

Guidance on

Association codes of Ethics: Part Two Developing a code

For occupational associations operating professional
standards schemes under professional standards legislation

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Table of Contents

1. Purpose	4
2. Code development – key initial stages.....	4
2.1 Beginning and planning	5
2.2 Planning stage	6
2.3 Research stage	8
2.4 Drafting stage.....	9
3. Typical content & structure.....	10
3.1 Dedicated codes for members who offer specialised services	10
3.2 Different structures for codes of ethics.....	11
4. The content of your code of ethics.....	13
4.1 The preamble to the code	13
4.2 Code content: values, principles & standards	15
4.3 Content to avoid in your code.....	18
5. Rules and additional guidance.....	19
5.1 Optional extra content with your code.....	20
6. Adopting or adapting other codes of ethics	21
6.1 Working with pre-existing legislated obligations and codes.....	22
7. Consultation stage.....	23
8. Redrafting stage.....	23
9. Adoption stage.....	25
10. Education and communication stage	25
11. Implementation and governance stage	27
12. Feedback, measurement, and review stage	28
12.1 Measurement	29
13. Acceptability check-in.....	31
14. Pressures that can weaken your code.....	32
15. Next steps	33



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Disclaimer

This guidance is applicable only to an occupational association preparing a Scheme for approval under Professional Standards Legislation. It does not constitute legal or other professional advice and should not be relied on as such. An occupational associations should seek its own legal/professional advice to find out how the Professional Standards Legislation and other relevant laws and regulations may apply to it. For access to legislation in force in NSW, go to the official NSW Government website for online publication of legislation at www.legislation.nsw.gov.au.

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1. Purpose

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 new or review a code of ethics oriented towards improving professional practitioner standards and consumer protection. This guidance is aimed at helping your code's continuous improvement over the life of your association's Professional Standards Scheme.

This is Part Two of the Association Codes Guidance of the Professional Standards Councils. This Part, as set out below, focusses on developing a code if you don't already have a code.

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

- Part Two: important questions to consider before preparing 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)
- Part Four: revising a code (if your existing code needs improving).

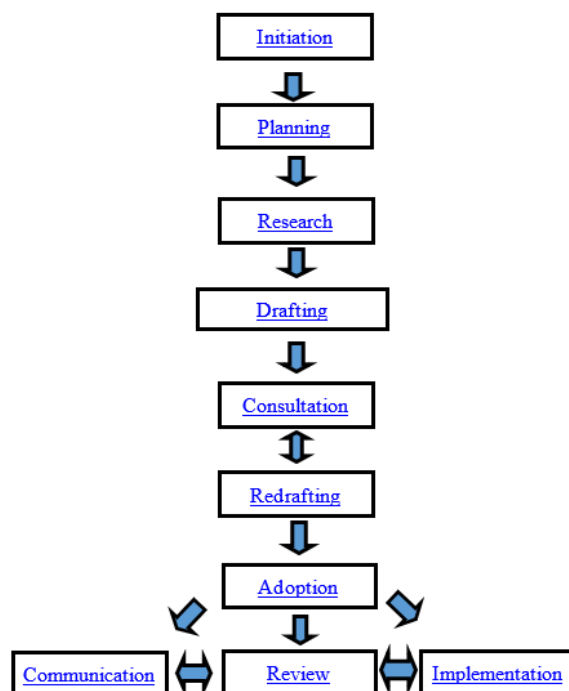
2. Code development – key initial stages

If you want to end up with an effective, accessible, and credible code, it is important that you do the following:

