



Ethical Dilemmas Case Studies

Professional Accountants Working as
Non-Executive Directors

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Introduction

The following case studies were developed by the UK and Ireland's [Consultative Committee of Accountancy Bodies](#). They illustrate how the codes of ethics of the CCAB bodies can be applied by professional accountants working as non-executive directors. These scenarios are not intended to cover every possible circumstance, but instead outline key principles and processes that could be considered when attempting to identify, assess and resolve ethical problems in line with the professional body's code of ethics ('the Code').

The CCAB welcomes comments on these case studies. Please email admin@ccab.org.uk

The role of the non-executive director

All members (and registered students) of CCAB bodies have a responsibility to behave professionally and ethically at all times. It is important, when working within an organisation, that you consider how your behaviour will help to promote an ethical culture within it. As a professional accountant and a non-executive director, you will have a particularly important role to play in creating, promoting and maintaining an ethical culture.

Organisational culture

The 'tone at the top' is a fundamental building block. Boards are responsible for establishing a set of clear values, defining the culture of their organisation. These values serve as the basis for how everyone in the organisation is expected to behave. All members of the board must behave in a manner which reflects the company's values, and this should be a key driver when making critical decisions. As a professional accountant you also have a responsibility to ensure your behaviour and contribution, as a board member, is not in breach of your professional body's Code of Ethics.

Oversight and support role

You, as a non-executive director, have a broad role. You are expected to contribute to the development of a clear mission and strategy for the company and to helping to ensure that the strategic objectives are fulfilled. Non-executive directors are encouraged to demonstrate their objectivity and, where appropriate, to challenge decisions of the executive directors. The duties of non-executive directors cannot be easily reconciled. On

the one hand, you are expected to work closely with the executive directors as part of a team (support role); on the other hand, you are expected to monitor the executive directors' behaviour and to challenge their decisions (oversight role).

Legal duties and governance responsibilities

Legal duties and responsibilities apply to all directors, whether executive or non-executive (there is no legal distinction between these in UK or Irish company law) or whether paid or unpaid (e.g., serving in a voluntary capacity on the board of a charity or school). All professional accountants who are directors are expected to behave professionally and demonstrate strong ethics. All directors are accountable for their behaviour, and how they fulfil their duties and responsibilities. There are requirements where certain companies are required to report on this, e.g., the Section 172 reporting requirement under UK Companies (Miscellaneous Reporting) Regulations 2018, the UK Corporate Governance Code, or EU Non-Financial Reporting Directive.

The primary duty of directors as set out in Section 172 of the Companies Act 2006 is to promote the success of the company. Acting for the benefit of shareholders is not the directors' sole duty. Directors must also have regard to the interests of a range of stakeholders (including employees, suppliers, customers, the community and environment) as part of the board's decision-making process.

For financial years beginning on or after 1 January 2019, The Companies (Miscellaneous Reporting) Regulations 2018, and, for listed companies, the UK Corporate Governance Code, require the directors of large UK companies to report how they have fulfilled their duty to Section 172, and how shareholder, employee and other stakeholder interests have been considered in the board's deliberations.

It is important to consider the wider requirements of your role as a non-executive director, whether in the public, private or third sector, and to ensure that you comply with all relevant governance standards and regulations. For example, you, as a non-executive director, may be approached by employees wishing to report unethical behaviour and, as a professional accountant within the organisation, you will have an important impact on its ethical tone. You will be expected to take any appropriate action, if necessary, in accordance

with the organisation's policies and procedures and legislation governing protected disclosures.

Non-executive directors play an important role in corporate and other sectors which brings with it a greater risk of personal liability should things go wrong.

In cases of non-compliance with laws and regulation there is a greater expectation that senior professional accountants will take whatever action is appropriate in the public interest to respond to non-compliance or suspected non-compliance, than other professional accountants' roles.

Resolving ethical dilemmas

These case studies are compatible with the codes of ethics of the CCAB member bodies, which are derived from [The International Code of Ethics for Professional Accountants \(including International Independence Standards\)](#) issued by the [International Ethics Standards Board for Accountants](#) (IESBA). Any reference to 'the Code' below is a reference to your professional body's Code of Ethics.

Conceptual framework and five fundamental principles

The case studies illustrate the application of the 'conceptual framework' approach to resolving ethical dilemmas. This approach focuses on identifying, evaluating and addressing threats to compliance with the fundamental principles of:

- **Integrity** – to be straightforward and honest in all professional and business relationships.
- **Objectivity** – not to compromise professional or business judgements because of bias, conflict of interest or undue influence of others.
- **Professional competence and due care** – to: (i) Attain and maintain professional knowledge and skill at the level required to ensure that a client or employing organisation receives competent professional service, based on current technical and professional standards and relevant legislation; and (ii) Act diligently and in accordance with applicable technical and professional standards.

- **Confidentiality** – to respect the confidentiality of information acquired as a result of professional and business relationships.
- **Professional behaviour** – to comply with relevant laws and regulations and avoid any conduct that the professional accountant knows or should know might discredit the profession.

Threats to compliance with the five fundamental principles

In order to do so, it is important to be alert to situations that may threaten these fundamental principles. Identified threats need to be evaluated and managed, to ensure that they are either eliminated or reduced to an acceptable level.

Threats may arise as a result of any of the following:

- **Self-interest** – the threat that a financial or other interest will inappropriately influence your judgement or behaviour;
- **Self-review** – the threat that you will not appropriately evaluate the results of a previous judgement made; or an activity performed by you, or by another individual within your firm or employing organisation, on which you will rely when forming a judgement as part of performing a current activity;
- **Advocacy** – the threat that you will promote a client's or employing organisation's position to the point that your objectivity is compromised;
- **Familiarity** – the threat that, due to a long or close relationship with a client or employing organisation, you will be too sympathetic to their interests, or too accepting of their work; and
- **Intimidation** – the threat that you will be deterred from acting objectively because of actual or perceived pressures, including attempts to exercise undue influence over you.

