

# Changing the landscape

The IFA's revised Code of Ethics will affect accountants and their terms of engagement, says *Anne Davis*.



## TEN SECOND SUMMARY

- 1 The new Code of Ethics includes reference to an accountant's responsibilities on non-compliance with laws and regulations.
- 2 Renewed emphasis on the role of accountants in business in promoting a culture of compliance.
- 3 The IFA's Code of Ethics will come into effect from 1 January 2018.

The IFA's Code of Ethics is based on the equivalent code of the International Ethics Standards Board for Accountants (IESBA), which is part of the International Federation of Accountants (IFAC) independent standard-setting bodies. Our code was last updated in 2012 and since then the IESBA has issued a number of minor updates that clarify certain terms and build on existing guidance.

The IFA took the view that no changes were needed to its code because the changes proposed by the IESBA were relatively minor. Well, that was the case until this latest edition of its code, which has caused some controversy, confusion and concern throughout its development.

The IESBA Code of Ethics (edition 2016) has some significant changes, particularly in relation to NOCLAR – the acronym used for addressing professional accountant's responsibilities when they become aware of non-compliance or suspected "non-compliance with laws and regulations" committed by a client or employer. The official line by the IESBA is that this framework is a guide to professional accountants of the actions they should take in the public interest if they become aware of a potential illegal act committed by a client or employer. Others have interpreted this framework as a type of mandated whistleblowing.

### What it is and what it means

So what is NOCLAR exactly and what does it mean for IFA members?

NOCLAR ("Responding to Non-Compliance with Laws and Regulations") applies to all IFA members, including members working in public practice and those working for organisations.

NOCLAR is defined as any "act of omission or commission, intentional or unintentional, committed by a client or by those charged with governance, by management or by other individuals working for or under the directions of a client which are contrary to the prevailing laws or regulations." Potential illegal acts could be a breach of a range of laws and regulations concerning fraud, corruption and bribery, money laundering, terrorist financing, proceeds of crime, securities markets and trading, banking and other financial products and services, data protection, tax and pension liabilities and payments, environmental protection and health and safety. Members who encounter or who are made aware of NOCLAR matters that are clearly inconsequential, either by their nature, impact, financial or otherwise, are not required to comply with the guidance in the code.

Among other matters, the new code provides guidance for members to disclose potential non-compliance situations to appropriate public authorities without being constrained by the ethical duty of confidentiality. It also places renewed emphasis on the role of senior-level accountants in business in promoting a culture of compliance with laws and regulations and prevention of non-compliance within their organisations. The standard will also affect



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directly those to whom members will raise NOCLAR, including management, boards of directors, those involved with governance, regulators and other public authorities. To be effective, the standard needs to create a link in the financial reporting supply chain in preventing and raising potential acts of non-compliance.

In fact, this will be the first time that accountants will be permitted to set aside the duty of confidentiality under the code of ethics to disclose NOCLAR to appropriate public authorities in particular circumstances.

The majority of the NOCLAR amendments are included in new section 225 (members in public practice) and section 36 (members in business). Consequential and conforming changes have been made to sections 100, 140, 150, 210, and 270 of the code.

### Why is NOCLAR important?

The idea is that NOCLAR will encourage greater accountability among organisations. It will help to protect stakeholders and the general public from substantial harm resulting from the violation of laws and regulations, and strengthen the reputation of the profession. NOCLAR also positions the accounting profession to play a much greater role in the global fight against breaches of legislation and regulations, including financial fraud, money laundering and corruption. In a world where cyber-crime is also on the rise, it is important that accountants realise the significant role that they can and should play.

The standard was also developed to clarify that it is not enough for professional accountants to simply turn a blind eye to breaches of the law, while also placing renewed emphasis on the roles of management and those charged with governance. It is also intended that earlier action by professional accountants and management will provide greater protection and reduce any adverse consequences for all stakeholders involved, including the general public. Overall, it is hoped that NOCLAR will lead to more trustworthy organisations and a healthier global financial system.

### Implementation of NOCLAR

The IPA Group believes that guidance will be needed on: how to implement and apply NOCLAR; how to interpret what constitutes “non-compliance”, the “public interest” and other concepts; and clarifying the legal, regulatory and ethical responsibilities on responding to the standard. There will be much ambiguity and greyness in how NOCLAR is to be interpreted and applied, not just across the UK, but also consistently across the world. It is also likely that stronger whistleblowing protections will be needed in certain countries.

The IESBA will also be providing more guidance including “implementation support material” and answering questions such as how the standard will apply in countries that don’t have safe harbour provisions for whistleblowers. The IESBA currently has material on implementing NOCLAR

including a question and answer video series and developments can be followed on Twitter #NOCLAR and #IESBA.

From a practical perspective, members in public practice may want to consider including a paragraph in all engagement letters on their obligation in relation to NOCLAR, as well as training staff on the NOCLAR changes.

### Other changes in the code

As well as the new guidance on NOCLAR, other key changes to note in the code of ethics of particular relevance to IFA members are:

- a) *Amendments for conflicts of interests.* These establish more specific requirements and provide more comprehensive guidance to support members in identifying, evaluating, and managing conflicts of interest. The revisions affect members in public practice and in business, taking account of the different circumstances in which they work.
- b) *Amendments for non-assurance services.* These changes include:
  - the removal of provisions that permitted an audit firm to provide certain bookkeeping and taxation services to public interest entity (PIE) audit clients in emergency situations because these were susceptible to being interpreted too generally;
  - new and clarified guidance on what constitutes management responsibility (section 290 and 291); and
  - clarified guidance regarding the concept of “routine or mechanical” services relating to the preparation of accounting records and financial statements for audit clients that are not PIEs (section 290).

### Date of changes

The IFA is aiming to publish the revised Code of Ethics and other regulations on the website in October 2017 with an effective date of 1 January 2018. During this period the IFA will keep members informed of developments and other regulatory changes through the usual communication channels.

Members should ensure that the code is on their agenda for the last quarter of this year, as well as other IFA regulatory changes – soon to be announced.

## WHISTLEBLOWING LAW IN THE UK

The Public Interest Disclosure Act (PIDA) 1998 provides protection to “workers” making “qualifying disclosures” in the public interest and allows such individuals to claim compensation for unfair dismissal if they are dismissed or victimised for making such disclosures.

Qualifying disclosures are disclosures of information where the worker reasonably believes (and it is in the public interest) that one or more of the following matters is either happening, has taken place, or is likely to happen in the future.

- A criminal offence.
- The breach of a legal obligation.
- A miscarriage of justice.
- A danger to the health and safety of any individual.
- Damage to the environment.
- Deliberate attempt to conceal any of the above.

If a worker is going to make a disclosure this should be made to the employer first or, if they feel unable to use the organisation’s procedure, the disclosure should be made to a prescribed person so that employment rights are protected.

Further Information and advice is available at Public Concern At Work: [www.pcaw.org.uk](http://www.pcaw.org.uk).

### ➤ FURTHER INFORMATION

IESBA Code of Ethics (edition 2016): [www.ethicsboard.org/iesba-code](http://www.ethicsboard.org/iesba-code)  
IESBA material on implementing NOCLAR including a question and answer video series: [tinyurl.com/yhj9omo](http://tinyurl.com/yhj9omo)  
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