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

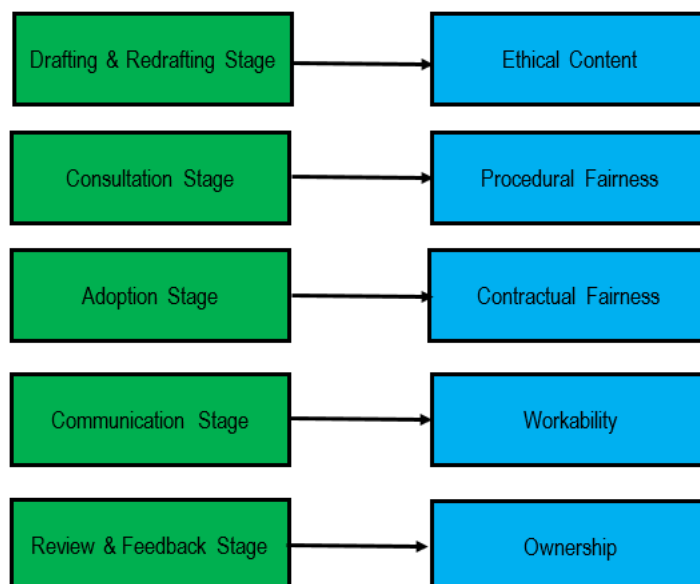
As you work through the process, there are opportunities for harnessing, or losing, your members' acceptance of the new code at each stage.

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



Acceptance and the process to develop the 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

It is important that you consider two things.

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:

- Who will do the drafting, the research and run the consultation and submission processes?
- The timetable for all this to happen.

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 them having 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 little status 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 that you will have to manage:

- *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 workable 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 very quick processes, as errors are more likely, and members can feel ‘railroaded’. However, if you need a new code quickly, you can use a streamlined process and put greater emphasis on the review stage.

Your 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 so you can accommodate them as you design 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 our members - or those in other 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 do give you critical information on the ethical challenges the code must manage.

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?

You **can consult** widely when you are writing your first draft.

You really **must consult** widely when you are refining that 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. You will need to decide if 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 the 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 you are writing this first public draft, keep in mind these factors:

- ✓ The code should **focus on the positive activities** that the members perform and the good outcomes they can secure. You can derive the activities that will be banned from these positive elements.
- ✓ You can use aspirational language and your draft should encourage best practice.

However, **be realistic**. The code's principles and standards shouldn't be impossibly idealistic. Your 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 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 as well as the style of the revisions remains 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 here.

- ✓ 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, for example by highlighting that their access to a particular



liability insurance scheme (a benefit that potentially advantages both members and their employers) only comes with membership of your association.

Tips

In this early stage, it can be best to err on the side of including more rather than less content. Later, it is easier to cut 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 you 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 you.

Show what you mean. Don't 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, we expect that most of the consumer protection issues in these modules will 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.

It is necessary to **read through all four of these modules** before beginning the drafting process.

If your 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 sometimes they can't.



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.

You can use code subsections, additional codes, and alternative codes for:

- Members in a specialised field e.g., tax accountants developing a code distinct from general accountants.
- Members for specific employers e.g., 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 you require either a core relationships code or a principles-based code, you can use **a short code as an interim measure** to improve professional practitioner standards and consumer protection, or to test the workability of specific principles.

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 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.

Or 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.

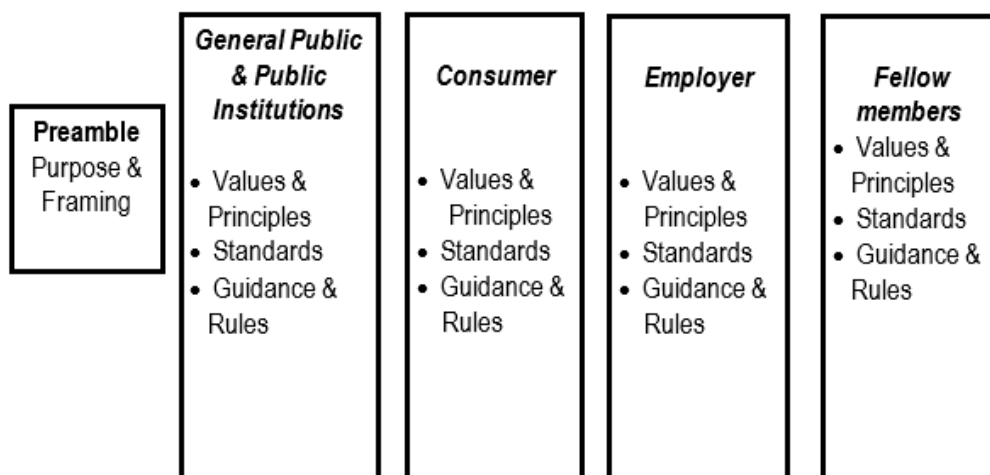


Figure 4 Code of Ethics Structure: "Core Relationships Model"

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 talk about. 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 provide the grounding for the detailed standards and rules.

