal Services department (+44 (0)131 347 0271) at ICAS for advice on how to proceed;
- if all other avenues have been exhausted without success, you are entitled to make a complaint to ICAS.

**Why can I not ask for information on anti money laundering issues?**

This could lead to you and the outgoing accountant being involved in “tipping off” or alerting the client, which is a criminal offence. Do not ask the outgoing accountant/adviser for information on their suspicious activity reports for this client.
What should I do if my communications or other acceptance procedures identify an issue?

You should:

• evaluate the nature of the threat and the impact;
• if the threat is other than clearly insignificant, identify safeguards to eliminate the threat or reduce to an acceptable level: the appropriate safeguard will depend on the nature of the issue. You should bear in mind what a third party might think about the situation looking at it from a neutral standpoint. Would a member of the public think that the safeguards put in place would be sufficient to deal with the threat placed on the firm?

For example, if it is a lack of specialist knowledge, then this might be safeguarded by employing the services of an expert. If the issue is one of the client’s integrity (eg evidence of fraud, tax evasion, accounting irregularities, or misleading the previous accountant) without successful resolution of the causes by the client, then there are likely to be no appropriate safeguards and declining is the only action that can be taken.

You are advised to look up the specific ethics issue in the Code and find the appropriate safeguard. If the specific threat is not mentioned, Section 200 of the Code provides details of potential safeguards that can be applied. Examples of safeguards include:
  - communication of issues with the client;
  - more stringent supervision procedures;
  - consultation with a third party;
  - using different partners;
  - involving an additional professional accountant for review of the work;
  - involving another firm;
  - rotating senior personnel;
  - the client may have safeguards eg personnel with specialist knowledge.

• if the threat cannot be eliminated or reduced to an acceptable level, you should decline/discontinue the engagement. The considerations should be taken in a timely manner and the client should be informed immediately of the decision.

At times, there may be a difference of opinion between the client and the previous accountant, in which case you should satisfy yourself that the client’s position is reasonable before making an acceptance decision.

You should also bear in mind that it is important to periodically review acceptance decisions for recurring engagements and existing clients.
What should I do if the client refuses to sign an engagement letter?

It is best practice to have engagement terms in place for all work undertaken. This forms the contract between the client and the accountant and ensures that the client is aware of the scope of the work and the firm’s responsibilities as well as their own and will help avoid any future misunderstandings or disputes.

There are a number of standard engagement letters available in the marketplace. You may find suitable samples within your firm’s practice management software. Alternatively you can purchase templates from a number of suppliers.

If your client refuses to sign an engagement letter:

• you could send the client, via recorded delivery, various copies/reminders to sign the engagement letter;
• you could speak to the client to determine if there is a particular reason for the client not signing and try to resolve the issue with the client;
• with a continued failure to sign, you could word the engagement letter to state that, unless you hear otherwise in writing from the client, non-response is tacit approval of the terms.
WHAT PROCEDURES SHOULD I HAVE FOR DISENGAGEMENT?

The client has refused to allow me permission to communicate with the incoming accountant/adviser?
You should:
• respond to the existing accountant, indicating that permission has not been obtained;
• if there are matters to be disclosed, then you should also note that matters do exist but not providing any detail.

This will allow you to demonstrate that you have fulfilled your responsibility as far as has been practical. You should not provide any further information on any issues, as to do so will be breaching client confidentiality.

What do I do if there are issues to report?
After you have received permission to communicate from the client, a response can be made to the prospective accountant confirming, clearly and unambiguously, the full details of any matters you are aware of in relation to the letter of enquiry, or if you are not aware of any matters, positive confirmation to that effect.

What should I do if the incoming accountant complains to ICAS about my slow/non–response?
You should act and respond promptly and in a professional manner to all information requests and in a way that a member of the public would consider suitable, whether you are able to respond fully or not.

Complaints in respect of an undue delay are not uncommon. You should therefore either demonstrate to ICAS (via producing copies of correspondence) that you have dealt with the incoming accountant/adviser in a timely and professional manner, or accept that you have not and rectify this immediately.

You must communicate promptly with ICAS in response to the notification of the complaint and to any requests for information.

