CCAB

Ethical Dilemmas
Case Studies

Professional Accountants Working in the Not-for-profit Sector

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Contents

Introduction

The following case studies were developed by the UK and Ireland's Consultative Committee of Accountancy Bodies (CCAB). They illustrate how the codes of ethics of the CCAB bodies can be applied by professional accountants working in the not-for-profit sector. 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, evaluate and address ethical threats 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 professional accountant in the not-for-profit sector

All members (and registered students) of CCAB bodies have a responsibility to behave professionally and ethically at all times. In addition, a professional accountant in a role within an organisation in the not-for-profit sector will have a particularly important role to play in creating, promoting and maintaining an ethical culture within that organisation. You may be approached by others wishing to report unethical behaviour and, as a professional accountant within the organisation, you will have an important impact on its ethical tone. An accountant in the not-for-profit sector carries a great deal of responsibility, and may be subject to scrutiny by the staff, regulators, and members of the local community.

As a professional accountant in the not-for-profit sector, you may have a significant level of trust placed in you – for example, by the beneficiaries, donors and trustees.

A professional accountant working in the not-for-profit sector has a responsibility to further the legitimate aims of the organisation for which they work. The codes of ethics of the CCAB bodies do not seek to hinder the fulfilment of that responsibility, but address circumstances in which compliance with the fundamental principles may be compromised.

The professional accountant is required to act in the public interest, which requires objectivity to be exercised at all times. On occasions, it may be difficult to reconcile this requirement with the duty to act in the interests of the not-for-profit sector organisation.

Therefore, it is important to understand the conceptual framework approach (prescribed in the Code) to resolving ethical dilemmas.
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 addressed, 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 professional accountant working in the not-for-profit sector. 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 those parties should be approached. You should keep in mind confidentiality obligations.

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 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 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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We welcome comments on and enquiries concerning this work. To contact us, please email admin@ccab.org.uk.

Case Study 1 - Disclosure of malpractice – unauthorised payments

Outline of the case

You are a self-employed consultant, engaged by the senior management team ('SMT') of a charity to write an internal report concerning the operation of the charity's internal controls. The SMT manages the charity on behalf of the trustees and reports to the board. You are concerned that unauthorised payments have been made by former trustees using the charity credit card for their personal use. Therefore, in your report, you have suggested various policies and procedures that should be put in place to prevent this practice in the future and have recommended that the individuals in question should be investigated by the appropriate authority.

You have presented your report to the board, but you suspect that it will not act on your recommendations, as it would prefer to avoid negative publicity. You are unsure whether to take this matter forward yourself or leave it to the charity to address.

Questions

As a professional accountant in the not-for-profit sector:

(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: Having presented your report, can you overlook these unauthorised payments by the former trustees and still demonstrate integrity?

Confidentiality: To whom should you turn for advice? Do you have whistleblowing or other reporting responsibilities?

Professional behaviour: You must comply with relevant law and regulations. What are your responsibilities? How should you proceed so as not to discredit yourself or your profession?

Threats to compliance

There is an intimidation threat to your compliance with the fundamental principles, since you believe you may be deterred from following up the potential fraud.

(b) Considerations

Identify relevant facts:
The former individual trustees have potentially committed fraud. You have brought this to the attention of the board and provided your recommendations. The priority of the board is to protect the charity's reputation, and so it appears likely that the charity will amend its procedures but will not take action against the former trustees who have misused the charity's credit card.

Consider the published ethical policies of the charity, and also any applicable law and regulations. Quantify the extent of the fraud, and ensure you have sufficient evidence.

Identify affected parties:
Key affected parties are you, the SMT, the former trustees and the board. Other affected parties may be the current trustees, and the beneficiaries of the charity. It is highly likely that the relevant charity regulator would need to be informed in accordance with their serious incident or 'raise a concern' reporting requirements.

Who should be involved in the resolution:
You should involve the SMT and one or more of the current trustees. You might also involve the auditors (internal or external) to provide advice.

(c) Possible course of action

You are right to be concerned about the ethical implications of this situation. You have met your responsibilities to the charity in providing the board with an objective report. However, you have knowledge of a potentially illegal act, and you must consider your whistleblowing or other reporting responsibilities.

