

Guidance note

Association Codes of Ethics: Part two Developing 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 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 Two of the Association Codes Guidance of the Professional Standards Councils. This Part focusses on developing a code if an association does not already have a code.

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

- Part One: important questions to consider before developing a code of ethics oriented towards improving professional practitioner standards and consumer protection
- 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).

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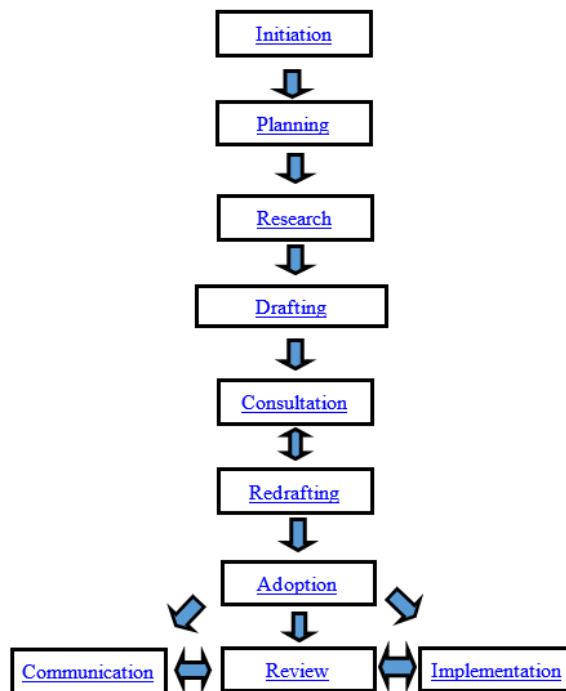
2. Code development – key initial stages

To develop an effective, accessible, and credible code, it is important to:

- plan carefully
- research constantly
- consult widely
- redraft often.

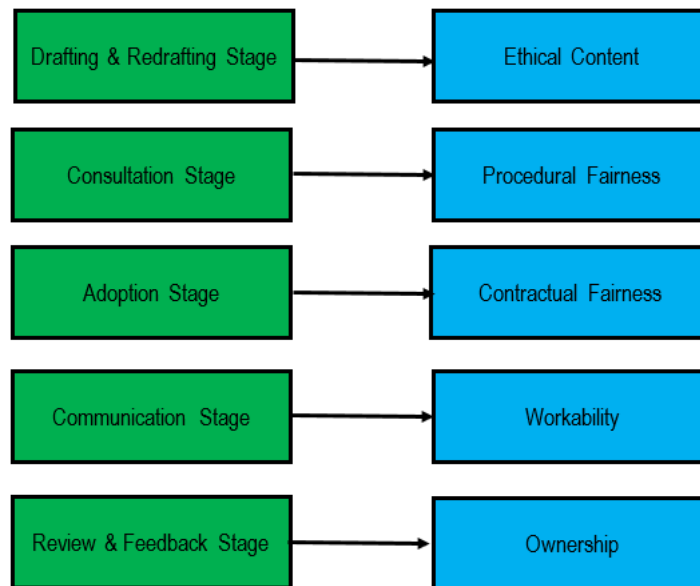
As associations work through the process, there are opportunities for harnessing, or reducing, members' acceptance of the new code at each stage.

Developing a code of ethics and the systems to support it is a major undertaking, as illustrated by the following stages of code development and implementation:



Acceptance and development of a code

Here you can see how the five sources which lead to the acceptance of an ethical code are linked to each stage.



2.1 Beginning and planning

Initially, associations should:

1. Decide formally, as an association, that you will develop a new code; and
2. Select a drafting committee.

Recommended practices

- ✓ **State the primary reasons** for having a new code in the formal decision. An explicit purpose helps guide the work. It could go in the code's preamble (see <http://ethics.iit.edu/ecodes/authoring-code>).
- ✓ **Have volunteer members as well as full time staff on the drafting committee.** The process should be member-driven.
- ✓ Make sure the committee is **representative of the full range of members**, not just the full-time staff of the association. The volunteer members are critical to the decisions of the committee being accepted by the association as a whole.
- ✓ Find ways to **make it easy for all members** to contribute to key decisions, not just those with strong networks in the association or time on their hands.
- ✓ Make sure the committee has relatively easy access to **a lawyer who understands the standards and regulations** that are appropriate to your occupation. An ethicist can also be useful. These experts can be on the committee or be a Consultative Advisory Group.
- ✓ **Build stability** in the committee right from the beginning. It really helps you achieve your long-term reforms.
- ✓ Members must be **fully informed** about the timetable for change to ensure they understand and are involved in the process. This will help build acceptance of the process and help to avoid unrealistic expectations. Other stakeholders should also be kept informed.

2.2 Planning stage

At the planning stage, the drafting committee decides how it will work.

Key decisions include:

- Responsibility for the drafting, the research, and consultation and submission processes, and
- The timetable for all actions.

At least one committee member should be familiar with the full guidance process for this pathway to be sure the planning is comprehensive and the timetable is realistic.

Recommended practices

- ✓ Members and other stakeholders should be fully informed about the timetable to ensure their engagement, and to avoid unrealistic expectations.
- ✓ Strategic decision-making should ensure the inclusion of all stakeholders during the process, acknowledging that some groups may have specific obstacles to contributing (for example, time poor members, early-career members, those with lesser seniority or few networks within the occupation).
- ✓ Every drafting process is different, but it is common for it to take several months to create an initial draft, and up to a year before a final product is delivered. Some processes (such as for international codes) may take longer.

In developing the timetable for the process, there is a trade-off to be managed:

- A *shorter process* maintains energy and focus and avoids the problems that can come from revolving membership in the drafting committee and changing priorities from the governing organisation. It also delivers a code more quickly.
- A *longer process* can allow for greater input and inclusion, and more time for deliberation, drafting and redrafting; usually this more thorough process will result in a more credible and effective code.

If it takes too long, it risks stalling or members being tired of it.

- ✓ The drafting committee should prepare for areas where they might encounter 'pushback'—such as if the code's principles will disrupt existing business models, for example by changing rules on conflicts of interest.

Tips

Avoid excessively brief processes, as errors are more likely, and members can feel 'railroaded'. However, if a new code is needed quickly, a streamlined process can be used with greater emphasis on the review stage.

