

Guidance note

Association Codes of Ethics: Part One Important questions before preparing a code

For professional standards schemes
under professional standards legislation

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1.0	Professional Standards Councils	17 June 2022	1 November 2022	This is a new guidance

1. What is the purpose of this guidance note?

The guidance is designed to provide an easily accessible, phase-based learning tool to assist associations (scheme applicants or those seeking to re-make or amend a scheme) in how to build or review a code of ethics oriented towards improving professional practitioner standards and consumer protection. Adherence to a code of ethics is a vital element in setting professional standards. This guidance is aimed at helping associations to establish and continuously improve their codes of ethics.

This is Part One of the Association Codes Guidance of the Professional Standards Councils. This Part focusses on important questions to consider before embarking on building a code of ethics.

Other parts of this guidance are located on the Councils' website under 'Research Library of Modern Professionalism' as follows:

- **Part Two:** developing a code (if a code of ethics oriented towards improving professional practitioner standards and consumer protection is not already in place)
- **Part Three:** implementing a code (if the substance of an existing code is appropriate, but the systems supporting it need improving), and
- **Part Four:** revising a code (if an existing code needs improving).

Table of Contents

1. What is the purpose of this guidance note?.....	3
2. Important questions an association needs to firstly consider	4
3. Understanding codes of ethics	4
4. Other code types: need for caution.....	10
5. Does your code's existing content offer effective protection to consumers?	13
6. Next steps.....	13

2. Important questions an association needs to firstly consider

2.1 Why should an association have a code of ethics oriented towards improving professional practitioner standards and consumer protection?

1. A code of ethics is a critical part of association risk management.
2. A code or external sources of codified ethics are necessary to qualify for a professional standards scheme.

2.2 Why do all associations need a code?

Each occupation should aim to meet the needs of its consumers in a way that leaves them respected, safe and satisfied. However, each occupation carries potential risks for consumers, including through substandard services, over-servicing, breaching confidentiality, fraud, or exploitation.

Good codes can significantly reduce the risks of unsatisfactory consumer outcomes, and the undesirable consequences for that particular industry or profession.

This guidance outlines a process to assist associations to develop or renew codes of ethics (and to implement any externally codified ethics) by:

- providing a set of steps for developing and revising codes, noting risks and opportunities at each stage, and
- outlining key content for possible inclusion in a code, and offering ideas for improving the accompanying education, communication, implementation, governance, and review systems.

It will take time to work through the development process - six months to two years is common, depending on circumstances.

3. Understanding codes of ethics

This section contains information that explains the main features of a code of ethics.

3.1 A survey to find where you are at the moment

This survey will help associations to reflect on the existing state of an occupation, and how a code of ethics might improve professional practitioner standards and consumer outcomes.

Task

Discuss the following questions with colleagues and keep notes. The notes will be helpful later in the process.

In the shaded areas below each question are other questions to help guide the discussion. Use them to clarify, prompt or refocus discussion if needed.

- **What do good professional practitioner standards and consumer outcomes look like in your occupation?**
 - What are the valuable goods or services provided by your occupation to consumers?
 - What does a fully satisfied consumer look like?
 - Why is society better off overall through the existence of your occupation?
- **What are the risks to consumers when they buy services from your occupation?**
 - What do poor outcomes for consumers look like? These are the types of cases where there are dissatisfied consumers, complaints, scandals, or lawsuits.

- What are the causes of those poor outcomes?
- Be as comprehensive as possible. Bad outcomes can come from poor skills, insufficient training or supervision, unreasonable expectations, risky decision-making, communication failures, misleading advertising and corner-cutting, as well as dishonesty or exploitation.
- Can you cite any cases where members' incentives (such as for greater remuneration or easier workload) might encourage them to risk bad consumer outcomes? These are cases where there is a 'conflict of interest'—where the service-provider's interests differ from the consumer's.