First, you must check the relevant facts. You know that the former trustees have misused the credit card in their possession but, if possible, you should quantify the extent of the potential fraud, and evaluate the evidence you have. The fact that the charity is concerned about negative publicity suggests that the extent of the fraud is not insignificant. You are required to have regard to the interests of the charity and its beneficiaries, as well as the wider public interest. You must also consider any regulatory reporting requirements from the relevant charity regulator. You should also consider the reputation of the charity were it not to take appropriate action. The potential negative publicity arising from inaction is likely to be worse than the discovery of the fraud.

If the SMT has already discussed your report, you should request a meeting with them, at which you should highlight and explain some of the report's contents. If you are still of the opinion that the illegal acts of the previous trustees will not be properly addressed, and you consider the extent of the fraud to be significant, you should discuss your responsibilities with one or more members of the board. If you cannot reach agreement, you should consider how you might best address the board of trustees.

There are specific obligations in the Code if you encounter actual or suspected "Non-Compliance with Laws and Regulations (NOCLAR)". Ultimately, you should determine whether it is either required by law or in the public interest to disclose the fraudulent activity to the charity regulator or other appropriate authority. Where the public interest is involved, you should bear in mind the need to balance the interests of the charity and its beneficiaries with the wider public interest. You should consider the perceptions of a reasonable and informed third party and the implications for your reputation and that of the profession if you choose to turn a blind eye. However, if you have a legal obligation to report, your judgement of the public interest becomes irrelevant.

You must consider your responsibilities according to civil and criminal law. You may seek assistance from a trusted advisor, e.g., a colleague or your professional body, and it may be necessary to obtain legal advice.

You should document, in detail, the steps that you take in resolving your dilemma, in case your ethical judgement is challenged in the future.

If the trustees are unwilling to take action, you should consider your own position and whether to terminate the assignment. The Code of Ethics states, "*in extreme situations, if the circumstances that created the threats cannot be eliminated and safeguards are not available or capable of being applied to reduce the threat to an acceptable level, it might be appropriate for a professional accountant to resign from the employing organisations.*" However, deciding to resign or terminate the assignment will not excuse you from any legal or regulatory obligations you have prior to that decision.

Case Study 2 - School governor – fair tender policy

Outline of the case

You are an accountant appointed as a [voluntary] governor to a school governing body. You also serve on the finance and buildings committee of the school, which is responsible for awarding building contracts. The membership of the committee includes a number of local business people. One is a builder – a long-standing governor who is well respected by the community and your colleagues on the board of governors ('the governors').

At your first meeting, the committee considers a report from the head teacher about the condition of the school hall. The report sets out a scheme of remedial building works, with estimated costs – circa €/£50,000. After discussion of the scheme and recognising the need to move quickly if the work is to be carried out during the summer vacation, the builder on the committee offers to do the work at a competitive price of €/£45,000. The other members of the committee are minded to accept the offer.

The finance and buildings committee reports to the governors. In this case, the governors are not considering the use of a formal tender process or making any reference to the existing governance arrangements in respect of tenders. This may also be in breach of public procurement requirements/legislation.

You are concerned that the committee (and consequently the governors) will be unable to demonstrate reasonable decision-making and stewardship of public money. Although it may be in the best interests of the school to accept the builder's offer, you are concerned that established procedures are not being followed, and that the decision made is somewhat subjective. The governors and the committee may be vulnerable to criticism.

Questions

As a professional accountant in the not-for-profit sector:

(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: Can you demonstrate integrity by highlighting the lack of due process, while not impeding the progress of the building works?

Objectivity: Is it possible for the governors to demonstrate objectivity in their decision to proceed without implementing a tender process? Can you remain objective in the face of pressure from the committee to accept the builder's offer?

Professional behaviour: The need for you to demonstrate professional behaviour in a voluntary appointment is just as important as it is in paid employment. You also need to ensure that you do not bring discredit to yourself, the school, or the profession.

Threats to compliance

There is a familiarity threat as the single tender bid is from a fellow governor who is a member of the finance and buildings committee on which you sit.

There is a potential intimidation threat to your compliance with the fundamental principles, since you may feel under pressure not to 'rock the boat' and to support the building work when the school is closed.