Education and implementation activities will need to be ready to roll out as soon as the code is adopted. Be familiar with the requirements of these stages early in the process and throughout the design of the code.

2.3 Research stage

Before developing a draft, the drafting committee needs to learn about the existing ethical values, problems, and solutions within the occupation.

Recommended practices

- ✓ The drafting committee should gather information from a wide variety of sources.

Useful sources include:

- Members, through interviews, workshops, seminars and conferences about ethical decision-making and challenges.
- Academic literature on ethics in the occupation.
- Media - including analyses of past scandals, ethical failures, and reform efforts.
- Codes from similar occupations, or the same occupation in other jurisdictions (see <http://ethicscodescollection.org/>).
- Codes of conduct used by employing organisations in the public or private sector.
- Relevant law and regulatory rules, court decisions, and any government reports or commission findings.

Typical research questions to consider include the following:

- ✓ Who are our stakeholders? Who benefits from our activities, and who can be adversely affected by them?
- ✓ Where do existing problems lie, in terms of unethical actions or outcomes that need to be prevented?
- ✓ How have association members, or those in similar occupations, previously navigated these problems?
- ✓ What values already exist in the occupation?
- ✓ Are there inconsistencies in existing principles or rules? Are the existing principles too ambiguous or idealistic to be practical guides to action?

In answering these questions, also look at the outcomes of the Self-assessment survey (refer to 3.1 Part One).

Tips:

Focus on the positives as well as the negatives.

In the early stages of developing the code, it will be natural to focus on what is going wrong - scandals in the media, prosecutions in the courts and so on, because these provide obvious critical information on the ethical challenges the code must manage.

However, cases where things have gone right will often point to best practice and the solutions to those challenges. Where innovative solutions, workable compromises and existing values have secured good results, why not build them into the code for all to use?

Consult widely when writing a first draft and when you are refining the draft and the ones that follow.

2.4 Drafting stage

During the drafting stage:

The committee makes decisions about what sections the code will have, such as whether there will be different or additional codes for occupational subgroups (for example, in law: separate codes for attorneys, or for lawyers working for government). These decisions will be only provisional and may change with feedback from members.

The committee creates a working draft of the code, including versions of all major sections, and all its values and principles. Detailed sections, such as on *Additional Guidance* and worked examples, aren't necessary yet.

Recommended practices

When writing the first public draft:

- ✓ **Focus on the positive activities** that the members perform and the good outcomes they can secure.

- ✓ Use aspirational language and encourage best practice.

But **be realistic**. The code's principles and standards should not be impossibly idealistic. Members face time-pressures, a constantly changing market and often demanding consumers. Overblown value statements can make the code seem naïve and unrealistic.

- ✓ Make sure the code is structured so the links between the elements are **easy to see**. It should show, so far as possible, how the specific rules link to more general principles and standards, and how they come from the occupation's values and purpose.
- ✓ Be careful to make the code sound like it was written by **one author**. Revisions can easily make the code sound awkward and unprofessional even if the content they add is excellent. Make sure the content and style of the revisions remain consistent.
- ✓ **The code should be clear** about what rules and principles are minimum standards, desirable conduct, or best practice.

Penalties or sanction processes should be on a sliding scale. The draft code should clarify if principles allow discretion or not.

Using "must" for compulsory behaviour and "can" or "may" when members have a choice can be useful.

- ✓ The code should be **sensitive to pressures** that employers might apply to reduce consumer protections. The code's obligations should not be so consumer-oriented that members become uncompetitive or unemployable.

However, members should be empowered to push back against improper employer demands where appropriate. For example, by highlighting that access to a particular liability insurance scheme (a benefit that potentially advantages both members and their employers) only comes with membership of an association.

Tips

In this early stage, it can be best to include more rather than less content. It is easier to cut later than to write new content.

Similarly, try to avoid agonising too much within the committee about the specific provisions of the code. Later consultation may completely revise elements that took hours to resolve.

Trap

Do not assume all members will interpret the principles and value-statements in the same way. Moral concepts are often ambiguous, and people with different backgrounds will understand them differently.

Be aware of the 'curse of knowledge' - the inability of experts to explain their knowledge to others. Ordinary members will not be as familiar with ethical issues, dilemmas, and concepts as committee members.

Explain. Do not be afraid to explain key terms, the links between concepts, and the ways the principles should be interpreted.

3. Typical content & structure

When drafting and redrafting the content of the code, think about:

1. Whether members who offer specialised services need dedicated codes.
2. The different structures for codes of ethics you can choose from.
3. The typical content of consumer protection codes of ethics.

Don't simply copy from the content modules. However, most of the consumer protection issues in these modules should be present in some form in the final code.

4. The benefits and risks involved in adopting or adapting existing codes of ethics from other sources.

If a code of ethics is being drafted in the context of an existing set of legal codes (such as an occupation-protecting code of conduct) then review the Working with pre-existing legal obligations (refer to 6.1 Part Two).

3.1 Dedicated codes for members who offer specialised services

Often, specialised members can simply follow the more general code but, but this will not always be possible.

The values and principles will probably be the same for all members, but different subgroups within an occupation can face unique challenges and need different resources and solutions. This can mean that some standards or rules are inappropriate for one group, even as they are necessary for another.

When this is the case, it is worth considering a supplementary code.

Sometimes it can be helpful for a specialised member to have one of these options:

1. A dedicated subsection within the larger occupational code.
2. An additional code that operates alongside the larger code.
3. A separate code altogether.

Choose one of these during the drafting and consultation stages.

It may be appropriate to use code subsections, additional codes, and alternative codes for:

- Members in a specialised field, such as tax accountants developing a code distinct from general accountants.
- Members for specific employers, such as different codes for government lawyers, in-house salaried lawyers, and independent lawyers providing consultation services.

3.2 Different structures for codes of ethics

There are three types of structures commonly used for a code of ethics:

- Short codes
- Core Relationship codes
- Principles-based codes.

Before deciding whether either a core relationships code or a principles-based code is required, using a short code as an interim measure to improve professional practitioner standards and consumer protection may be appropriate.