- **What would a code of ethics look like for your occupation?**

- Codes of ethics are public documents that lay down key values, principles and standards, which encourage, require or prohibit certain practices.

- What types of actions would a code for your occupation aim to ban?
- What types of best practices would it encourage?
- How might it communicate these requirements to your members?
- How could it educate consumers on the protections it offers them?

- **How does your existing code compare to a code oriented towards improving professional practitioner standards and consumer protection?**

- If your occupation already has an existing code of ethics, or implements external sources of codified ethics, there's a good chance that it wasn't designed to protect consumers.
- Many statutory codes of ethics aim to provide legal protection for occupations and industries by laying down standards to avoid legal liability. This is a legitimate purpose, but it doesn't always prioritise consumer outcomes. Reflect on your existing code and the extent to which it offers genuine improvements to professional practitioner standards and protections to consumers.
- Reflect on how you would provide association feedback to improve the external sources of codified ethics or improve/supplement implementation of the external source of codified ethics for your members and consumers.

Consumer protection provisions may be ignored or be too vague to provide real guidance.

Consumers may be unaware of the protections the code grants them or have little recourse when the code is breached.

Consider whether your code of ethics has provisions that are routinely ignored, and whether this might be a failure of communication, education, or accountability.

Monitor breaches of codes through complaint handling processes. This should assist in identifying the need for further education.

3.2 Recognising the professional practitioner and consumer protection issues in your occupation

Associations need a good insight into the consumer protection issues in their occupation to inform a robust code of ethics.

Here are some ideas about how to be sure your association has a broad enough analysis of these issues so its code can manage them.

Make a list of the issues consumers are concerned about.

- *Vulnerabilities:* Consumer protection is critical in areas where consumers are at their

most vulnerable.

Do these vulnerabilities apply to your occupation?

- Do members cater for people's fundamental or urgent needs, where some consumers will probably have to rely on their services?
- Can consumers suffer serious harm from exploitation or substandard services?
- Can consumers find it difficult to know if they have received quality service – for example, as a result of an educational imbalance or information asymmetry between the professional and the consumer?
- Does the service require consumers to reveal sensitive information?
- *Media reporting*: Revelations often point to major areas of risk for consumers.
- *Official proceedings*: Consider all the available information on legal investigations, findings, and outcomes, including court trials, mediation proceedings and civil settlements, as well as government reviews, commissions and reports.
- *Consumer advocates*: Consumer advocates and public interest organisations may provide valuable information on common problem areas.
- *Members' experiences*: Association members will often have considerable information on consumer concerns. They may have received complaints, or they may be aware of the presence of low-standard competitors. Complaints hotlines can help to identify complaints that did not lead to satisfactory redress under an existing code.

Tips

Maybe consumers aren't realistic

While it is worth including all consumer issues, this does not necessarily mean 'The customer is always right'. Sometimes consumer expectations are unrealistic, so an organisation needs to find ways to clarify those expectations.

Be realistic

A common response to consumer complaints and media reports is denial. Not all consumer issues, nor all media stories, are over-blown, isolated, or caused by a few bad apples.

3.3 What is a code of ethics?

Ethics are about how we should live and act. A code of ethics helps answers questions like:

What is the right thing to do? (for example, principles like 'tell the truth').

What sort of person should I be? (for example, virtues like patience and kindness).

What should I be aiming for? (for example, improving other people's wellbeing).

Codes of ethics are official, public documents that declare a group's values, principles, and standards.

Values are morally desirable qualities, for example, honesty, integrity, wellbeing, respect, security, freedom. (*For a helpful list of values, see: ethics.org/resources/free-toolkit/definition-values/*)

Principles are broad guidelines that show how people and organisations turn values into ways of working. For example, *some professionals must respect their consumers' right to make lifestyle/wellbeing decisions based on informed choices.*

Standards apply principles to situations to deliver clear practical directives. For example, *before they provide legal services, legal practitioners must have the client's*

free and informed consent.