(b) Considerations

Identify relevant facts:
Consider the school's policies and procedures regarding tenders. Do the governors have a code of conduct? Study the head teacher's report to establish the urgency of the building work and determine the summer vacation period during which the work should be performed. Are there any donor or grant funding conditions to be considered with respect to the monies being used to fund the work and do government/public procurement rules apply?

Identify affected parties:

Key affected parties are you, the other members of the committee (including the builder) and the governors. Other possible affected parties are other local builders, who might wish to tender for such work, and the general public, as the work is to be financed by public funds.

Who should be involved in the resolution:

You should involve the chair of the finance and buildings committee and ultimately the chair of the board of governors. You might be able to gain support from other members of the committee, and the builder on the committee should also be involved.

(c) Possible course of action

You should make your concerns known and explain to the other members of the committee why you feel acceptance of the offer from the builder on the committee could be inappropriate in the absence of a formal tender process.

You should make it clear that you are acting in the best interests of both the school and the local community. If you have to raise your concerns forcefully, you should try to provide constructive advice, rather than be seen as impeding the building works. Try to demonstrate how the process of tendering for and performing the work may still be completed during the summer vacation. If this is not possible, explain that the benefits of delaying the work will include protecting the reputation of the school and the governors (collectively and individually), and ensuring compliance with relevant requirements. You need to ensure that the committee (and consequently the governors) reach a decision objectively, but also that a reasonable and informed third party would conclude that objectivity has been adequately safeguarded.

If, in your opinion, the building work is significant, you should try to insist that the award of the contract be subject to a proper tendering process. If relevant, refer to the school's policies and procedures or to any applicable external requirements outlining thresholds for running a tender process. You will encounter less resistance from the committee if you gain the support of other individual members, including, if possible, the builder and the committee chair.

You should explain that the committee needs to demonstrate a proper decision-making process that would support any contract awarded. This would protect the governors from the potential reputational risk that the school is not seen to award contracts properly or non-comply with relevant legislation/regulations. If your views are not heeded by the committee, you should raise the matter at the next meeting of the governors. Consider first referring the matter to the chair of the board of governors. It is also advisable to discuss the matter with other governors in advance of the meeting.

After taking these steps, if the prescribed tender process is not adopted, and it is inappropriate not to do so, you should consider disassociating yourself from the board of governors. The value of resigning as governor should be weighed against the value of remaining in order to influence events.

You should document, in detail, the steps that you take in resolving your dilemma, in case your ethical judgement is challenged in the future.

Case Study 3 - Disclosure of malpractice – grant claim

Outline of the case

You have recently been employed as a management accountant for a charity and have been asked to prepare a grant claim which totals c. €/£500,000/pa. As you are new to the company, this is the first year you have prepared the claim. However, the company has been claiming the grant for a number of years.

When reviewing the detailed cost information, you find that some inappropriate/disallowable expenditure was misclassified and included in the past, which increased the amount of grant awarded by more than €/£125,000 each year. This incorrect approach was consistently applied to previous claims, and the external auditor signed off the claims without raising any issues. Your predecessor had a close working relationship with the auditor.

Your manager, the head of finance, is also new to the organisation. He is a member of the same golf club as the long-serving external auditor, and you are concerned that they might have a close relationship which could prevent the issue being addressed objectively.

Questions

As a professional accountant in the not-for-profit sector:

(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: Can you overlook the inclusion of the inappropriate expenditure and still demonstrate integrity?

Objectivity: In view of the good relationship that the company has built up with the auditor, how can you retain objectivity and also persuade your manager to do the same?

Professional competence and due care: Do you have the competence to explain to the interested parties the errors made in the past and how to disclose them and account for them?

Professional behaviour: How do you appropriately address the matter, safeguard your professional reputation and not bring discredit to the profession?

Threats to compliance

There is a self-review threat that you might not appropriately challenge the work of colleagues in the previous grant claims.

The Head of Finance, also an accountant, may have a self-interest threat due to their relationship with the external auditor.

You could also consider that you, yourself have a self-interest threat because to resign from the organisation after such a short period of employment might expose you to both personal financial and career risk.

(b) Considerations

Identify relevant facts:
Consider the charity's policies, procedures and your professional body's code of ethics. Ensure you fully understand the grant application process and how to amend past errors. Do you need to perform further work to quantify the errors made in the past? Do you need to verify that the expenditure was misclassified?