Short Codes

Short codes are often a single page, containing a brief list of statements, values, and principles.

- ✓ They can be useful as a stopgap measure to guide behaviour while a longer code is being developed.
- ✓ They can be used to add higher values and aspirations above the minimum requirements in an already existing code.
- ⊗ Because short codes use more general principles rather than more specific standards and rules, they can be interpreted in different ways. This prevents them from giving clear guidance and makes it hard to police minimum standards.

Core Relationships Codes

The Core Relationships structure uses different groups of stakeholders to organise the code’s content. Typical categories include: the public and public institutions, consumers, employers, and fellow members.

This structure (see Figure 4 below) typically begins with a preamble, sometimes accompanied by a general statement of values. It then moves through each of the groups to which duties are owed. In each group, the code may begin by listing general principles, then specific standards, then hard rules.

Alternatively, it may begin with a principle and then describe the standards and rules that follow from that principle as they apply to each group.

The Core Relationships structure has several advantages:

- ✓ It groups the principles and standards in a sensible way.
- ✓ It clarifies that members have responsibilities to many stakeholders (not only consumers and colleagues).
- ✓ It can prioritise responsibilities, with the strongest ethical duties usually owed to the public and to consumers. These groups are usually considered first, before the code turns to obligations to employers and colleagues.
- ✓ It can be a helpful decision-making tool, reminding members to consider the impact on each group of stakeholders, and the member’s obligations to each.
- ✓ In long, detailed codes, the core relationship structure can make finding the relevant standard easier, as they are grouped in an intuitive way.

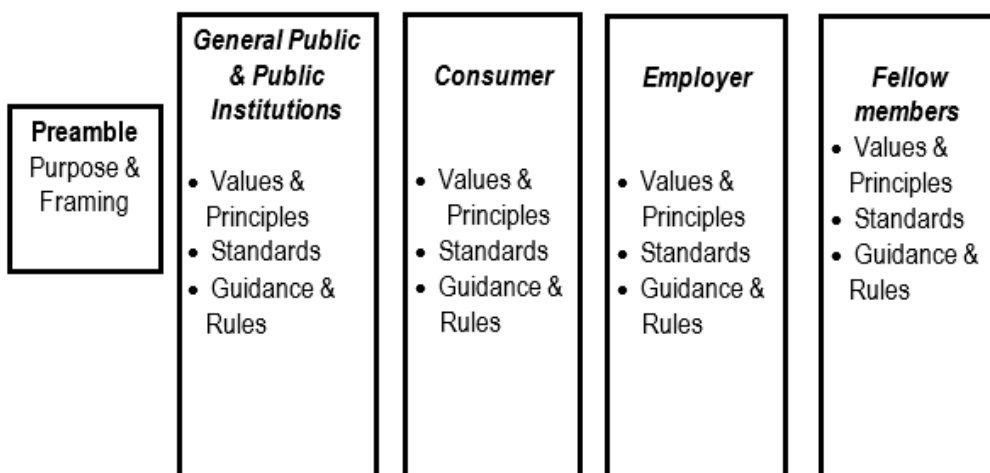


Figure 4 Code of Ethics Structure: “Core Relationships Model”

Principles-based codes

Principles based codes (Figure 5 below) begin with a Preamble, and then list the ethical principles. The following section provides more detailed standards that derive from the principles. The final section provides specific rules and additional guidance.

The principles-based code has the following advantages:

- ✓ The ethical principles are all listed at the beginning, so the code immediately displays the occupation’s core commitments, in a way that is accessible, easy to remember and easy to discuss. The principles may make up a single page, allowing this part of the code to be easily displayed.
- ✓ It illustrates that the ethical principles have priority and provides the grounding for the detailed standards and rules.

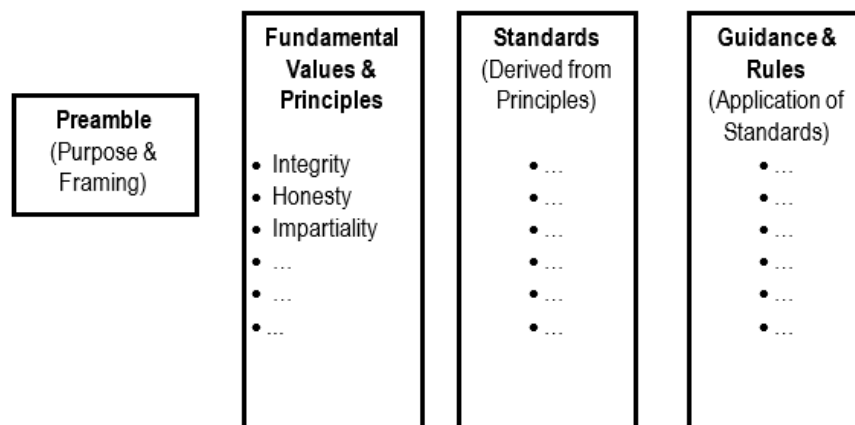


Figure 5: Code of Ethics Structure : “Principles Based Model”

4. The content of a code of ethics

There is no universal content applicable to all codes of ethics. The standards need to be appropriate to a particular occupation. There are expected professional standards that provide consumer protections, and these are an important resource to ensure your code addresses all major sources of consumer risk. The sections below detail the typical content of these codes of ethics.

4.1 The preamble to the code

A brief preamble introduces the code of ethics, reminding the reader of the occupation’s highest aspirations and ethical traditions. Such declarations are worth including in the code (if not in the preamble, elsewhere – such as the *Additional Guidance* section). The preamble itself should be relatively brief.