Codes of ethics can include, or be accompanied by, documents that specify how the standards should be interpreted and applied.

One way this can be done is through rules.

Rules are precise requirements, which may have a limited life due to new services or products being introduced into the market.

Rules may require that members perform a specific action or prohibit them from performing an action.

Because they are explicit and specific, rules are more easily scrutinised and monitored. For example, *except in time-sensitive situations, a financial adviser should always ensure that a consumer has read and understood the Statement of Advice before the adviser takes any action on the consumers' behalf.*

Figure 1 below illustrates how general principles give rise to precise obligations:

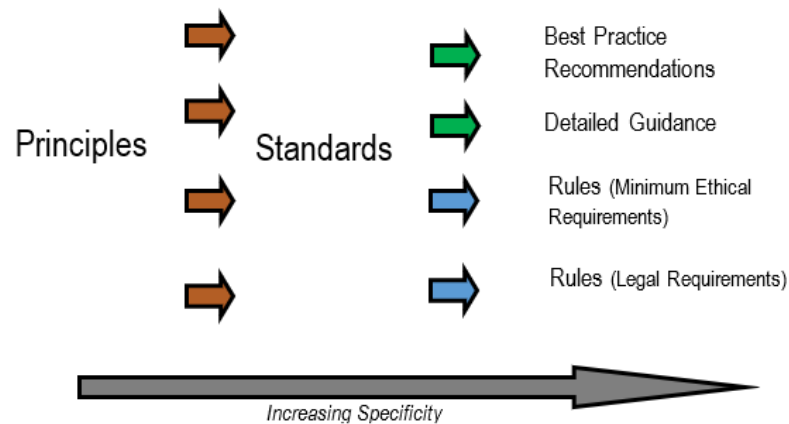


Figure 1: [How general principles give rise to precise obligations](#)

Once you have the principles and the standards, you can derive specific obligations from them. If these more specific obligations:

- cover minimum requirements, they are *rules*
- show how high standards apply to specific situations, then they are 'Detailed Guidance', or
- show exemplary ethical conduct, then they are 'Best practice recommendations'.

It is important to bear in mind the enforcement issues associated with these various categories; for example, you can applaud best practice but can easily enforce a rule.

Code supporting systems: These are the associated systems that support the code of ethics itself, including the systems of education, communication, governance, and review that accompany it.

Even if the code of ethics has excellent content, it won't work without strong and integrated supporting systems. The education, implementation and review stages below describe these systems.

It is important to understand that a code of ethics can also be called a 'code of practice' or another similar title. What is important is the content of the document. These types of codes operate at the level of minimum standards or rules. They are not based on high standards and

broad ethical principles. They are often backed up with disciplinary systems that monitor compliance.

Such codes may be an independent statutory requirement or may be imposed by individual employers, for example.

3.4 What is a code of ethics oriented towards improving professional practitioner standards and consumer protection?

This is a code of ethics that clearly states the values, principles, and standards of an occupation related to the way it offers goods and services to the public. The code also works to lessen any associated risks to professional services and consumers.

This code of ethics has three key qualities:

1. It lays down standards that respond to *all* professional practice standards and consumer protection issues arising in the occupation (see: Recognising professional practitioner and consumer protection issues in your occupation)
2. Its content includes the major professional standards that protect consumers (refer to 4.2 Part Two, Code content: values, principles and standards)
3. It has aspirational moral principles and high standards to guide ethical decision-making, rather than minimum standard rules.

3.5 What does a code of ethics do?

Within an occupation, a code can:

- *provide ethical guidance*
 - The code guides association members' decision-making by clarifying the association's and public's expectations, raising members' awareness and assisting in communicating best practice solutions to members' real and relevant ethical problems.
- *inspire and motivate ethical action*
 - A code can provide association members with stronger reasons to work ethically.
 - It can help individual members resist pressure to act in an unethical manner (for example, pressure from their employer).