Identify affected parties:
Key affected parties are you, your manager and the charity. Other possible affected parties are the auditor, your predecessor, the grant-awarding body and the beneficiaries of the charity.

Who should be involved in the resolution:

Consider not just whom you should involve but also why and when. You should involve your manager, the board, or the audit committee, if necessary, and possibly the external auditor.

(c) Possible course of action

You are right to be concerned about the ethical implications of this situation. A professional accountant must prepare information in a manner that represents the facts accurately in all material respects. Accordingly, you should not be associated with reports, returns or other information which you believe may contain materially false or misleading statements.

First, you should check the relevant facts. You should then discuss the situation with your manager, so that he is aware of the errors included in the previous claims. You and your manager may agree to raise the errors with the external auditor together, in order to reach a decision on how to address the previous grant claims. If your manager's response is not satisfactory, it may become necessary for you to involve the board or the audit committee yourself, as there is a responsibility upon charity trustees to notify the relevant charity regulator of 'serious incidents' or events that have a significant impact on the charity.

You might not have direct access to the external auditor. Therefore, if the board does not seek to disclose the errors to the grant-awarding body, you should consider your whistleblowing options. In the case of a charity, the public interest considerations may be complicated, and you should seek advice where necessary, for example from a trusted advisor, e.g., a colleague or your professional body. You may also wish to seek legal advice on the matter.

You should try to ensure that future grant claims are accurate and honest. If you believe that the charity is submitting inaccurate claims, you should take steps to disassociate yourself from them. In extreme circumstances this might require your resignation.

During the resolution process it would be helpful to document, in detail, any discussions held, and the reasons for the decisions reached in resolving your dilemma, in case your ethical judgement is challenged in the future.

Case Study 4 - Undisclosed employee benefits

Outline of the case

You have been working as finance director for a medium-sized charity for just under a year. A member of the finance team informs you that your predecessor incorrectly declared various pay elements and benefits of the charity's senior staff over a number of years, with the intention of underpaying income tax (PAYE) and social insurance.

The value of the undisclosed pay elements and benefits is high in relation to the size of the charity, which is not considered to be in a sound financial state. Your colleague has performed some broad calculations and advises you that the amount of tax relating to the undisclosed benefits would probably be large enough to push the charity very close to insolvency. Accurately calculating and declaring to the tax authority the undisclosed benefits might create a tax liability that could, without immediate mitigation, potentially force the charity to cease operating within 6-9months.

You fear the repercussions for you, your colleagues and other stakeholders, most notably the charity's beneficiaries. Nevertheless, you feel that you have a duty to declare the undisclosed benefits to the tax authority. You have spoken to the charity's trustees and made them aware that there is a large outstanding tax liability. However, they have denied you permission to declare the undisclosed benefits to the tax authority, or to account for the tax liability in the charity's financial accounts.

Questions

As a professional accountant in the not-for-profit sector:

(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: Can you comply with the wishes of the trustees, and still be deemed to be acting in a straightforward and honest manner?

Objectivity: Can you determine the appropriate course of action, despite the threats to your objectivity in the form of self-interest (regarding your future employment) and intimidation by the trustees?

Confidentiality: Without proper authority, you should not disclose to third parties any information acquired as a result of your employment, unless there is a legal or professional obligation to disclose. Therefore, you must consider any speaking-up, whistleblowing responsibilities or external reporting obligations you may have.

Professional behaviour: You are required to comply with relevant law and regulations. Could any of the actions you are considering discredit you or your profession?

Threats to compliance

There is a self-review threat that you might not appropriately challenge the work of colleagues in the tax returns and statement of accounts.

There is a self-interest threat because to resign would expose you to personal financial risk.

There is an intimidation threat. You are deterred from acting objectively because the trustees have denied you permission to report the matter to tax authorities.

(b) Considerations

Identify relevant facts:

The charity has a liability in respect of income tax (PAYE) and social insurance, which is thought to be material, and could threaten the ongoing existence of the organisation. You must determine the best estimate of the actual tax liability and establish the facts with regard to the responsibilities of the charity and the trustees when possibly facing insolvency. Should the trustees refuse to sanction the disclosure of the undeclared benefits to the tax authority, you should determine your whistleblowing options and any reporting requirements in light of relevant legislation. You must also be aware of your responsibilities should the trustees refuse to sign the financial accounts containing the estimated tax liability.