For the preamble, choose from:

- ✓ A ‘mission statement’ on the occupation’s positive contribution to society:
 - For example, *[This occupation] aims to provide [core social benefit] through [constitutive activities] while always respecting [relevant constraints].*
- ✓ A ‘statement of intent’ on the code’s purpose and significance.
- ✓ An oath that members can use to declare publicly their allegiance to the code’s mission, values, and principles.
- ✓ Statements that increase the code’s acceptance. For example:

- A reference to longstanding traditions of ethics in the occupation, such as in medicine, where the Hippocratic Oath dates back millennia (ownership).
 - Highlighting the important social goods delivered by the members (harnessing 'ethical content').
 - Framing the occupation's special ethical obligations as a fair exchange: *To deserve the trust necessary for us to perform our important role in society, we undertake to...* or *To be worthy of the legal privileges bestowed on us by legislation, we undertake to....*
- ✓ **Overarching guidance statements**, including statements of:
- *Ethical Priority*: Declaring that the code's principles must be prioritised over other pressures and incentives:
 - *You cannot put anything above the principles in this code including being more competitive, complying with your employer's demands or...*
 - *You may have other obligations based on your employer's codes, but they can never replace these obligations.*
 - *Stakeholder Priority*: Declaring that some principles have ultimate priority in ethical decision-making. For example:

When in doubt, avoiding harm to consumers will always be your first priority.
 - *Comprehensiveness*. For example:

The code's values and principles apply to all your work as an X.

The Supplementary Materials show some, but not all, the ways you can apply these principles and values.
 - *Accountability*: Declaring that breaches of the code's standards will result in disciplinary action, and that all members have ethical duties relating to their colleagues breaching those standards.
 - *Review and growth*: Declaring that the code is a living document, and that feedback is welcome.
 - *Guidance*: Declaring that the code is not above each member's conscience. Offer guidance and advice based on the code and, ideally, an advice line (resources permitting).
 - *Organisational support*: Declaring that employers should understand the code, and that they should value and encourage their employees to keep its principles and values.

Tips

When a code is formally adopted, usually the chair of the board will write to members endorsing it and seeking their support for its successful implementation.

4.2 Code content: values, principles and standards

The following list of possible content is organised under broad **values** (in bold), then *principles* (in italics) that follow from the value.

An association may write specific standards appropriate to the particular occupation.

The key values will probably apply to every occupation, but some principles will be inappropriate for certain occupations, for example, the 'fiduciary responsibilities' value.

The *values* and *principles* of a code of ethics may include statements about:

- **Expertise**

- *Ongoing education*: Members having adequate initial and continuing education to ensure their knowledge is appropriately comprehensive and up to date.
- *Competency*: Members only performing work they are trained or licensed for. They will never mislead others about their qualifications or capacity to do the work.
- *Diligence*: Members working conscientiously, efficiently, and effectively. Work will be thorough and delivered on time.
- *Improving knowledge*: Members improving and deepening their professional knowledge.
- *Peer and Entrant Education*: Members contributing to the occupation's high standards by being involved in, when they can, education and training of their colleagues, especially those new to an occupation.

- **Objectivity**

- *Prohibition on Conflicts of Interest*: Wherever possible, members avoiding being subject to any conflict of interest, by (for example) removing the conflict, refusing inappropriate payments or by excusing themselves from the work.

Members should be alert to any way new conflicts may arise (such as through changing business practices).

- *Independence*: Members observing restrictions on bonuses, gifts, and other perks, as well as on accepting offers of work (such as 'speaking fees') in any cases where these could create a conflict of interest.
- *Impartiality & disclosure*: In cases where removing a conflict is not possible or appropriate, members fully disclose that incentive to the consumer.

Members must never alter their service or advice for their own financial benefit, incentives provided by their employer or company profit.

- *Prohibition on over-servicing*: Members never performing work, or recommending its performance, beyond the consumer's best interests and in keeping with their informed consent.

- **Fiduciary responsibilities**

- *Consumer best interests*: Except where otherwise directed by the code's principles, members putting the consumer's best interests first, and never acting to harm or exploit those interests.
- *Care for the vulnerable*: Members having special duties to ensure they take proper care of highly vulnerable consumers, such as children and those with diminished mental faculties.
- *Prohibition on inappropriate relationships*: Because of the power they have over vulnerable consumers, members keeping their private and professional relationships distinct, and avoiding inappropriate relationships with consumers.

- **Confidentiality and record keeping**

- *Consumer confidentiality*: Members respecting their consumers' confidentiality, within the limits defined by the law.
- *Record keeping*: Members keeping safe and appropriate records of their consumers' information and all services provided to them.
- **Consumer autonomy**
 - *Informed consent*: Members respecting consumers' autonomy, ensuring they are provided with the opportunity to give voluntary informed consent to all services. This includes full information on fee-structures and costs.
 - *Communication*: Members taking responsibility for ensuring that all advice and information they provide is given in a way their consumers can understand. This will sometimes mean working with consumers to make sure they can understand advice.
- **Commitment to law and society**
 - *Respect for law*: Members respecting all laws and regulations relevant to their field of activity.
 - *Respect for legislative intention*: Members acting in accordance with the spirit, and not merely the letter, of all relevant laws and regulations, and not acting to undermine legislative intentions. (This can be a challenging obligation and must be carefully considered.)
 - *Non-discrimination*: Members not discriminating unlawfully on the basis of gender, ethnicity, religion, or sexuality.
 - *Public Interest*: Members respecting all obligations to social institutions (for example, lawyers' duties to 'the court'), and to third parties relying on their declarations.
 - *Human rights*: Members acknowledging their role in directly (for consumers) and indirectly (for third parties and the wider public) contributing to the delivery of human rights, as in the *Universal Declaration of Human Rights*.
 - *Complicity*: If a member knows someone is acting unlawfully, they should report it to the appropriate association, government regulatory body or police. They also cannot be part of any illegal activity themselves.
- **Collective support of standards**
 - *Support for colleagues and subordinates*: Members supporting the use of the code by their peers and subordinates.
 - *Using appropriate resources*: When members are making a decision, using all available resources to guide them in complying with the code.
 - *Accountability*: Members holding each other accountable for complying with the code. They will give appropriate credit to other members and their work.
 - *Non-retaliation*: Whistle-blowers, or any members that act in good faith to bring to light any ethical issues within the occupation (for example by using the association's complaints processes), are to be supported appropriately and protected from retaliation.
- **Integrity**

- *Honesty*: Members telling the truth and avoiding misleading others in all they do at work. They stand by their public statements and the terms of any undertakings, promises or contracts.
 - *Transparency*: Members fully informing their consumers of an unavoidable conflict of interest.
 - *Candour*: Members acknowledging any errors they make, and any adverse outcomes, mistakes and near-misses that are their fault; and report them to their consumers and/or relevant authorities.
- **Cooperativeness**
 - *Collective delivery*: Where they can, members cooperating with one another to deliver the occupation's high ethical standards.
 - *Teamwork*: Members working in teams ensuring that the team upholds all consumer protections.
 - *Non-plagiarism*: Members never misleading anyone about who it was who wrote their work documents.
- **Competitiveness**
 - *Collegiality*: An association can, within the limits of the law, restrict members' capacity to advertise if necessary to protect the dignity of the occupation.
 - *Fair Competition*: Members competing fairly in the market, never engaging in price-fixing or misleading advertising.