Reasonable and informed third party test

When applying the conceptual framework, professional judgement needs to be exercised; there is a need to remain alert for new information and to changes in facts and circumstances; and to apply the 'reasonable and informed third party' test.

The Code states: "*The reasonable and informed third party test is a consideration by the professional accountant about whether the same conclusions would likely be reached by another party. Such consideration is made from the perspective of a reasonable and informed third party, who weighs all the relevant facts and circumstances that the accountant knows, or could reasonably be expected to know, at the time the conclusions are made.*"

The reasonable and informed third party doesn't have to be an accountant, but does have to be objective, knowledgeable, experienced and informed, i.e. not an uninformed member of the public, and able to impartially consider the appropriateness of the conclusions.

Non-Compliance with laws and regulations

There are also obligations in the Code for professional accountants who encounter actual or suspected 'Non-Compliance with laws and regulations (NOCLAR)' as a non-executive director. The laws and regulations which are relevant are those which have a direct impact on material items and disclosures in the financial statements or are fundamental to the organisation's operations. The NOCLAR provisions do not take precedence over local laws and regulations. If there is a conflict between local legislation and the provisions of the Code, you must adhere to local legislation. For example, you should be aware of the disclosures that could amount to 'tipping-off' under UK or Irish Anti-Money Laundering laws and regulations.

An approach to resolving ethical dilemmas

When resolving an ethical conflict, consider carefully whether other parties could or should be involved in discussions and, if appropriate, how the board should be approached. A board may be approached via the secretary or the chair. Disclosure to the board will often be necessary, and the dynamics of the board should be taken into consideration as you formulate your response to the dilemma. As a non-executive director, you may also be

expected to spend less time discharging your duties than you feel is required. This may give rise to a risk that any potential ethical issues that arise will not be adequately considered.

If you are facing, or think you might be facing, an ethical dilemma, it is useful to be aware of who your trusted advisors are, i.e., people you trust and can approach to discuss the situation in confidence or as a hypothetical scenario. Consider the resources available from your professional body, the organisation and whether you, or the board, need to obtain independent legal advice.

Consider whether your actions in response to the situation and the advice obtained are sufficiently well documented, either by way of board minutes or your own records. In many situations, the perception of a reasonable and informed third party will be relevant to the resolution of the dilemma, and you might be required to evidence the steps you took to resolve the issue. Documentation of the substance of the issue, the details of any discussions, the decisions made, and the rationale for these decisions is encouraged. Keeping an evidence trail of conversations, emails and documents; a diary of meetings; and noting down a summary immediately afterwards can be helpful.

These case studies do not form part of the CCAB bodies' codes of ethics. You may find it useful to refer to the advisory services and websites of the individual CCAB bodies for further information. The [IFAC website](#) may also be of use.

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Case Study 1 - To be or not to be a non-executive director

Outline of the case

You are a professionally qualified accountant, recently retired from your position as the financial director of Company A, which is a listed company. Company A operates in the heavy engineering industry, and you worked there for over 12 years. Prior to this, you had spent 10 years as an audit partner in a large accountancy firm.

You receive a phone call from a head-hunter with an executive recruitment agency, acting on behalf of a company's nominations committee. After the usual small talk, he cuts to the chase:

"You have been recommended to me as a suitable candidate for a very prominent non-executive role. Company B, a listed company, is seeking a non-executive director who will also serve as the chair of the company's audit committee. Company B is a well-known financial services provider."

You are not struggling financially. You have a reasonable pension, but the extra cash from this role would come in handy. Additionally, you are finding it difficult to fully unwind after years spent working to tight deadlines and coping with difficult challenges on a daily basis. Therefore, you find this potential opportunity very attractive.

You advise the head-hunter that you will think about his proposal and get back to him as to whether you wish to be considered for the role. You hang up and then consider the matter in greater detail. Your first instinct was to say to him, whilst he was on the phone, that you wished to be considered for the position. However, due to your prudent nature, you decided that it would be wise to give yourself some time to reflect fully on the issues before making a decision.

You are keen to be put forward for this role, but you have a nagging doubt at the back of your mind: you have no work experience in the financial services sector; However, you are aware of the complexities of the transactions which many financial services companies undertake. You are not sure what to decide: on the one hand, there is little doubt that your

business acumen will be of benefit to Company B; on the other hand, you feel that your lack of expertise in this sector will leave you struggling to contribute constructively at times.

Questions

As a professional accountant:

- (a) Which fundamental principles feature more prominently for safeguarding?
- (b) What would be your key considerations in your approach to resolving the dilemma presented?
- (c) What course of action would you take to resolve the dilemma?

(a) Key fundamental principles

Integrity: You should safeguard your integrity by only allowing your name to be put forward for positions where you believe that you have (or can readily attain) the technical skill set required, or where you can serve effectively as a lay member of the board, and the board is balanced by the presence of other technical experts.

Objectivity: The ability to make an informed, unbiased decision must be preserved. The potential financial rewards are obviously a threat to your objectivity, but ultimately you should not let these cloud your judgement in considering the interests of shareholders and other stakeholders.

Professional competence and due care: Can you quickly acquire adequate knowledge of the commercial, strategic, technical and regulatory requirements of the proposed role?

(b) Considerations

Identify relevant facts:

Consider the technical and regulatory requirements which impact on Company B's business and the legal responsibilities of a non-executive director. You have to be satisfied that you can acquaint yourself with these requirements quickly. Find out whether Company B provides a comprehensive induction programme for its new non-executive directors. You should ensure that an appropriate induction programme would be put in place if you were to be appointed, and that you would be provided with ongoing awareness

training. It would be helpful to find out whether a more detailed specification is available for the role.