Identify affected parties:
Key affected parties are you, the charity, other senior staff, the tax authority, the trustees, and the beneficiaries of the charity. It also appears likely that other stakeholders, such as creditors, are affected by the threat to the charity's ability to continue as a going concern.

Who should be involved in the resolution:
Although you have already brought the matter to the attention of the trustees, you should continue to involve them and seek their cooperation. If you have any doubts concerning your competence to calculate the tax liability or claim mitigation to the tax authority, you should involve someone with the necessary experience. There may be other directors and senior staff with whom you can discuss your ethical dilemma and the technical issues involved.

(c) Possible course of action

You must quantify as accurately as possible the tax liability arising on the undisclosed benefits, so that you can advise the trustees of the implications. Even before accounting for the liability, there is a threat of insolvency, and so you should already be providing the trustees with regular and detailed financial information.

You should consider engaging tax specialists to carry out the investigation and calculations.

You have discussed the additional tax liability with the trustees, and so they are aware that there is an amount outstanding that could render the charity insolvent with 6-9 months. However, your responsibilities do not end there. As a professional accountant, you should be aware of relevant insolvency legislation, and advise the trustees accordingly (obtaining detailed advice on their behalf from an insolvency practitioner if necessary). You should make absolutely clear to the trustees the possible consequences of concealing the liability and continuing to trade, which may have legal implications for the charity and its trustees personally. You should also inform the trustees of the requirement to notify the relevant charity regulator of 'serious incidents' or events that have a significant impact on the charity.

You should explain to the trustees the code of ethics by which you are bound as a professional accountant. You cannot simply ignore the situation. You may wish to consider your own liability should the charity be deemed to be trading while insolvent. It would be advisable to make the trustees aware of your responsibilities and their obligations.

Having made the trustees fully aware of the issues, you might be able to suggest ways in which the tax liability may be mitigated (which is more likely through voluntary disclosure), and you might explain the possibility of the tax authority agreeing to the payment of the liability by way of instalments. You can also set out the necessary measures for a financial recovery plan to keep the charity afloat.

You cannot help the trustees to conceal the tax liability. If they cannot be persuaded to disclose it to the tax authority, you must not be associated with the deceit. With regard to the financial accounts, it may become necessary to resign in order to disassociate yourself from them.

In addition, you must consider any obligations you may have to disclose the liability to the tax authority, without the charity's permission, or to disclose to the appropriate authority the concealment of the liability in the financial accounts. You might wish to speak with a trusted advisor, e.g., a colleague or your professional body. You may also wish to seek legal advice on the matter. There are also organisations that can provide advice regarding your employment rights in such a situation.

You should document, in detail, the steps that you take in resolving your dilemma, and any discussions held. This may serve to protect you if the charity goes into liquidation, or your ethical judgement is challenged in the future.

Case Study 5 - Persuading others to tell the truth

Outline of the case

You are a trustee of a charity, which has total incoming resources of approximately €/£500,000 and total assets of approximately €/£200,000. You recently discovered that, almost a year ago, the respected, long-standing treasurer (also a trustee) of the charity 'borrowed' €/£40,000 from the charity's funds. At the time, the charity's bank accounts held €/£100,000, of which €/£30,000 belonged to the general fund and €/£70,000 to the restricted fund.

The treasurer had been experiencing personal financial difficulties arising from the partition of his business following an acrimonious divorce. He has explained to you that he borrowed the money because his company was up to its bank overdraft limit, and he had to pay the employees' wages. He had used one of the blank cheques signed by another trustee that the treasurer traditionally held to cover emergencies while the other trustees were on holiday. His intention had been for this only to be for a few days, as he was expecting a large trade debt to be settled imminently, relieving the pressure on the overdraft.

To compound his misfortune, the debtor then went into liquidation, and the treasurer could not pay back the 'loan' from the charity immediately. Nevertheless, he had hoped to trade his business out of financial difficulty. All this occurred a month before the charity's financial year end. The treasurer successfully delayed the audit for a few months while he tried to pay back the money to the charity. He has managed to pay back €/£15,000 since the year end. The charity's audit will begin next week.