Outside an occupation, a code can help to:

- *Distinguish high-standards members*
 - Membership in an association with a code oriented towards improving professional standards and consumer protection can be used for branding purposes, which gives members a market advantage.
- *Improve the reputation of an occupation*
 - High standards bring increased trust for an occupation, which improves the reputation of members.
- *Increase self-regulation*
 - Effective enforcement of a code can make intrusive government regulation less necessary.

You can see how parts of a code of ethics assist these functions, at: ethics.iit.edu/ecodes/codefunctions.

3.6 Understanding ethical decision-making

There are six generally accepted stages a person goes through to get to a morally justifiable outcome.

In the case of an association member, these are:

1. *Scans*: The member recognises that the situation poses an ethical choice.
2. *Gathers information*: The member gathers relevant information.
3. *Considers alternatives*: The member develops a list of alternative courses of action and considers their probable consequences.
4. *Deliberates*: The member reasons their way to a principled course of action.
5. *Implements*: The member acts in a principled way.
6. *Debrief*: The member reflects on the outcome and any lessons learnt.

Figure 2 below shows how the code can be helpful at each stage of the process.

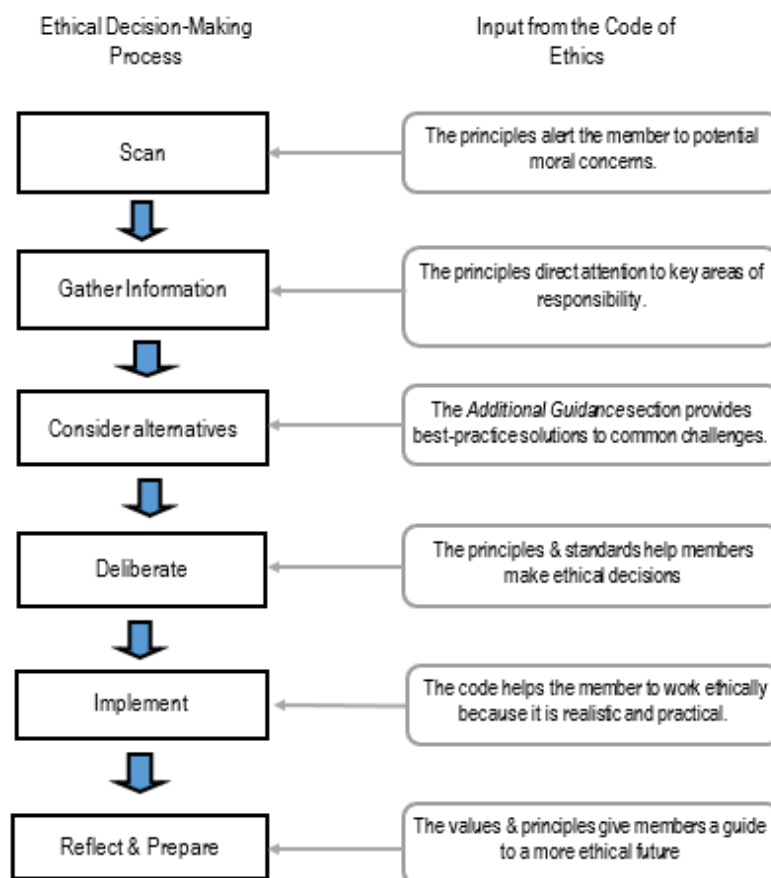


Figure 2: The way the code supports ethical decision-making

3.7 Acceptance by the occupation: how a code can result in higher standards

If your members are ethically motivated, then they should already be treating their consumers well and should be delivering higher standards. If members are not already committed to acting ethically, then how can a code change their behaviour?

The answer is by accepting that the code declares who they are and what they aspire to be.

While no code can guarantee compliance, the more that members accept the code as realistic about the ethical challenges of their work, the more they are likely to endorse its principles and obey its rules.