Identify affected parties:

Key affected parties are you, the head-hunter, the nominations committee, other directors of Company B, the shareholders of Company B, and the financial services regulator (e.g., regarding any necessary approvals or criteria).

Who should be involved in the resolution:

You should involve the head-hunter in the resolution process, as he may have access to much of the information you require. The nominations committee may also be involved through their contact with him.

If you decide to be put forward for the role, then you should be open and transparent in your discussions with Company B. The nominations committee may, in fact, be looking for someone who is unfamiliar with the financial services industry, or who has the specific qualities that you possess, in order to bring a fresh perspective to the workings and add to the diversity of the company's board and audit committee.

(c) Possible course of action

Ultimately, you have to exercise professional judgement in this matter. If you do not feel comfortable being put forward for the role, then you should inform the head-hunter accordingly. You may, of course, decide to be put forward for the role, but if your concerns are not adequately addressed, and if you are offered the role, you should decline the appointment at that stage. You should also consider consulting with a trusted advisor, e.g., a colleague or your professional body. You may also wish to seek legal counsel for advice.

You need to establish what Company B is looking for. Try to obtain a detailed specification of the role and the skill set of the person that the company requires. Ask the head-hunter why, in his opinion, you were 'recommended' to him as a suitable candidate. You need to ensure that you are aware of the responsibilities associated with a non-executive director's role. For example, the UK Senior Managers and Certification Regime (SMCR) applies to all Financial Services and Markets Act 2000 authorised firms regulated by the Financial

Conduct Authority. In Ireland, regulated financial service providers are required to comply with the Central Bank of Ireland's fitness and probity regime. The regimes include requirements for all non-executive directors to comply with the regulator's conduct rules, and regulatory pre-approval for certain non-executive director roles. If applicable, you would need to ensure that Company B, and you personally, are in compliance with all obligations in relation to this regime. There may be additional considerations if Company B carries out regulated activity in other international jurisdictions.

You should also undertake your own due diligence on Company B and on your prospective fellow directors. Do you believe that, even if you have, or can acquire, the necessary skill set, this is a company on whose board you would want to serve? What is the 'tone at the top'? Are ethics, values, and culture regularly discussed at board level? Does the company 'live' its published values? Is the board focused on its stewardship role to ensure the long-term success and reputation of the organisation? Do you believe that the board would then have the correct composition and balance?

In making your decision, you should apply the reasonable and informed third party test and consider if a reasonable and informed third party would likely conclude that your decision was appropriate.

Case Study 2 - Formal governance procedures not being followed

Outline of the case

You are a non-executive director of a public sector body, and a member of the organisation's finance committee.

The committee is currently discussing the tender process for the procurement of substantial capital improvements to the staff catering facility. The director of finance has suggested that the normal tender route be waived in this instance and the project awarded on a single tender basis. This is because the organisation has recently tendered for the construction of a new boiler facility on the organisation's main site. As the catering facility is in close proximity to this existing capital project, the finance committee has agreed that there are practical benefits in awarding the work to the same contractor, who has a good history of completing capital projects for the organisation.

If the tender process is waived, it will mean that the improvements to the catering facility can be commenced as soon as the boiler project ends. It is likely this could result in cost savings to the catering project, because the contractor's equipment will not have to be removed and the required workers can remain on site. The director of finance has also suggested that it is possible to benchmark costs to ensure that the agreed contract price is in line with current market prices. Initial discussions have already taken place with the contractor, who has explained that substantial cost savings would be achieved if this project was awarded to them straight after the boiler project. They have also provisionally agreed to undertake the works.

There are existing standing orders and standing financial instructions which require a formal tender process to be fulfilled for projects of this size. You are concerned that the organisation is openly ignoring the governance arrangements that are in place without providing a robust basis for doing so, and you believe that the director of finance should not recommend these proposals to the advisory board.

Questions

In your role as a non-executive director:

- (a) Which fundamental principles feature more prominently for safeguarding?
- (b) What would be your key considerations in your approach to resolving the dilemma presented?
- (c) What course of action would you take to resolve the dilemma?

(a) Key fundamental principles

Integrity: Whatever action you decide to take, are you able to demonstrate that you are being fair and honest towards all parties concerned, including the organisation's stakeholders?

Objectivity: Can you demonstrate objectivity in your actions? Does the potential breach of the organisation's governance documents, or any applicable public sector/state body governance code/requirements, require you to refer the matter to a higher level? You should not allow your objectivity to be threatened by close relationships with other members of the finance committee. Neither should you allow yourself to feel intimidated by advisory board members or other interested parties.

Professional competence and due care: This is a sensitive matter so it is important that any action you take is careful and considered. Do you have the knowledge and experience to decide on a course of action, or do you need to take advice?

Professional behaviour: You should endeavour to ensure that the organisation acts in accordance with relevant regulations, and that you act in compliance with your obligations and responsibilities as a non-executive director.

(b) Considerations

Identify relevant facts:

Is there an established procedure for overriding the tender process? As a non-executive director, you are required to hold a governance role which involves oversight of the

operations of the organisation. In this instance, you have been made aware of the issues and need to determine the appropriate action to take.

Identify affected parties:

The affected parties are you, the other members of the finance committee and the other advisory board members who have specific responsibility for the governance arrangements, including the CEO and the director of finance. You should also consider the contractor, who may or may not have been promised the work without following the tender process, and other parties who might not be given the opportunity to tender. It is also useful to consider other stakeholders, including taxpayers and government officials, and how they might perceive the situation.

Who should be involved in the resolution:

You should ensure that both the finance committee and the board are involved in the decision. The internal auditor may also need to be made aware.