The other two trustees had known about the treasurer's divorce and the financial pressures facing him and his business, and they are sympathetic towards him. The treasurer is trying to persuade you and the other two trustees that €/£40,000 can be included in the charity's trade debtors at the year end, as a debt due from his company, and he will return the remaining €/£25,000 as soon as he can.

Questions

As a professional accountant in the not-for-profit sector:

(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: The treasurer's conduct was dishonest, and he is proposing to conceal it within the charity's accounts. If you agree to assist him in his deception, you will not be acting in a straightforward and honest manner.

Professional competence and due care: You need to ensure that you understand the necessary disclosures in the accounts and any whistleblowing requirements in respect of the treasurer's dishonesty.

Professional behaviour: How should you proceed so as to comply with relevant law and regulations, and not discredit yourself or your profession?

Threats to compliance

There is a self-interest threat because the treasurer and trustees are colleagues.

There is an intimidation threat because you may feel under pressure to agree to the trustees' proposed solution.

(b) Considerations

Identify relevant facts:
The treasurer misappropriated a significant amount of money from an organisation whose interests you have been entrusted to protect. He appears to have been open with you and the other trustees recently, but you must now be sure of your obligations towards the charity, its auditors and users of the charity's accounts. You need to also consider, or seek advice on, any legal ramifications and whether use of the charity's funds in this manner constitutes a bread of any laws and regulations, e.g., charities regulations. You may wish to

review the internal controls and identify weaknesses and/or whether any controls were inappropriately overridden. It would be beneficial to also consider how the system of internal controls can be improved to precent a reoccurrence of an issue such as this.

Identify affected parties:
Key affected parties are you, your fellow trustees, the treasurer and the auditors. Also affected are the charity, the relevant charity regulator, its beneficiaries, donors, and users of the charity's accounts.

Who should be involved in the resolution:
You should consider to what extent the treasurer and the other trustees should be involved. However, the auditors will certainly need to be advised of the situation. You should check with the charity regulator's reporting requirements for fraud and serious incidents/raising a concern.

(c) Possible course of action

You should discuss the matter with the other trustees to ensure that they do not seek to cover up the treasurer's fraudulent behaviour. You should advise them that the accounts should reflect what actually occurred, and it should be explained to the auditors. You should consider the damage to the reputations of the trustees individually and the charity were the fraudulent behaviour to be covered up.

You should also explain to the other trustees the code of ethics by which you are bound as a professional accountant. You cannot simply ignore the actions of the treasurer and the implications for the charity.

You need to consider whether the treasurer should be immediately removed (or asked to immediately resign) as a trustee.

Not only were the treasurer's actions dishonest, but there is no guarantee that the remaining €/£25,000 debt to the charity will be repaid. As a professional accountant, and also specifically as a trustee, you must be aware of your whistleblowing responsibilities in addition to any external reporting requirements under the law, as well as your responsibilities to safeguard the charity's assets. There is a responsibility upon charity trustees to notify the relevant charity regulator of 'serious incidents' or events that have a significant impact on the charity. Fraud has taken place and failure to report might be construed as negligence, and the trustees might be opening themselves up to a personal liability. There are also likely to be other blank signed cheques in existence, and this undermines the charity's internal control system. You have a duty to cooperate with the auditors, and the auditors may have a statutory duty to report the fraud and whether or not the trustees have reported it. However, your own interest in the fact that the auditors may report you should not be relevant to your ethical decision.

You might wish to discuss aspects of the dilemma (bearing in mind the requirement for confidentiality) 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. You should document, in detail, the steps that you take in resolving your dilemma, and any discussions held. This may serve to protect you if your ethical judgement is challenged in the future.

Case Study 6 - Performance information

Outline of the case

You are the head of finance for a social enterprise providing services under contract to a range of social and health service providers. You have overall responsibility for the preparation of non-financial performance information (key performance indicators) that supports the financial values in those contracts. The newly appointed finance director is putting considerable pressure on you concerning the collation and reporting of this year's performance information for presentation to the health service providers and the social enterprise board. The director has made it clear that he expects the reported performance information to trigger contractual reward payments of at least €/£100,000 from a large public health service provider contract this year.

Some favourable performance information has not been adequately verified, but the director is willing for it to be reported, because it will help reach the threshold to trigger the €/£100,000 reward payment. You are aware that some operational delivery teams have had difficulties meeting contract targets during the last year, due to funding constraints and staff shortages. From your scrutiny of the information systems, you are concerned that the relevant information may be incorrect, and that the correct performance information would draw attention to some severe performance shortfalls which would trigger contract penalties.