Should I tell the incoming accountant/adviser about my money laundering suspicions?
You should not inform the prospective accountant that you have made a Suspicious Activity Report, or that you may have a suspicion of any activity, as you are at risk of alerting or ‘tipping off’ the client, which is a criminal offence.
ICAS operates a confidential money laundering helpline, should you have a specific instance that you suspect may require reporting and require assistance, please contact our Legal Services Department on +44 (0)131 347 0271, or your own legal advisor. When phoning ICAS do not state your name or firm or the client details (otherwise ICAS has a reporting obligation).

For additional information/guidance, you can also refer to the Anti Money Laundering area of the website.

**How should I liaise with the client?**

Whilst a formal disengagement letter is not required, it is recommended in order to avoid misunderstandings. This should cover:

- which matters have been dealt with;
- what remains to be done;
- the date by which any outstanding or incomplete matters need to be completed;
- what further work, if any, your firm will undertake; and
- the value of fees due to or from the client, both for past work and any additional work yet to be performed.

It is also recommended that you record on file any reasons or circumstances relating to this. Some considerations that may be worthwhile documenting and considering are:

- has the decision to terminate the relationship been taken by the client?
- has this decision been influenced by a client specific matter (e.g. relocation, restructuring)?
- was there dissatisfaction with the service provided and, if so, what was the reason for this (e.g. fees, delivery of service)?
- has the client made a complaint to the firm and, if so, have complaints procedures been followed?
- has the client indicated, by word or action, any intention to make any professional indemnity claim against the firm and, if so, have the insurers been notified?
- if it is the firm’s decision to disengage, has the client been advised of that decision?
It will take me a long time to pull together the information for the incoming accountant/adviser and transfer the appropriate records – can I charge for this?

The provision of information and records to a successor accountant should be made with no charge, unless there is a strong reason to do so, such as an unusually large amount of work. In such case a nominal fee should only be charged to the client with the clients’ express prior permission and agreement on the scope of the work to be undertaken.

What should I do if the client has not paid me?

It is very important that your actions do not prejudice the client. You should therefore, firstly, communicate with the client to try to resolve any fee dispute. Failing this you should consider using the ICAS fee arbitration service. You are also entitled to mention this to the incoming accountant/adviser.

Accountants are allowed to exercise a lien over certain books and records, but this should only be considered a last resort, and a lien should not be exercised in circumstances which would prejudice the client’s interests. Each case should be determined on its individual merits.

If you have exhausted all other avenues, we strongly recommend you refer to Section 240 of the ICAS Code of Ethics and/or contact the ICAS Legal Services Department, before taking this course of action.

To help firms deal with this tricky and sensitive area, a helpsheet on exercising the right of lien is available for free. icas.com/regulation/regulatory-guidance

Given the potentially inflammatory nature of such a course of action, you should ensure that –

- only documents which are the property of the client are subject of the lien (For the avoidance of doubt, a lien should not be exercised over a client’s passport or bank notes on the basis that they do not form the property of the client). It is therefore important to distinguish between work undertaken for a company and services performed for its directors in a personal capacity;
- reasonable and prompt steps have been taken to resolve any dispute and that there is effective and timely communication with the client about this process;
- a written record of reasons and correspondence has been kept;
- only books and papers relevant to the complaint have been held; and
- no statutory books or records have been held.
ADDITIONAL ASSISTANCE FROM ICAS

- Members with an ethical query (other than audit ethics) should contact us by telephone on +44 (0)131 347 0271.

- Members with a query relating to audit ethics should contact our Accounting and Auditing department – e-mail: accountingandauditing@icas.com

- Further assistance on this matter including support materials is also available from our Practice Support Department by telephoning +44 (0)131 347 0254 or emailing practicesupport@icas.com

For more information regarding Regulatory Monitoring, ie Audit Monitoring or Practice Monitoring, contact auditandpracticemonitoring@icas.com or by phone on +44 (0)131 347 0284.

For more information regarding the CA Practitioner Service, contact Linda Laurie on +44 (0)131 347 0249 or email caps@icas.com.

USEFUL LINKS

ICAS Code of Ethics; icas.com/Ethics/
The complaints process; icas.com/RegulationandEthics/Complaints_Section/
ICAS website – Anti Money laundering guidance; icas.com/home/regulation-and-ethics/anti-money-laundering/overview-of-money-laundering/
ICAS fee arbitration service; icas.com/Fee_Arbitration.aspx

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