(c) Possible course of action

There are specific obligations in the Code if you encounter actual or suspected 'Non-Compliance with Laws and Regulations (NOCLAR)'. The laws and regulations which are relevant are those which have a direct impact on material items and disclosures in the financial statements or are fundamental to the organisation's operations. As your concerns are in relation to the legal framework of regulations relating to public sector procurement, and it is a substantial capital improvement, consideration ought to be given to these provisions.

As a non-executive director, it is your responsibility to raise your concerns at the committee meeting so that the other members are fully aware of your views on this matter. If the committee does not consider your view, you should ensure that, when the matter is referred to the board for decision, you make your board colleagues aware of your concerns. This should involve highlighting the potential risks and consequences to the organisation if it fails to comply with the organisation's governance arrangements, including the reputational risk to the organisation of such an action, particularly as it relates to public sector expenditure.

However, before voicing your concerns, you should exercise due care in obtaining sufficient information to be able to meet your responsibilities as a non-executive director. You should ensure you understand the requirements within the regulations, and any public sector/state body governance code requirements and establish whether protocols and procedures exist for situations where it is proposed to waive the formal tender process.

At all times, you should remember your obligations and responsibilities as a non-executive director. You are required to act in the best interests of stakeholders. This often demands the exercise of professional judgement. Whilst you need to safeguard the principle of objectivity, you should also be aware that insisting on following established internal procedures may sometimes impede the operations of the organisation.

In making your judgement, you should apply the reasonable and informed third party test and consider if a reasonable and informed third party would be likely to conclude that you had acted appropriately in the public interest.

If, having gathered the necessary information, you have determined it necessary to disclose your concerns to the finance committee and then the board, and if you believe that the board will not give due consideration to your concerns, you could raise them with the internal auditor.

If the matter is not resolved, consideration may need to be given to disclosing the matter to the appropriate authority.

You should consider taking legal advice. In addition, as a non-executive director who is also a professional accountant, you could discuss the dilemma with a trusted advisor, e.g., a colleague or your professional body. You should document the matter; any discussions you have; the bases for the decisions you make; and how you are satisfied you have fulfilled your responsibility to the public interest.

Case Study 3 - Confidentiality and conflict of interest in non-executive roles

Outline of the case

You are a non-executive director of two unrelated companies, Company A and Company B. Company A has recently bought a business that has an operation that competes with Company B, so that both companies are now bidding for the same contracts.

You are now likely to find out information about Company A that could be useful to your role in Company B and vice versa.

Questions

In your role as a non-executive director:

- (a) Which fundamental principles feature more prominently for safeguarding?
- (b) What would be your key considerations in your approach to resolving the dilemma presented?
- (c) What course of action would you take to resolve the dilemma?

(a) Key fundamental principles

Integrity: Are you able to act fairly and honestly in your role with either or both companies? Is a breach of trust likely to arise or be perceived by a reasonable and informed third party?

Objectivity: Will the potential conflict of interest compromise your professional or business judgement in respect of either or both companies? How do you discharge your duties to both companies?

Confidentiality: Can you maintain the requirement to respect confidentiality? You should not use information gained as a result of your relationship with one company to the advantage of the other.

(b) Considerations

Identify relevant facts:

You should gather information in respect of each company's policies, procedures and guidelines (including any code of conduct), any legal requirements to avoid conflicts of interest, and your professional body's code of ethics.

You should also ascertain to what extent Company A and Company B will now compete. Will this occur regularly or only for occasional contracts? Will the boards be involved in discussions relating to this? You need to manage the perception of your involvement with both companies, as well as any actual conflict you might anticipate.

Identify affected parties:

The key affected parties are you and the boards of Company A and Company B. Other possible affected parties are stakeholders in the companies, such as shareholders, investors and creditors.

Who should be involved in the resolution:

Consider not just whom you should involve, but also why and when. Board dynamics vary and there will be different ways to ensure that you and the chair of each of the boards (and then the boards themselves) engage effectively. Other external and internal parties may also be relevant, as the appearance of ethical behaviour is important as well as the reality.

(c) Possible course of action

It is important to be transparent, and to ensure that the boards are in an informed position to make decisions on the matter. The first step in resolving a potential conflict situation is likely to be disclosure to the parties involved, as soon as a threat to one or more of the fundamental principles is identified. It may be advisable to discuss the matter with the company secretaries to determine how it should be raised with the chairs and then the boards. One of the boards, or indeed both, may feel that it would be in everyone's best interests for you to step down from one of the companies.

Alternatively, both boards may be happy that the situation can be managed, in which case procedures should be put in place that are capable of identifying and assessing threats as they arise and applying appropriate safeguards. However, a key question for you and the boards to consider is whether you 'should' manage the conflict of interest (as opposed to whether you 'could' manage the conflict). There is a need to have regard to reputational risk. In making your judgement, you should apply the reasonable and informed third party test and consider if a reasonable and informed third party would be likely to conclude that you had acted appropriately.

You are entitled to use experience gained in other roles, but not to use confidential information for your own benefit or that of another party. A key threat is that you could be put in a position where you can influence a decision on a matter in one company through your knowledge of relevant information gained in the other. If you use that information, you will breach the fundamental principle of confidentiality; if you do not use it, you may be refraining from influencing a decision that you know to be wrong. Can you realistically maintain objectivity, or can you be acting in the best interests of either company in such situations?

Having established to what extent Company A and Company B will compete, an appropriate safeguard to apply might be to exclude yourself from involvement in decision-making at Company A and Company B on matters where a conflict of interest exists or is likely to arise.

You should protect your professional reputation, and insist that the resolution of this ethical dilemma, and the basis for it, be minuted by both boards. You should also keep your own record of the substance of the issue, the details of any discussions, the decisions made, and the rationale for these decisions.