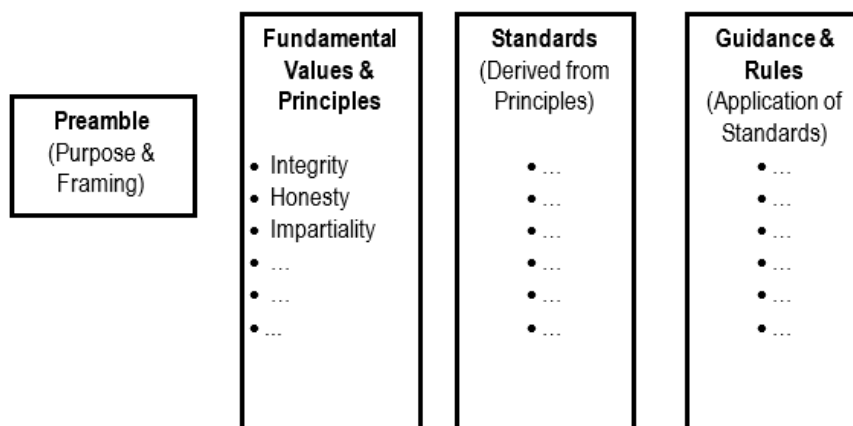


Figure 5: Code of Ethics Structure : "Principles Based Model"

4. The content of your code of ethics

There is no universal content that can just go into all codes of ethics since the standards need to be appropriate to your 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 often introduces the code of ethics, reminding the reader of the occupation's highest aspirations and ethical traditions.

Many of these declarations are worth including in the code or somewhere for example in the *Additional Guidance* section. However, the **preamble itself should be relatively brief**, so usually you will choose only a very few declarations to go in it.

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...* (harnessing contractual legitimacy).
- ✓ **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, consumer safety 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 be 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 welcomed.
 - *Guidance*. Declaring that the code is not above each member's conscience. Offer guidance and advice based on the code, from other members and, ideally, an advice hotline.
 - *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 your code is formally adopted, usually your Chief Executive will write to your members, endorsing it and seeking their support for its successful implementation.



That letter would not be part of the code's official content. The code reflects the occupation, and not a single person.

4.2 Code content: values, principles & standards

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

You can write specific standards, based the content following the principle, appropriate to your 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 having only do 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 your occupation.
- **Objectivity**
 - *Prohibition on Conflicts of Interest*: Wherever possible, members avoiding being subject to any conflict of interest, either by removing the conflict, refusing kickbacks or by excusing themselves from the work.

Members 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.

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



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- *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 your advice.
 - **Commitment to law and society**
 - *Respect for law*: Members respecting all laws and 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, illegally, on the basis of gender, ethnicity, religion, or sexuality in the way they do their work.
 - *Public Interest*: Members respecting all obligations to social institutions (for example, lawyers' duties to 'the court'), and to third parties relying on their declarations.



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- *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 breaking the law, they have a duty to report it. They also cannot be a 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 they are making a decision, members 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 be supported appropriately, and protected from retaliation.
 - **Integrity**
 - *Honesty:* Members telling the truth and avoid 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; 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:* You can, within the limits of the law, restrict your members' capacity to advertise, if you think it necessary to protect the dignity of your 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 if they have 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, record-keeping, 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 moonlighting.

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

When you are 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 professional work and 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

Once you have developed your principles and standards, you can move onto the detailed guidance.

You can give this guidance in a variety of ways:

- **Rules within the code of ethics:** Your 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** 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 these 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 when its rules are broken, your members need to have clear and specific guidance from the earliest possible moment.

5.1 Optional extra content with your code

You can add extra sections that may help your members to implement your code's standards.

Some ideas are below:

I. A list of the dangers to you making ethical decisions

There are several common ways your members are likely to fall into serious moral error. You can warn your members, in a supplementary section, about the typical scenarios where their ethical decisions are most at risk of faltering.