The code can encourage 'buy in' if it is a useful and realistic source of moral guidance at work. Unrealistic codes give members an easy excuse to ignore or reject them.

Here are five everyday moral reasons a person might say they did something:

1. *It's the right thing to do.*
2. *I agreed to do it.*
3. *We talked it through and collectively decided to do it this way.*
4. *It effectively achieves good outcomes.*
5. *It's the way we do things around here.*

Codes can harness each of these five reasons for your members to act ethically.

1. Ethical content - 'It's right'

'Ethical content' refers to the substance of the code's principles and standards.

If the code provides common-sense ethical answers, or if the solutions it offers are obviously in the best interests of society, your members are more likely to accept the code and act in ways that it suggests.

2. Contractual fairness - 'I agreed'

Members may obey the code out of a sense of obligation.

The duties the code imposes may be accepted as a fair exchange for the status and trust that society places upon them, and the ways that it supports them. Or the member may have taken an oath to uphold the code.

3. Procedural fairness - 'We decided'

If all your members had a chance to contribute to the contents of the code, one way or another, and then voted on the final version, they are likely to accept it. The process validated the code.

4. Workability - 'It works'

A workable code is understandable, stable, and effective. Its principles can be followed and relied upon, without requiring unrealistic knowledge, time, or resources.

5. Ownership - 'It's ours'

When a code builds upon a group's identity and traditions, it will be more acceptable to them and adopted more readily than if it feels inconsistent with their occupation's traditions.

3.8 A code won't fix everything

It is important to have realistic expectations about what a code can achieve. The mere adoption of a code will not instantly improve ethical standards.

4. Other code types: need for caution

Some institutions, cultures and organisations provide immense temptations, pressures, and opportunities for people to do the wrong thing. Society needs many tools to ensure satisfactory standards of behaviour. Generally, a code of ethics, with supporting systems specific to an occupation, is only one of them.

Different types of official documents can be called 'codes of ethics'. If your occupation has an existing code, it is important to find out if it is:

1. A code of ethics oriented towards improving professional practitioner standards and consumer protection.
2. A code of ethics designed to protect an organisation.
3. A code of ethics designed to protect an occupation.
4. A code of conduct or practice (or legislated ethical rules).

- *Code of ethics*

As discussed above, a code of ethics has three key qualities:

- ✓ It lays down principles and standards that respond to all professional practice standards and consumer protection issues arising in the occupation.
- ✓ Its content includes the major professional standards that protect consumers (refer to 4.2 Part Two, Code content: values, principles, and standards).
- ✓ It has aspirational ethical principles and high standards to guide ethical decision-making, rather than minimum standard rules.

- *Oath, declaration, or mission statement*

These brief declarations set down an organisation's or occupation's social purpose, the goods that it aims to achieve, and the values to which it aspires.

These are useful resources when developing a code of ethics, but because they do not include principles and standards, they cannot give clear ethical guidance to association members nor reliable protections to consumers.

- *Organisation-protecting codes of ethics*

This kind of code is designed protect an organisation from legal, financial, and other sources of risks. It would typically have been written by lawyers, and it would list the obligations of members or employees.

There is a legitimate place for organisation-protecting codes of ethics, but because their priority is to protect the organisation, they rarely offer genuine improvements for professional practitioner standards and protections for consumers.

- *Occupation-protecting codes of ethics*

Many occupations have codes of ethics - sometimes laid down by statute - whose core purpose is to provide legal protection for the occupation and its members rather than being primarily focused on protecting consumers.

These codes provide important legal clarity to members by describing what they have to do to avoid legal sanction or civil liability, but are limited in the following areas:

- *The form it takes*

- An occupation-protecting code is typically a disciplinary code of conduct laying down technical rules that provide a minimum baseline of required conduct.
Its provisions can be narrowly interpreted, and members sometimes exploit its loopholes.