You should consider a final appraisal of the situation:

- Is the resolution of the dilemma acceptable from a professional and personal point of view?
- Would a reasonable and informed third party reach the same conclusion?
- Is the proposed solution workable?
- Could the situation compromise your professional or personal reputation?

You might wish to review these questions with a trusted advisor, e.g., a colleague or your professional body. In some situations, you may wish to seek legal advice on the matter.

Case Study 4 - Non-executive director being used as a sounding board by an employee

Outline of the case

You are a non-executive director of a manufacturing company. The company's success and reputation rely on one core product. In order to manufacture the product, it needs to source two main components, X and Y. Component X may be purchased from either of two suppliers, A Limited or B Limited. The board has agreed a strategy that both suppliers will be used, thereby enabling the purchasing department to exercise bargaining power over its suppliers.

On the days that you attend monthly board meetings, you take lunch in the staff restaurant. One day you find yourself in conversation with the purchasing manager, who is unfamiliar with the concept of a non-executive director. As you explain your role, the purchasing manager takes the opportunity to seek your opinion on a matter that has been causing her some concern.

She is responsible for placing orders for stock, and orders of component X are usually placed on a weekly basis. Prices are obtained from A Limited and B Limited on a regular basis and confirmed prior to each order being placed. However, in recent months the purchasing director has been taking a more active role in the ordering process. He has been directing the manager to place almost every order with B Limited, although the manager believes that a better price could often have been obtained from A Limited. The director has told the manager that he has been building an effective relationship with the sales director of B Limited, which will lead to a reduction in prices in the long term. This has involved regular business lunches and an invitation for the purchasing director and his family to spend a weekend on the sales director's private yacht.

The purchasing manager expresses her opinion to you that the purchasing director is accepting bribes, as well as ignoring the company's agreed purchasing strategy, which aims to limit the risk associated with exposure to just one supplier. You are asked for your views on the situation, as the purchasing manager is delighted to have this opportunity to 'run the issue past you, informally and off the record'.

Questions

In your role as a non-executive director:

- (a) Which fundamental principles feature more prominently for safeguarding?
- (b) What would be your key considerations in your approach to resolving the dilemma presented?
- (c) What course of action would you take to resolve the dilemma?

(a) Key fundamental principles

Integrity: Are you able to be straightforward and honest with the purchasing manager and the board while, at the same time, safeguarding the other fundamental ethical principles, ensuring good governance and complying with relevant legislation on protected disclosures?

Objectivity: Are you able to retain your independence from the executive board members and, at the same time, resist the influence of any potentially unfounded assumptions made by the purchasing manager?

Professional competence and due care: You should exercise diligence and gather all the relevant facts before reaching any conclusions. Are you sure of your responsibilities in this situation? To whom do you owe a duty? Should you seek advice concerning your legal obligations?

Confidentiality: Can you discuss the information you have acquired from this informal conversation at the next board meeting without breaching the trust of the purchasing manager? Is there anyone else whom you may consult or whom you should inform?

Professional behaviour: Are you able to comply with established internal procedures, and are there 'speak-up', including whistleblowing, or employee code of conduct procedures with which you should encourage the manager to comply? Is there relevant legislation related to protected disclosures and bribery or corruption that you may need to know more about?

(b) Considerations

Identify relevant facts:

In this case, your responsibilities concern the actions of a director and a manager, the possible undermining of company strategy, a serious ethical breach and potential corruption or a bribery offence.

You have been made aware that the company's purchasing strategy may be being breached, and that an employee believes that a director is accepting bribes. You should decide what information and advice you give to the purchasing manager, and what information you provide to the board (or others). You have the right to make enquiries within the company as necessary.

Identify affected parties:

Key affected parties are you, the purchasing manager and the purchasing director. Other affected parties are the shareholders, other members of the board and, possibly, the officers of A Limited and B Limited. Other parties may become involved at a later stage, e.g., an independent investigator if an investigation is called for, or law enforcement if a reportable offence arises.

Who should be involved in the resolution:

You may wish to seek independent legal advice or consult with the company's ethics committee if one exists or identify the officer or person within the company responsible for leading compliance with ethics. You might wish to discuss the situation with the board. The initial approach could be to the company secretary, although in a matter as potentially serious as this the CEO or the chair might be more appropriate (having regard to the dynamics of the board). Having pursued these routes, it might be appropriate and necessary to discuss the matter with the internal audit function or the chair of the audit committee. If there is a breach of the law, such as the Bribery Act 2010 (UK) or Criminal Justice (Corruption Offences) Act 2018 (Ireland), the company's legal counsel would also need to be involved.

(c) Possible course of action

You should advise the purchasing manager to obtain details of any established internal 'speak-up' or whistleblowing policies and procedures, as well as external organisations that will look after her interests. You know that 'speak-up' mechanisms within organisations are vitally important. Stress to her that 'speaking up' by employees is valued and that it can enable issues to be tackled at an early stage. You also know the importance of 'listening up' and acting upon issues that have been raised.

You should explain to the purchasing manager that you have a responsibility towards the company, including its shareholders and other stakeholders, such as its employees and suppliers, and that you recognise that she has concerns. The allegation of bribery is a serious one, and so her concerns will need to be investigated.

As a professional accountant, there are also specific obligations in the Code if you encounter actual or suspected 'Non-Compliance with Laws and Regulations (NOCLAR)'. A suspicion of bribery would require these provisions to be addressed.

You should also be aware that there are provisions within the Code regarding inducements. These provisions prohibit professional accountants from offering or accepting inducements where there is, or perceived to be, intent to improperly influence behaviour. Application material in the Code, Sections 250.10, prompts a professional accountant to consider the actions to take, such as those outlined above, if they become aware of an inducement offered.