Comment *Collegiality* and *Fair Competition* can push in opposite directions. The first principle is a longstanding tradition in some professions (such as law). The second responds to changing laws (e.g., competition law) and social expectations.
- **Ethical culture**
 - *Building ethics culture*: Members promoting an ethical culture in all organisations they work in as owners, employees, consultants, contractors, or executives.

Tips

Your core principles are usually just **a sentence or two long**. This keeps them short enough not to be weighed down with detail, but descriptive enough so they are not too vague.

Avoid repetition. Ensure each principle is focused and has its own distinct significance.

Beware of counterproductive principles and standards. For example, an obligation to report on other members' serious wrongdoing or potential malpractice may be appropriate if you build in enough support for your members to report something. Without such support, this principle could stop your members from sharing their concerns and challenges with peers and mentors.

4.3 Content to avoid in your code

There are two areas of content that should normally be avoided.

I. *Obligations dealing with corporate, employment and organisational matters*

Employee codes and occupational codes will often overlap, such as in areas of confidentiality and diligence.

The obligations set down by an employing organisation will depend on its size and nature. Because of this, organisational matters are usually best left out of occupational codes,

allowing them to be dealt with in specific employee codes, and in relevant laws and regulations. These organisational matters include important issues such as: occupational health and safety, labour and environmental issues, sexual harassment, corruption and fraud, and constraints on secondary employment.

II. *Excessively expansive obligations for 'appropriate' behaviour*

When developing a code, it can be tempting to include obligations beyond what is strictly necessary for members to deliver high standards of professional conduct and consumer protection. This temptation should be weighed carefully.

It can also be appropriate for codes to provide guidance on activities that blur the line between work and personal life - such as providing standards for teachers involved in extra-curricular activities with students, or who are approached by students on social media.

The code's principles should be able to be respected by a wide variety of cultural, political, and religious standpoints, and codes should not constrain members from public and civic involvement. Undue constraints on personal activities can undermine the members' liberty, reduce diversity within the occupation, and encourage pushback against the code.

5. Rules and additional guidance

When principles and standards have been developed, detailed guidance can be developed.

This guidance can be provided in a variety of ways:

- **Rules within the code of ethics:** A code of ethics can include rules, with minimum requirements following each of its standards, that explain precisely what that standard requires.
- **A separate code of conduct:** The code of ethics can be accompanied by a code of conduct or practice, containing minimum requirements or rules where breaches will be followed by sanctions.
- **An *Additional Guidance* document** can be added to the code, or developed later, containing:
 - Case studies and/or worked examples of the code's standards as they apply to typical situations, challenges, and dilemmas in your occupation.
 - Best-practice suggestions, showing exemplary ethical action in typical situations.
 - Detailed definitions of all key terms, and other interpretive guidelines.
 - Q&As and FAQs that help with clarification and interpretation.
 - Authoritative interpretations of all standards and rules, for example written by the code ethics committee.
- ***Additional Guidance* resources**, including:
 - De-identified cases of complaints or board rulings published either as individual case studies or combined. These resources allow members to learn about the developing authoritative interpretation of standards, as well as highlighting areas where ethical failures commonly occur.
 - Blogs, podcasts, position papers, modules, discussion threads and forums can help encourage for discussion and reflection.

Tips

- ✓ The code of ethics should explicitly state that the detailed rules, worked examples

or best practice case studies are not exhaustive. Ethical principles apply in many different cases, some of which are unforeseeable.

- ✓ Case studies and worked examples are useful for experienced practitioners to show how the code applies in familiar situations.

They can also provide an educational resource for new members, allowing them to, a) recognise, understand, and prepare for these situations, and b) realise that the code is a practical document providing guidance in real world situations.

Case examples can be developed over time. But where the code has monitoring and disciplinary practices, members need to have clear and specific guidance from the earliest possible moment.

5.1 Optional extra content with your code

Extra sections may help members to implement a code's standards. Some suggestions are set out below.

I. A list of the dangers in ethical decision-making

There are several common ways association members are likely to fall into serious moral error. A code can warn members, in a supplementary section, about the typical scenarios where their ethical decisions are most at risk of challenge. Examples include:

- When their stress is high - including time pressures and chronic overwork.
- Where there is any substance abuse and addiction.
- Unethical organisational climates.
- Team based or corporate structures which provide no individual accountability.

The well-known 'HALT' tool can be referenced, which advises against making decisions when Hungry, Angry, Lonely or Tired.

Some occupations face challenges specific to their own activities which may require specific references.

II. Ethical decision-making models and guides

An *Ethical decision-making* guide can be included as part of a code or as an extra resource. This can provide members with a step-by-step guide to making ethical decisions (refer to 3.6 Part One, Understanding ethical decision-making).

An example is available at: <https://www.ethics.org/resources/free-toolkit/decision-making-model/>

Another way to help structure a guide for ethical decision-making is to include a list of questions for readers to consider. For example:

- ✓ The front-page test:

How would this decision look on the front page of the newspaper?

How would you feel about being questioned on this decision by an ethics review board or a commission of inquiry?

- ✓ The mirror test:

How would I feel looking in the mirror, knowing I have done this? Is this something I will look back on with pride?

- ✓ The integrity test:

Is this action compatible with my publicly stated values? Is it something I would happily tell my partner, children, or parents?

- ✓ The consistency test:

Am I rationalising an exception to a rule I would otherwise endorse?

- ✓ The conflict test:

Is this decision good for me but not my client?

III. Guidance on conscientious objection

Conscientious objection occurs when a person decides that they cannot perform an action because of their conscience or religion. This situation can be challenging because the belief may be inconsistent with a reliable, safe, uniform practice that empowers an occupation to deliver social goods.