Common contexts where there is a risk your members will not always make ethical decisions include:

- When their stress is high - including time pressures and chronic overwork—and ensuing mental health conditions.
- Where there is any substance abuse and addiction.
- People inventing excuses why the ethical principle doesn't apply to their particular case.
- Unethical organisational climates where the ends justify the means
- Team based or corporate structures that mean no one is responsible because it was a group effort/decision/action.

It can be helpful to suggest to your members the well-known 'HALT' tool, that advises against making decisions when Hungry, Angry, Lonely or Tired.

Some occupations face challenges specific to their own activities, and the dangers you list may make special note of these.

II. Ethical decision-making models and guides

You could add an *Ethical decision-making* guide as part of your code or as an extra resource.

It would give your members a step-by-step guide to making ethical decisions (refer to 3.6 Part One, Understanding ethical decision-making). It can help by directing their attention to each stage in the process, in doing so ensuring they don't skip anything. This could help them both have a clear understanding of what they need to do at each point and ensure that they give themselves enough time to get to the ethical decision.

You can include the guide in the code itself - or give the reader links to generic online resources. One example is at: <https://www.ethics.org/resources/free-toolkit/decision-making-model/>



The guide will need to be appropriate for your occupation.

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

- 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 it is often reliable, safe, uniform practice that empowers an occupation to deliver social goods and become trusted.

At the same time, unless absolutely necessary, members should not be forced into performing acts that directly go against their moral principles. You need to carefully consider how your occupation promises to offer uniformly high standards of treatment if certain members avoid certain actions.

Ideally, this issue should be considered separately from the development of the code itself because controversies in this area usually delay the adoption of the code.

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 their religion forbids, or if they will not comply with that element of the code, give up their practice.

6. Adopting or adapting other codes of ethics

When you are researching you will often consider existing codes of ethics from similar occupations in the same jurisdiction, or from the same occupation in a similar jurisdiction.



These existing codes can be very helpful, and you should look closely at, not only their principles, standards, and rules, but at their 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 industry problems.
- ✓ It can give you a 'tried and tested' code, with fewer errors and issues than a freshly written one.
- ✓ It can promote agreement with behaviour of your members with the actions of those in the same occupation in other jurisdictions, and perhaps with larger (e.g., federal, or international) contexts.

However, there are substantial **downsides** to this approach:

- ⊗ 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 cases where you are going 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 your adopted code's implementation. This way any gaps or inappropriate provisions will be quickly brought to your attention.

6.1 Working with pre-existing legislated obligations and codes

Existing codes of conduct, or legislated ethical duties, can serve as a useful resource to see the occupation's professional practitioner standards and consumer protection issues.

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

- Draw your attention to longstanding ethical concerns for consumers.
- Give you 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. The usual case will be that the ethical code imposes wider, more extensive, and more discretionary duties than those in an existing code of conduct or in legislated obligations. This is quite usual.

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

7. Consultation stage

During the consultation stage, you release the public draft for consultation and feedback.

Plan to ensure your members and others have every chance to know about and comment on the process and the content. Take notice of what they tell you.

Recommended practices

- ✓ There are many ways to consult your members:
 - **Typical processes** include 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.
 - You can ask your members about the types of ethical dilemmas they face, and whether they have developed solutions, while they are in workshops and seminars about other topics.
 - You can write 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.
 - You can use existing ethics training programs to 'road test' the draft code. You will get information back about how clear it is and how practical it is. You can offer incentives (such as continuing education or professional development credits) for those taking part.
- ✓ Get input from outside your occupation to ensure that the code is not disconnected from the society it seeks to serve.

You can invite 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.

Tips:

Make sure it is obvious to everyone who reads it that this is a draft code and not the final document.

It is usually a good sign (although frustrating for the committee) if your members are arguing about the content of the code. It implies that they are taking it seriously and expect to be bound by its principles.

8. Redrafting stage

In the redrafting stage:

- You write new drafts after you get feedback.



Often you will need complete rewrites. At other times, you may be just revising specific standards, which you may need to be redrafted several times. You will need to send out each new version for further consultation.

- You will have to make the final decisions about the code's overall structure and content, and whether to use dedicated guides for subgroups.

Once all these tasks are finished, your final draft is complete.