You might initially request permission from the manager to discuss the situation with the internal team responsible for investigating wrongdoing. This may be an internal audit, risk management team, a Bribery Compliance Officer, or another officially designated person. If permission is granted, you should ensure that you have all available facts and relevant information before progressing the matter (thereby exercising professional competence and due care).

When considering bringing the matter to the board's attention, your initial approach might be via the company secretary. However, you should consider bringing the matter directly

to the chair of the board or audit committee, as the issue is potentially one of fraud, and there may be a risk of alerting and 'tipping off' the purchasing director if the situation is discussed openly with the board.

If permission to discuss the matter with anyone else is withheld by the manager, you should nevertheless address the NOCLAR provisions within the Code. You must also adhere to your professional obligation to discharge your legal duties (e.g., Section 172 Companies Act 2006 (UK) or Section 228 Companies Act 2014 (Ireland)) as a non-executive director. There could be potential risks and consequences to the organisation if it fails to address this issue, including the reputational risk.

If there is an audit committee, it may be possible for you to bring an anonymised version of the matter to its attention (via the committee chair); or you might be able to discuss the situation with the internal or external auditors.

You should apply the reasonable and informed third party test and consider if a reasonable and informed third party would be likely to conclude that you had acted appropriately.

If the matter is not resolved, consideration may need to be given to disclosing the matter to the appropriate authority.

At any stage, you might wish to seek your own independent legal advice, or consult with a trusted advisor, e.g., a colleague or your professional body. In the case of consulting with a trusted advisor, confidentiality should be maintained, and care should always be taken not to disclose the identities of the persons or company involved in the allegations.

You should document the discussions you have, the actions you take, and the bases for any decisions made.

There are also provisions within the Code (Section 200.5 A3) highlighting that professional accountants are expected to encourage and promote an ethics-based culture in their organisation, such as the implementation of ethics education and training programs, and policies and procedures in relation to whistleblowing and also non-compliance with laws

and regulations. As a non-executive director, this situation should prompt you to ensure that such programmes are being employed in your organisation.

Case Study 5 - Pressure on a non-executive director to make a decision without adequate information

Outline of the case

You are a non-executive director of a medium-sized company. The company's financial director (who is also the company secretary) is advocating that the company makes an acquisition and has implied that, if the company does not act quickly, the opportunity will disappear. The CEO has also said that she wants to move quickly. However, you are not convinced that the figures presented to you indicate that the acquisition is currently the right thing to do, and you think it warrants further discussion.

One year ago, shortly after you had joined the board, a similar decision was made which, to you, seemed unusual given the company's trading position at that time. However, none of the other board members (who had been on the board for several years) challenged the CEO.

You have tried to contact, through the company, an independent specialist to get an expert, impartial view on the acquisition. However, the CEO seems to be discouraging you from proceeding with this.

You are considering whether you should raise your concerns with other board members or simply allow the company to go ahead with what could be a profitable acquisition. Should you insist on waiting for the impartial professional advice at the risk of the company missing the opportunity of the acquisition?

Questions

In your role as a non-executive director:

- (a) Which fundamental principles feature more prominently for safeguarding?
- (b) What would be your key considerations in your approach to resolving the dilemma presented?
- (c) What course of action would you take to resolve the dilemma?

(a) Key fundamental principles

Objectivity: Is your objectivity compromised by the pressure from the CEO and the financial director to push through the decision, or by the close working relationships you may have with other members of the board or management?

Professional competence and due care: Is it appropriate to seek expert advice or are you, in fact, attempting to make your concerns more palatable by asking someone else, namely the expert, to express them? Is there sufficient time for you and the independent expert to consider the situation fully?

Confidentiality: In seeking expert advice, can you ensure you maintain confidentiality over commercially sensitive information?

Professional behaviour: If the acquisition goes ahead and there is subsequently a high-profile failure of the company, would you be able to defend your actions as being appropriate? Would people be able to see, and comment favourably on, the part played by the non-executive directors in making the decision to acquire? Professional behaviour also means complying with relevant laws and regulations. Have any applicable company law provisions been considered?

(b) Considerations

Identify relevant facts:

The dilemma you face involves weighing up the risks faced by the company against the opportunities and the potential benefits that might accrue. You should establish whether it is, in fact, necessary to make the acquisition as urgently as the financial director claims. You should also assess whether the numbers that have been presented to you can be objectively verified and any assumptions tested. You should assess whether the risk assessment on the acquisition, including its impact on the current business, e.g., cultural fit, reorganisation, etc., have been adequately considered and planned for.

Determine whether the company has an acquisition policy which includes a due diligence process. Consider also whether company law confers upon you personally any legal

accountability for the decision, as a professional accountant and non-executive director. You should also take into account your responsibility to apply your professional judgement.

Identify affected parties:

Key affected parties are you, the financial director, the CEO, other board members and the company, as well as the other company being considered for acquisition. Other stakeholders in the businesses, such as investors, shareholders, customers and suppliers, will also be affected.

Who should be involved in the resolution:

You should discuss your concerns with the chair. Are there other board members (executive or non-executive) that you could approach? Consider not just whom you should involve, but also why and when. It is possible that an independent expert adviser will also be involved in the resolution.

(c) Possible course of action

Directors have legal responsibilities to promote the success of their company, having regard to the interests of a range of stakeholders including shareholders, employees, suppliers, customers, the community and environment as part of the board's decision-making process. They may also have an obligation to explain within the company's annual report how they have fulfilled their legal duty, and how shareholder, employee and other stakeholder interests have been considered in the board's deliberations.

You need to make it clear that you are concerned that to make such a critical decision without full consideration would not be in the best interests of the company's stakeholders and would not meet the directors' legal responsibilities, or the principles of good corporate governance. You should remind the board that they have a duty to behave in a manner which reflects the company's values, and this should be their driver when making important decisions.