At the same time, unless absolutely necessary, members should not be forced into performing acts that directly go against their moral principles.

Ideally, this issue should be considered separately from the development of the code to avoid confusion and delay. However, in some cases, these issues may need to be considered, such as if religious members need to be assured that the code will not contain measures that will force them to act in ways contrary to their religious beliefs.

6. Adopting or adapting other codes of ethics

Existing codes for similar occupations can be very helpful on principles, standards, and rules, as well as structure, preamble, and any related information on governance, education, and feedback.

Can we just adopt a code completely or with a few modifications?

There are benefits to this approach:

- ✓ It can save 're-inventing the wheel'.
- ✓ It can allow a rapid response to pressing problems in the particular industry or profession.
- ✓ It can provide a 'tried and tested' code, with fewer errors and issues than a freshly written one.
- ✓ It can promote with the actions of association members in the same occupation in other jurisdictions, and perhaps within larger (e.g., federal, or international) contexts.

However, there are substantial downsides:

- ⊗ Short-cutting the code development process - especially if this involves less consultation with members and stakeholders - can weaken the code's acceptance with your members.
- ⊗ It can be out of step with local values, problems, and solutions. The success of a code in one jurisdiction does not guarantee its success when imported into a different area.
- ⊗ The code you are copying may itself have errors, gaps, or be outdated.

In considering whether to adopt a pre-existing code, or use one as a basis for your own, it is best practice to:

- Research its success. Ask for the any feedback on that code.

- Find out what its members' views are about how helpful it is to them in managing the main ethical challenges they face.
- Check that the main ethical challenges that code is designed to help with match those faced by your members.
- Invest heavily in feedback and review in the first years following an adopted code's implementation. This way any gaps or inappropriate provisions will be identified.

6.1 Working with pre-existing legislated obligations and codes

Existing codes of conduct, or legislated ethical duties, can set out an occupation's professional practitioner standards and consumer protection issues.

While these codes will rarely cover *all* such issues, they can:

- Draw attention to longstanding ethical concerns for consumers.
- Provide something to build on. For example, if legislation requires members to disclose conflicts of interest (like commissions) to consumers, then the consumer protection ethical code might go further in prohibiting certain types of conflicts of interests.

In all cases, the code of ethics must be compatible with the occupation's existing obligations. Usually the ethical code imposes wider, more extensive, and more discretionary duties than those in an existing code of conduct or in legislated obligations.

Once the code of ethics has been adopted, association members are simply called upon to do more for professional standards and consumers than the law explicitly demands.

7. Consultation stage

During the consultation stage, an association will release the public draft for consultation and feedback. An association should ensure members and others have every chance to know about and comment on the process and the content. This feedback should be carefully considered.

Recommended practices

- ✓ There are many ways to consult association members, including:
 - Typical processes like public calls for submissions; sending out targeted questionnaires and surveys; running discussion groups, roundtables, workshops, and forums; conducting interviews; and giving committee members giving conference presentations.
 - Asking members about the types of ethical dilemmas they face, and whether they have developed solutions, in workshops and seminars (including those on other topics).
 - Writing hypothetical scenarios and discussions of case studies for small groups (at workshops or conferences.) These formats can also be used to pilot the code's principles, to see how members apply the code's standards to the hypothetical cases.
 - Using existing ethics training programs to 'road test' the draft code obtaining information about how clear and practical it is. Incentives can be offered (such as continuing education or professional development credits) for those taking part.
- ✓ Obtain input from outside an occupation to ensure a code is not disconnected from the society it seeks to serve.

Inviting the public, government regulators, client and consumer groups, or relevant academics (including ethicists and those who teach ethics to aspiring members) for their comments and suggestions may assist.

Tips:

Make it clear that a code is a consultation draft and not the final document.

It can be a good sign if association members are debating the content of a code. It may indicate it is being taken seriously.

8. Redrafting stage

In the redrafting stage:

- New drafts are prepared following feedback.
A complete rewrite may be required, or more limited changes (such as revising specific standards). This may require several rounds of consultation and revision.
- Final decisions must be made about the code's overall structure and content, and whether to use dedicated guides for subgroups.

Recommended practices

- ✓ Consult widely and repeatedly. Different group of people may focus on specific concerns or sections. However, consultations may be better focused by having those who wrote the first version of something look at the reworked version.
- ✓ Use focus groups to check the readability of the final draft. This is especially important when final formatting is in place.
- ✓ If additional rules or guidance material are to be provided, there should no 'surprises'. If the interpretation of a standard is likely to be controversial resolve these issues while writing the code itself.
- ✓ All association members and the public should be able to use the code. Attaching a Creative Commons (or similar) copyright licence will ensure it can be freely downloaded, emailed, printed, and copied.

Tips

Try to have one person write the last version, and use a professional writer if possible. You will avoid having the code sound disjointed because all writers have different preference and styles.

Style tips

The code's final draft should:

- ✓ Use inclusive and gender-neutral language.
- ✓ Use active rather than passive language (e.g., *We agree to...* rather than, *It is required that...*).
- ✓ Use positive language where possible.

While there is a place for prohibitions, writing in a positive way can be more inspiring. For example, the code might declare, *we treat all consumers fairly* rather than saying *we do not tolerate discrimination*.

- ✓ Have an open, uncluttered design, that is interesting and readable. If the code looks too busy, with unbroken blocks of text, it will be less likely your members will read it.

Early parts should be short, so that the principles and standards can be easily remembered and used.

Leave the detailed specification to later parts of the document.

Use colour but ensure the document is easy to print and copy.

For useful style tips see: <https://www.ethics.org/resources/free-toolkit/style-tips/>

9. Adoption stage

The adoption stage involves an occupational association formally adopting the code.

The board may give approval prior to a vote of the membership at an AGM (for example). There may also be a formal announcement of adoption and a ceremony. Members may take oaths during the ceremony.

It will be necessary to decide whether to dissolve the drafting committee, reform it or rename it. A standing ethics committee or group must be in place to continue the work described in the remaining stages.