Recommended practices

- ✓ You will have to consult repeatedly. Different group of people may focus on specific concerns or sections. You can focus the consultations by having those who wrote the first version of something look at the reworked version.
- ✓ You can use focus groups to check the how easy the very late draft is to read and use. This is especially important when you have your final formatting in place.
- ✓ You will probably write the detailed areas of the code, such as its rules and *Additional Guidance* material at this stage. Sometimes, though, these will not make it into the code but be published as separate documents after the code has been finalised.

However, **there should no 'surprises'** in these documents. If the interpretation of a standard is likely to be controversial **resolve these issues** while you are still writing the code itself.

- ✓ Since you want all your members and the public to use the code, it is worth attaching a Creative Commons (or similar) copyright licence to ensure it can be freely downloaded, emailed, printed, and copied.

Tips

Have one person write the last version. You will avoid having the code sound disjointed because all writers have different preference and styles.

It can also be worth **getting a professional writer** (such as a journalist or editor) to go over the draft to improve its flow and readability.

Style tips

The words you use, how long the sentences and the paragraphs are, are all important. So is the tone. How the code is laid out makes a difference too.

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.



Its 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 you still want the document to be 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 your occupational association **formally adopting the code**.

The executive might give initial approval then the membership votes on it at an AGM (for example) There usually will be an official announcement. There may also be a ceremony, with someone signing the code on behalf of the members.

Sometimes some members will also take oaths during the ceremony.

You will also need to decide at this stage if you are going to dissolve the drafting committee, reform it or rename it. **You must have a standing ethics committee** or group to continue the work described in the remaining stages.

Recommended practices

You can manage the adoption process in several ways:

- It may occur through 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

It is **usual** to get your members **to vote** on the code.

Don't expect everyone to agree with everything in it. A two-thirds or three-quarters majority is probably safer in the long run, than a simple majority.

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 as they haven't been subject to the scrutiny that your revision process has required of everything else in the code.

10. Education and communication stage

A code is irrelevant unless members are aware of its existence, know its basic principles and can use it all.

It is recommended that you build in education, communication, and awareness-raising activities over three time periods:



1. **once the final code is drafted**, in the lead up to the membership deciding to adopt it.
2. immediately **after they adopt it**.
3. **over the longer term, as you revise and refresh the code**.

Recommended practices

You have a lot of choices about how to help your members understand and use the code. It is more important that the things you do achieve your goals. Quality not quantity is relevant here.

1. **An 'ethics hotline' or 'helpline' are useful tools. They are arguably the most important things you can do to help your members with their ethical dilemmas.**

This will encourage:

- **your members** (perhaps anonymously) to seek guidance on ethical matters. Ethics codes work best when people have access to advice from outside the normal chain of command.
- **your 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 your code.

2. **Choose wisely how you communicate with your members.**

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

Make it easy for them to read your message quickly and efficiently. Consider working with your marketing colleagues to work out what ways work best with your members.

Traditional channels:

- ✓ Emails, newsletters, internal memos
- ✓ Your website, bulletin boards and the intranet.
- ✓ Posters of the code's principles for the office walls.
- ✓ Articles about your new code in journals or e-zines your 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 as public commitment to your 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 your members are aware of how their actions may be monitored and investigated.
- ✓ Making sure all your 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 haven't been met.

11. Implementation and governance stage

To be effective, a code needs a governance process that embeds its principles in everyday practice. At a minimum, you will need a way to respond to serious violations of your standards and rules.

Sanctions are serious and must always **follow the rule of law**. They can only be applied when the rules are:

- clear
- consistent
- accessible
- about future behaviour and
- when any allegation of a member breaking these rules is judged impartially.

You must ensure defendants are 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. You can do it 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.
 - a complaints hotline, allowing consumers to report incidents they feel broke the ethical rules of your organisation.
- 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.

Striking a balance between trusting your members to behave ethically and ensuring those who behave unethically are likely to be caught, is hard. No one has come up with a perfect way to get that balance right.

If you let too many people behave unethically and get away with it, the code will look like window dressing. If the code is unreasonably harsh, your members will resist all of it and challenge it at every opportunity.

Usually, it is acceptable for you to monitor carefully:

- 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 by proving to them the benefits to them of providing a service which embodies high ethical principles.