You should apply the reasonable and informed third party test and consider if a reasonable and informed third party would be likely to conclude that you and the board had acted appropriately.

Depending on your relationships with the CEO, the financial director and other board members, it may be difficult for you alone to stand up to management on this issue. There could be a potential familiarity or intimidation threat to your objectivity.

If the CEO is a dominant character, it is possible that she will exert undue pressure on you to allow the decision to go through without further discussion. A threat to your objectivity might also exist if there is a risk that you will lose your position (and the associated income) by standing up to the CEO.

As a professional accountant, you need to ensure that the company is taking steps to manage risk effectively, including reputational risk, and that any established process for managing risk is followed. You should therefore make appropriate enquiries to ensure that you have all the information you require to be able to make a professional judgement on the company's actions. If the company has an acquisition policy and established procedures, you can bring these to the attention of the board to support your position.

You may need access to independent expert advice. However, you also need to balance this with not being obstructive. While there may be a potential business benefit in making a decision quickly, there is also a potential risk to the business in doing so. Unless you fully understand the consequences for all stakeholders, you will not be able to fully understand the potential risk.

It is important to be in a position to challenge management constructively. Ensure concerns are recorded in board minutes and if you resign, provide a written statement to the chair. It is also advisable to document any decisions you make outside of board meetings, including information about the facts; the discussions you have had and with whom; the courses of action considered; and the basis of the decision reached. You should also note that resigning does not absolve you of your legal duties and responsibilities during your tenure as a director.

If the CEO is domineering or aggressive, or if the other non-executive directors are passive and accepting, then part of the long-term solution could be to try to build a stronger board or to improve the board's processes or terms of reference.

Seek allies on the board. Those other non-executive directors who are usually accepting of the CEO's decisions may also have misgivings. They may speak up if you do. You should speak to the chair about this.

The processes that the board has in place will change as the company grows, as will the composition of the board, but there are certain basic steps that can be taken to help to resolve this situation:

- Seek further information and opinion on how necessary it really is to make a decision quickly (without breaching confidentiality).
- Consider whether sufficient due diligence has been carried out and whether there has been adequate debate about the outcome of the process, such as identification of the risks and the potential rewards.
- Consider seeking your own legal advice or, while being mindful of requirements for confidentiality or any non-disclosure agreement, contacting a trusted advisor, e.g., a colleague or your professional body, for guidance. In some jurisdictions, directors' duties are codified in law. This needs to be taken into account when deciding upon a course of action.
- If you are still concerned, after having sought expert advice and considered the situation, voice your concerns to the board and ensure these are minuted or consider submitting your concerns in writing to the board. Document the thought processes that led you to your decision, being mindful of the need not to breach confidentiality.

If you have very serious misgivings which you feel the board or management are not responding to appropriately, you may wish to consider other options, e.g., resigning. Resigning should be a last resort and it should be a carefully considered decision, i.e., not made in the heat of a disagreement, but if you do resign, you should ensure the chair knows of your reasons.

Case Study 6 - Withholding information from the non-executive directors

Outline of the case

You are a non-executive director of a large retail company. The board of directors meets on a monthly basis to discuss quarterly forecasts and other issues.

It is the responsibility of the group finance director to distribute financial and other appropriate information at least one week prior to the date of each meeting. The CEO must sign off on the information pack, which is then sent to each member of the board.

For each of the past three meetings, you have received the information the day before the meeting. You discuss this issue with the group finance director, who tells you that the pack has always been ready for sending on time, but the CEO has delayed signing off. You believe that this does not provide you with sufficient time to review the information and make a significant contribution at the meeting. You further believe that you are being given less and less information, and that the limited information available is often difficult to understand and appraise.

Previously, the pack included information on sales segments as well as on extended credit terms for favoured customers. Despite repeated requests from you over recent months, such information has not been included. You are becoming increasingly concerned about the quality and completeness of the information provided, and you are of the opinion that the non-executive directors are becoming less effective at the monthly board meetings as a result.

The majority of executive directors are closely involved with all the key reports contained within the pack. You believe that, because they are already familiar with the information, they are less affected (and consequently less concerned) by both the delay in receiving the pack and the limited information contained within it.

The company has a policy on performance bonuses. The CEO is expected to be awarded a significant bonus, should the company continue to achieve increasing profitability. The CEO has a very strong personality and is seen to influence the majority of the key decisions

made by the company. Most members of staff, including the executive and non-executive directors, feel intimidated by him.

Questions

In your role as a non-executive director:

- (a) Which fundamental principles feature more prominently for safeguarding?
- (b) What would be your key considerations in your approach to resolving the dilemma presented?
- (c) What course of action would you take to resolve the dilemma?

(a) Key fundamental principles

Integrity: This situation might have an impact on your integrity if the matter is not dealt with. The integrity of the CEO may be at issue, or alternatively there might be valid reasons why he has failed to sign off in good time. Nevertheless, a perceived lack of integrity may be created together with reputational damage to the CEO, you and the board.

Objectivity: Many of the executive and non-executive directors are intimidated by the CEO. This intimidation is a threat to their – and your – objectivity, and if you stand up to the CEO, you may find yourself in a minority. Nevertheless, you need to safeguard the principle of objectivity and ensure that the non-executive directors play an effective role.

Professional competence and due care: You require timely, relevant information in order to act competently as a non-executive director, and to continue to act without it would indicate a lack of due care on your part. It is your responsibility to ensure you receive the information you need to carry out your duties effectively. In the meantime, you should make the other board members aware of the limitations imposed on you by the lack of information.

Professional behaviour: How should you proceed so that you do not bring discredit on yourself? How will you manage relationships with the executive directors and other non-executive directors? You should ensure you are aware of the company's policies and procedures and be clear about your responsibilities.