Recommended practices

Associations may manage the adoption process in different ways. For example:

- In several stages. For example, the code may be sent out in a way that allows each member to vote on each provision. Then, after any revision, the final version can be presented as a whole to the membership, or their representatives, to formally adopt.
- The drafting committee may seek official independent approval of the code, such as by a government regulatory body, a larger (e.g., international) professional body, or an NGO/business that performs ethics assessments.

Tips

Association members usually vote on acceptance of the code. Not everyone will agree with everything in it. A two-thirds or three-quarters majority is preferable to a simple majority to maximise legitimacy.

Note: the development process is not over until the final draft is formally adopted.

Traps

Watch out for last minute amendments. Despite best intentions, eleventh-hour changes can introduce serious errors and contradictions which have not been subject to the scrutiny of the revision process.

10. Education and communication stage

A code is irrelevant unless members are aware of its existence, know its basic principles and can apply it. Associations should build in education, communication, and awareness-raising activities over three time periods:

1. when the final code is drafted, in the lead up to the membership deciding to adopt it
2. immediately after adoption, and
3. over the longer term, as the code is revised and refreshed.

Recommended practices

1. **An 'ethics hotline' or 'helpline' are useful tools (resources permitting).** These are arguably the most important practical tools to help members with ethical dilemmas.

This will encourage:

- **Members** (perhaps anonymously) to seek guidance on ethical matters. Ethics codes can work best when people have access to advice from outside the normal chain of command.
- **Consumers** to use your complaints processes. Consumers can play a vital role in driving up professional standards, but only if they are made aware of their rights under a code.

2. **Effective communication with members.**

Do not flood members with communications. The association and the new code are rarely members' top priority – their clients are.

Make it easy for members to read key messages quickly and efficiently. Consider working with communications/marketing colleagues to work out what ways work best with members.

Traditional channels:

- ✓ Emails, newsletters, internal memos
- ✓ Websites, bulletin boards, intranet links.
- ✓ Posters of the code's principles for office walls.
- ✓ Articles about the new code in journals or e-zines members often read.

Newer ways:

- ✓ Podcasts, YouTube clips, blogs, vlogs, social media.

Systemic ways:

- ✓ Integrating ethics education into all continuing professional development activities, including seminars in universities and other tertiary settings.
- ✓ Using formal ethics exams as one requirement for membership.
- ✓ Requiring senior members to be mentors on ethical as well as conventional professional matters.
- ✓ Having a public commitment to the code of ethics. For example, having new entrants take an oath at a public ceremony; requiring existing members to sign a similar affirmation.
- ✓ Using brochures: *You and the Law!* or *How to Keep out of Trouble!*
- ✓ Working with major employers while they are developing their own ethical codes.

- ✓ Showing how the code's principles are embedded in the decisions made by the association's senior management.
- ✓ Making sure all members are aware of how their actions may be monitored and investigated.
- ✓ Making sure all members know their rights and responsibilities under the code.
- ✓ Using case studies to help members and major employers see the consequences of poor ethical behaviour.
- ✓ Telling success stories of high standards of ethics, not just tales of where the standards have not been met.

11. Implementation and governance stage

To be effective, a code needs a governance process that embeds its principles in everyday practice. A process to respond to serious violations of standards and rules is a minimum requirement.

Sanctions are serious and must always be subject to procedural fairness. They can only be applied when the rules are:

- clear
- consistent
- accessible
- about future behaviour (i.e, not retrospective), and
- when any allegation of a member breaking these rules is judged impartially.

Defendants should be properly represented and have their cases heard by independent people.

Recommended practices

There is no one perfect way to build a governance system around a code of ethics. It can be done alone or with government regulators and employing organisations.

Possible initiatives include:

- Having a sliding scale of offences linked to a sliding scale of punishments.
- Setting up
 - an internal *whistle-blower hotline* (perhaps as part of the ethics hotline), allowing people to report wrongdoing anonymously, and/or
 - a complaints hotline, allowing consumers to report incidents they feel breached the ethical rules of the association.
- Providing guidance on methods for integrating the code of ethics into the reward system used by employers.
- Auditing the degree to which the occupation is living up to the code's values.
- Using awards and rewards to encourage exemplary ethical practice and innovation.

Tips

Not too lenient, not too tough

It can be difficult to strike the right balance between trusting members to behave ethically and ensuring those who behave unethically are held to account.

If members behave unethically and get away with it, the code will appear ineffective. If the code is unreasonably harsh, members will resist it and challenge it at every opportunity.

It is usually regarded as good practice for an association to focus its monitoring activities on:

- new members in their first year of service, and
- members who have been found guilty of a breach of the code of ethics.

Try to work with major employers to demonstrate the benefits of providing a service which embodies high ethical principles.

Traps

1. Avoid the single greatest threat to the code working properly – the possibility that ‘the process is the punishment’.

The stress and uncertainty about the consequences of an allegation against members, added to an unclear or drawn-out disciplinary process, can prove a traumatic experience for association members. The negative effects may be disproportionate to the alleged wrongdoing.

Disciplinary processes must respect the rights of those accused of ethical breaches.

2. Be careful to support members in difficult ethical situations. For example, if a lawyer has duties to report evidence of clients’ potentially dangerous criminal activity, systems should be in place to support them. An example of support in that context would be a confidential meeting of the ethics committee which could give practical advice to the lawyer.

12. Feedback, measurement, and review stage

No ethical code is ever perfect, and changing circumstances mean that provisions and principles can become outmoded or counterproductive. Associations need to evaluate how the code is performing.

Recommended practices

- By the end of the first year after implementing the code, it is reasonable that it be reviewed. This includes both the content of the code and how it is affecting the practices of members. To help with this, invite members and other stakeholders to make submissions on any aspect of the code.

Usually, they are concerned about:

- tensions between the principles
 - ambiguities in interpretation
 - provisions imposing unrealistic duties, and
 - unintended consequences.
- Some implementation issues can be avoided. Include examples of best practice and show clearly how to interpret the principles, such as in an *Additional Guidance* section to the code.
 - Record all authoritative rulings on the correct interpretation of the code’s standards. Tell members about these decisions.
 - Run workshops and conference streams on the code’s operation, and how it works in new contexts or alongside new technologies, like social media.
 - Ask those who teach the code to make submissions on areas of the code they struggle to teach, or that their students find hard to understand.
 - Keep records of all the complaints made through complaints hotlines and other processes (such as mediation proceedings).