Traps

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

The stress and uncertainty about the consequences of an allegation against them added to an unclear or drawn-out disciplinary process can prove a traumatic experience for your members, and one that may be out of all proportion for the alleged wrongdoing.

Your disciplinary processes must respect those accused of ethical breaches, most especially first-time offenders.

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, then you must have systems already in place to manage this process. 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. You need to evaluate how the code is performing.

Recommended practices

- **By the end of the first year** after you implement the code, it is reasonable that it be reviewed.

That means both the content in the code and how it is affecting the practices of your members. To help with this, invite your members and other stakeholders to make submissions on any aspect of the new code.

Usually, they are concerned about:

- tensions between the principles.



- ambiguities in interpretation.
 - areas where they impose unrealistic duties.
 - unintended consequences.
- You can prevent some issues with implementation. You could include worked examples of best practice and show clearly how to interpret the principles in an *Additional Guidance* section to your code.

If you haven't got such a section already, you should add one after the evaluation.

- Record all authoritative rulings on the correct interpretation of the code's standards. Tell your 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).

Don't just keep records of cases where there were infringements.

Complaints that did not lead to infringements can help your members to learn about consumer expectations.

Where there are a lot of complaints without infringements maybe you need to educate the public or perhaps realign the code to meet your customers' expectations.

- Monitor the media.
- Manage the data you keep appropriately and legally.

12.1 Measurement

Measuring the effectiveness of your code is critically important.

It can be hard to measure the 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 your code of ethics:

- You might be able to get access to the results from tests of people's knowledge of the content of the code (for example, at continuing professional development activities).
- You can survey the views or knowledge of members during other professional development activities - a more indirect method which could be valuable over time.
- You can count the popularity of activities focussed on the code.



- You can record the amount of traffic to the code's website. You may be able to distinguish members' visits from other visitors to the site.
- You will get metrics on the advice hotline and other feedback mechanisms.
- You could run consumer satisfaction surveys.
- You could structure a survey to show the relationship between different groups of members and different elements of the code.

Building on this, your work needs to consider the following questions that are identified in the Scheme Application Framework's 4.1.1a Template for Association Codes regarding code improvements and consumer protection outcomes:

- Describe any plans you have to improve your association's code(s), including any strategies that you may have to address consumer harms and risks.
- Describe any measures you use to assess the effectiveness of your code(s) to ensure professional conduct and their frequencies (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 further the objective of protecting consumers of the services provided by your members.
- Does your association's code(s) have an improvement cycle? Please describe - for example:
 - how emerging trends from the outcomes of conduct and competence processes (including but not limited to consumer claims, notification, and complaints data) are used to inform revisions of the code(s)
 - how your 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 engaging 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
 - 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 your members change; so does the impact of new legislation, court decisions and consumer expectations. All these factors will mean the code needs to adapt to if it is to remain relevant and useful to your members.

You may need to do a major revision every few years.



Between major revisions, strengthen the code.

- Add extra recommended 'best practices.'
- Add up to date interpretation of complex rules.
- Welcome ideas from new members.

Traps

You must 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 so flooded with detail they give up. Your code's website can easily be designed to balance these competing needs.

Your members are busy. They also may have to be on top of multiple other codes and guides, laws, and contracts. Respect that. Your 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 comply with all appropriate legal and ethical requirements of your members.

13. Acceptability check-in

Here are 10 questions your members may ask of their code of ethics. Would you get the answers you want?

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 about what these questions are about

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 (employment or service) contract 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 your consumers, even after your code has been implemented. It is never finished. You will have to monitor and refresh it regularly.

Even if the code you wrote and the processes you used were perfect, there are forces at work which may weaken it.

The list below is to alert you to them and reassure you that you are not the only association that has faced these issues.

- Every occupation includes corrupt and exploitative people, and those who would happily cut corners to make their jobs easier or more profitable. These people benefit from pushing 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. Make this as easy as sensible for them.
- It can feel like a waste of time to invest resources and energy into the code when its obligations are pretty universally accepted by the membership.



- New market pressures or opportunities and technological innovation all may make the code feel old fashioned.
- New initiatives will usually attract funding. 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.**

15. 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 One: important questions to consider before preparing 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)
- Part Four: revising a code (if your existing code needs improving).