(b) Considerations

Identify relevant facts:

Consider the business's policies, procedures, guidelines and code of conduct, and how these relate to the provision of the information pack to the board prior to each meeting. Is the expectation that the pack will be signed off and distributed at least one week in advance of each board meeting the result of a company policy, or is this simply a trend that has developed through habit?

Is it necessary for the CEO to sign off on the pack, or can this be done by someone else? Can you determine the reasons for the reduction in the amount of information provided and the repeated delays in signing off, and have any reasons been disclosed to members of the board?

Identify affected parties:

Key affected parties are you, the board (and in particular the non-executive directors), the group finance director and the CEO. Ultimately, the shareholders and other stakeholders might also be affected and, possibly, the favoured customers who receive extended credit terms (which, if not regularly reviewed, may have consequences for the ability of those customers to repay).

Who should be involved in the resolution:

You should discuss the issues with the other non-executive directors. Consider whether the chair of the board might be able to provide reasons for the lateness and deficiency of the information. Given the intimidating nature of the CEO, do you deem it appropriate to approach the CEO and discuss your concerns directly? Consider whether the company secretary is an appropriate person with whom to discuss the issue. They might be able to provide information regarding the company's policies and procedures. Another possible option would be to discuss the matter with the internal audit team (having regard to appropriate confidentiality measures).

(c) Possible course of action

Directors have legal responsibilities to promote the success of their company, having regard to the interests of a range of stakeholders including shareholders, employees, suppliers, customers, the community and environment as part of the board's decision-making process. They may also have an obligation to explain within the company's annual report how they have fulfilled their legal duty, and how shareholder, employee and other stakeholder interests have been considered in the board's deliberations.

You should consult the company's policies and procedures to ascertain the board meeting process. Confirm when the information pack should be delivered to members of the board, and if this is not formally established, consider how the timing of its delivery could be incorporated into the procedures. Establish whether there is a policy on the quantity and quality of the information to be provided. It may be the case that an undefined term is applied to the information that should be made available, such as 'sufficient' or 'adequate'. If so, you should establish whether there is a procedure to be followed if a member of the board believes that 'insufficient' or 'inadequate' information is being made available.

Depending on your relationship with other members of the board, it might be appropriate to discuss your concerns with them and, in particular, with the other non-executive directors.

Establish if any of them have similar concerns. Inform them that you believe that the lack of information is impeding your effectiveness as a non-executive director (and that non-disclosure of certain key information may contribute to inadequate corporate governance). You should refrain from suggesting that the CEO is responsible for this, as it may be the case that the information is being withheld inadvertently, rather than deliberately, or for a valid reason. If others share your opinion on this issue, it may be appropriate to approach the CEO as a group in order to mitigate any potential intimidation.

Alternatively, you may wish to seek a meeting with the chair to discuss your concerns. It is the chair's responsibility to ensure that the non-executive directors can fulfil their role effectively and receive the necessary information in order for them to do so. This includes

holding meetings with the non-executive directors without the executive directors being present.

You need to make it clear that you are concerned that board decisions are being made without the non-executive directors being given full information and sufficient time for due consideration, and that this is not in the best interests of the company's stakeholders and does not meet the directors' legal responsibilities, or the principles of good corporate governance. If a scandal were to occur in the future, how would it look to a reasonable and informed third party if the non-executive directors had not been provided with the necessary information in sufficient time to effectively carry out their role? The board needs to be reminded that they have a duty to behave in a manner which reflects the company's values, and this should be their driver when making important decisions.

The company secretary or the chair of the board may then be able to introduce the matter for formal discussion at a future meeting with the executive directors.

Should the CEO prove inaccessible, you may want to consider obtaining professional support and guidance from a trusted advisor, e.g., a colleague or your professional body. You may also wish to obtain independent legal advice. If you decide to discuss the situation with a trusted advisor, you should remember to safeguard the confidentiality of commercially sensitive information. Given the nature of the information involved, you should consider carefully with whom you discuss the matter, and the need to keep the facts general rather than provide specific detail.

In the absence of a solution emerging from the above approaches (and if you still feel that you are not receiving adequate and timely information), you may wish to consider other options, e.g., resigning. Resigning should be a last resort and it should be a carefully considered decision, i.e., not made in the heat of a disagreement, if you resign, you should provide a written statement to the chair regarding your concerns, which should then be circulated to the rest of the board. However, you should ask yourself whether it would be better for all the stakeholders involved for you to remain as a non-executive director and attempt to resolve the issue over time. You should also note that resigning does not absolve you of your legal duties and responsibilities during your tenure as a director.

You should weigh up the risks associated with each option. Your personal reputation may be damaged, should you remain on the board. However, your resignation might have an adverse effect on the company's reputation, which may cause disproportionate damage to the company. Despite this risk, you may consider it to be the only option due to an irreparable breakdown of trust impairing your ability to contribute effectively to the board.

During the resolution process, it is important to document the substance of the discussions held, who was involved, and what decisions were made and why. Where appropriate, such as when directors have concerns about the operation of the board, the discussions should be documented within board minutes or other minutes (preferably with the company secretary present). In any event, a personal account of events should be maintained.

About CCAB

The combined membership of the five CCAB bodies - ICAEW, ACCA, ICAS, CIPFA and Chartered Accountants Ireland - amounts to over 282,000 professional accountants in the UK and the Republic of Ireland (over 408,000 worldwide).

CCAB provides a forum for the bodies to work together collectively in the public interest on matters affecting the profession and the wider economy. CCAB's credibility stems from its insight into all areas of finance and accounting, from finance director and audit partner to management accountants, professional advisers, public sector finance leaders and entrepreneurs. CCAB's members work through the financial value chain in all sectors as key decision makers and business leaders within the UK and around the world.

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