Do not just keep records of cases where there were infringements. Complaints that did not lead to infringements can help members to learn about consumer expectations.

Where there are a lot of complaints without infringements, it may be necessary to educate the public or perhaps realign the code to meet consumer expectations.

- Monitor the media for issues.
- Manage data appropriately and lawfully.

12.1 Measurement

Measuring the effectiveness of a code is critically important.

It can be hard to measure a code's impact. For example, increased complaints might mean:

- there is more wrongdoing by your members (a bad thing), or
- it is easier for people to complain (a good thing).

Some ways to get good quantitative data on a code of ethics:

- Access results from tests of people's knowledge of the content of the code (for example, at continuing professional development activities).
- Survey the views or knowledge of members during other professional development activities - a more indirect method which could be valuable over time.
- Count the popularity of activities focussed on the code.
- Record the amount of traffic to the code's website, distinguishing members' visits from other visitors to the site.
- Develop metrics on the advice hotline and other feedback mechanisms.
- Run consumer satisfaction surveys.
- Structure a survey to show the relationship between different groups of members and different elements of the code.

Building on this, assessments need to consider the following points identified in the Scheme Application Framework's 4.1.1a Template for Association Codes regarding code improvements and consumer protection outcomes:

- Describe any plans to improve the association's code(s), including any strategies to address consumer harms and risks.
- Describe any measures used to assess the effectiveness of code(s) to ensure professional conduct (e.g. qualitative metrics such as measures of satisfaction, or quantitative such as actual numbers or dollar amounts), and how the measures contribute to continuous improvement of the code and consumer protection.
- Describe the association's code improvement cycle, for example:
 - how emerging trends form the outcomes of conduct and competence processes (including but not limited to consumer claims, notification, and complaints data) used to inform revisions of the code
 - how the association identifies and incorporates best practice
 - how the purpose for, and benefits of, the improvement is identified and confirmed
 - how adequate resources are assigned to the improvement
 - how the process is free of inappropriate or conflicted influence (including by government, the profession, employers, or other interested parties)
 - the process of engagement and consultation with stakeholders (e.g., members, public, consumers, regulators, related occupational associations) to assure alignment

- the development of practical measures of effectiveness of each code improvement, for example, collection, collation, analysis and reporting to the governing body, and
- what changes require governing body approval and formal approval by a general meeting of members.

Tips

The code should be considered a 'living document'. As the world changes, the ethical challenges to members change; so does the impact of new legislation, court decisions and consumer expectations. All these factors mean the code needs to adapt to if it is to remain relevant and useful to association members.

A major revision may be required every few years. Between major revisions, strengthen the code by:

- adding extra recommended 'best practices'
- adding up to date interpretation of complex rules, and
- welcoming ideas from new members.

Traps

Balance the big picture with the detail.

The code itself is usually best to be as concise as workable.

The supporting information can be arranged so that readers are not flooded with excessive detail. A code's website should be designed to balance these competing needs.

Remember association members are busy. They also may have to be on top of multiple other codes and guides, laws, and contracts. Respect that. A code of ethics is almost certainly not the centre of their working lives. **Make it easy for them to find and use your help.**

The aim is for your code to be:

- easy to find
- easy to use, and
- compliant with all appropriate legal and ethical requirements.

13. Acceptability check-in

Here are 10 questions members may ask of their code of ethics. Consider whether the association would get the answers it wants.

1. *Is it the right thing to do?*
2. *Is it fair?*
3. *Will it work?*
4. *Is it coherent?*
5. *Did we all have a role in developing it??*
6. *Did we vote for it?*
7. *Did I personally commit to it?*
8. *Is it realistic about the way we work now and for the foreseeable future?*
9. *Does the code respect us as intelligent decision-makers?*
10. *Does the code come from a trusted source?*

Further information

1. *Is it the right thing to do?* Do the code's obligations match common sense moral principles like honesty and benevolence?
2. *Is it fair?* Are members appropriately supported and recompensed for shouldering challenging obligations?
3. *Will it work?* Is it possible to obey the obligations and still run a productive, sustainable, and profitable enterprise?
4. *Is it coherent?* Are the obligations contradictory, impossibly vague or written in impenetrable legal terminology? Does the interpretation of the obligations change so regularly that it's impossible to plan ahead?
5. *Did we all have a role in developing it?* Were all members able to provide genuine input into the code's content? Or was it just decreed from above?
6. *Did we vote for it?* Did members or their representatives have the opportunity to democratically endorse the code?
7. *Did I personally commit to it?* Was there a ceremony where each member undertook to live up to the code, or was it incorporated into a contract (for employment or service) they signed?
8. *Is it realistic about the way we work now and for the foreseeable future?* Do the code's standards and principles reflect how local members practice and what they value?
9. *Does the code respect us as intelligent decision-makers?* Do the code's obligations try to micro-manage every move, or trust that members can make ethical decisions guided by the code's principles?
10. *Does the code come from a trusted source?* Do members trust the integrity, impartiality and expertise of the code drafters and their leadership?

14. Pressures that can weaken your code

There will be ongoing challenges to maintaining professional practitioner standards and protecting consumers, even after a code has been implemented. The process is never finished. The association will have to monitor and refresh it regularly.

Be aware of the following challenges:

- Every occupation includes corrupt and exploitative people, and those who would happily cut corners to make their jobs easier or more profitable. These people may push back against the code's requirements.
- Many occupations face pressure from other sources - such as employers, licensees, or colleagues from other occupations - to weaken the code's consumer protections.
- It is natural for people to resist accountability systems. The feeling of being 'watched' can make people feel like they are not trusted.
- It will take members time they may feel they do not have to prove they are complying with the obligations imposed by the code.
- It can feel like a waste of time to invest resources and energy into the code when its obligations are universally accepted by the membership.
- New market pressures or opportunities and technological innovation may make the code feel old fashioned.
- New initiatives will usually require resources. Once the code is established it may be difficult for it to compete for the continuing professional development dollar.

For all these reasons, the code requires constant monitoring and resourcing.