You are aware of some instances where teams have been double counting activity in order to increase the income to meet budget. This was highlighted in a recent internal audit report, which will shortly be submitted to the audit committee. The director is putting considerable pressure on you to conceal this issue, in the short term, while he reviews the position and puts in place a plan for remedial action.

Questions

As a professional accountant in the not-for-profit sector:

(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 must use your best endeavours to ensure that the performance information finally reported gives a straightforward and honest picture of the performance of the social enterprise. You should not knowingly be associated with information that contains false and misleading statements.

Objectivity: How can you maintain your professional objectivity in the face of undue pressure from the finance director? If the social enterprise's performance rating affects your own position, how can you avoid self-interest influencing your ethical judgement?

Professional competence and due care: You are required to perform your work diligently, thoroughly and on a timely basis. This will require balancing the need to verify much of the performance information with the need to report within a reasonable time.

Threats to compliance

There is an intimidation threat to your compliance with the fundamental principles, since you are being deterred from acting objectively because of pressure resulting from undue influence over you by the finance director.

There is also a self-review threat in that you might not appropriately evaluate the performance reported by some departments.

There is a self-interest threat from your employer receiving a €/£100,000 reward payment.

(b) Considerations

Identify relevant facts:

You suspect that some of the performance information you have is incorrect or misleading. You are also aware of inaccuracies in the information provided by certain departments, but you have been asked to conceal these in the short term. You must obtain adequate information concerning the extent of any inaccuracies and obtain appropriate verification.

Consider the relevant policies, procedures and guidelines of the social enterprise, together with your professional body's code of ethics, applicable law and regulations and any applicable technical standards.

Identify affected parties:
Parties affected include you, the finance director, the social enterprise board of directors, the audit committee, the client/customer, and any other users of the information you are compiling. The managers of the operational delivery teams that have provided inaccurate information may also be affected.

Who should be involved in the resolution:
In the first instance, you should involve the finance director. Also available are the audit committee, and the social enterprise board (NEDs and Executives).

(c) Possible course of action

It is important that you try to maintain a good working relationship with the director of finance and information. However, you should deliver a rational, firm and honest statement of the situation in your discussions with him.

You are likely to feel pressure to follow the director's wishes, but you should not allow intimidation to sway your professional judgement. Nor should you be influenced by any self-interest arising from the organisation receiving the €/£100,000 reward monies.

You should suggest to the director ways in which the performance information may be best presented. This should be done objectively and accurately, while highlighting positive data based on both historical events and projections and the risk of financial penalties if the true performance is misrepresented. If the director continues to urge you to present the information dishonestly or with an unreasonable bias, you should bring to his attention the relevant policies, procedures and guidelines. As a professional accountant, the finance director themselves should not place pressure on you that they know would result in you breaching the fundamental principles of the international code of ethics for professional accountants.

By acknowledging that issues exist in the collation and processing of information, and suggesting an action plan, you may successfully demonstrate to the director that efficiency improvements can be made to the information systems. Your proposed action plan might also indicate how the reputation of the social enterprise and its relationship with the client/customer may be maintained.

It is possible that your proposals will not be sufficient to prevent the public sector client taking contractual action, in terms of penalties or even termination. The director may not accept your proposals and may insist that you are presenting unverified information. In the event of such an impasse, you may wish to bring the matter to the attention of the chair of the audit committee or social enterprise board of directors. If possible, this should be done with the co-operation of the director. At any time, you may wish to seek advice from a trusted advisor, e.g., a colleague, somebody responsible for ethics within the social enterprise or your professional body. In some situations, you may wish to seek legal advice on the matter. If unverified, potentially inaccurate, information is reported against your will, you should consider how best to disassociate yourself from it. At all times, bear in mind the need for appropriate confidentiality, especially if raising the matter outside the organisation.

Having taken suitable advice, it may be appropriate to file a report with the social enterprise board of directors, or to report directly to the audit committee. In extreme circumstances, it might be necessary for you to report your concerns to the relevant regulator.

You should document, in detail, the steps that you take in resolving your dilemma, in case your ethical judgement is challenged in the future.

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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