- *The content it includes*

- An occupation-protecting code may provide weak protections for consumers, which less ethical operators find they can work around.

- The code may not address key areas of professional standards and consumer protection, such as over-servicing, conflicts of interest or whistleblowing.
- The code might not lay down professional practitioner and consumer protection standards that are easy to monitor.

For example, rather than prohibiting conflicts of interest, the code might only require that services are provided in the customer's 'best interests' (a more subjective standard which can be harder to police).

- *The governance systems it uses*

- The code may have weak and inaccessible systems of consumer complaint, feedback, and review. When customers complain, the code can 'shield' the member because, contrary to external expectations, the service-provider did nothing defined as wrong.
- The code's education practices centre on members complying with minimum standards, rather than guiding best practice. Its communications processes do not ensure that members of the public understand their rights.
- The code's governance processes only punish breaches, rather than helping members resist wider institutional pressures (such as skewed remuneration) which might be driving their members to act unethically.

The new code of ethics should encourage higher moral standards, not just meeting minimum standards.

- *A code of conduct or practice and/or legislated ethical rules*

Sometimes, occupational associations will have an existing regulatory code of conduct or practice. This may be an occupation or organisation-protecting code. However, sometimes an existing code does not fall into either of these categories. For example, the code may be legislated for the purpose of consumer protection, but only through minimum standards rules and legal requirements.

In this case, it is recommended that associations develop a code of ethics that is clearly oriented towards improving professional practitioner standards and consumer protection - extending beyond minimum legal standards. Despite this, an existing code will be an important document when drafting a new code (refer to 6.1 Part Two, Working with pre-existing legislated obligations and codes).

- *One coherent document*

Association member's ethical duties may appear in different pieces of legislation, without ever being explicitly drawn together in one coherent document (for example, in some parts of the legal profession).

In this case, it is important to develop a way of communicating, educating and presenting ethical duties coherently, including considering the potential for a new association code, because:

- The legislated duties usually will be minimum requirements, rather than inspiring ethical principles and guiding high standards.
- The duties might be read legalistically, with loopholes members can exploit.
- Legislation is slow, and its detailed rules can struggle to respond to new challenges that come with changes in society.

Commitment to codes of ethics

Some organisations are not committed to adhering to codes of ethics. Documents may be produced for public relations purposes, serving as smokescreens for exploitative, immoral, or

illegal practices. Such documents often invoke glowing ethical standards, but they are not based in reality and outline no way of enforcing the ethical principles they embody.

Enron's glossy 64-page 'Code of Ethics', released only a couple of years before its collapse, is perhaps the most infamous example of this.

Occupations, and occupational associations, should be aware that consumers are suspicious of a code of ethics if it isn't supported by rigorous education and governance systems.

5. Does your code's existing content offer effective protection to consumers?

If an association has a code of ethics, it is important to know if it needs to be revised.

It may be necessary to revise a current code if:

- It was copied from another code, without it being adapted to the local context.
- It is more than five years old.
- It is not widely used.
- It doesn't have a feedback or review process.
- It doesn't adequately state professional practitioner standards and consumer protections.
- It doesn't respond to all consumer protection issues in an occupation because it is missing several key ethical principles and standards.
 - To see more detailed information on what the typical content of a consumer protection code of ethics looks like, refer to 4.2 [Part Two, Code content: values, principles and standards](#). If an existing code doesn't contain most of these principles and standards, then we recommended revising the code.

6. Next steps

Having looked at and considered the issues outlined above, the following Parts of this guidance will assist on your journey (located on the Councils' website under 'Research Library of Modern Professionalism'):

- Part Two: developing a code (if you don't already have a code of ethics oriented towards improving professional practitioner standards and consumer protection).
- Part Three: implementing a code (if the substance of your existing code is appropriate, but the systems supporting it need improving); and
- Part Four: revising a code (if your existing code needs improving).