

CODE OF CONDUCT FOR ELECTED MEMBERS

2016-2019



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1. INTRODUCTION

This Code of Conduct (the Code) sets out the standards of behaviour expected from elected members in the exercise of their duties. Its purpose is to:

- enhance the effectiveness of the local authority and the provision of good local government of the community, city, district or region;
- promote effective decision-making and community engagement;
- enhance the credibility and accountability of the local authority to its communities; and
- develop a culture of mutual trust, respect and tolerance between the members of the local authority and between the members and management.

This purpose is given effect through the values, roles, responsibilities and specific behaviours agreed in this Code.

2. SCOPE

The Code has been adopted in accordance with clause 15 of Schedule 7 of the Local Government Act 2002 (LGA 2002) and applies to all members, including the members of any community boards that have agreed to adopt it. The Code is designed to deal with the behaviour of members towards:

- each other;
- the chief executive and staff;
- the media; and
- the general public.

It is also concerned with the disclosure of information that members receive in their capacity as elected members and information which impacts on the ability of the local authority to give effect to its statutory responsibilities

This Code can only be amended (or substituted by a replacement Code) by a vote of at least 75 per cent of members present at a meeting when amendment to the Code is being considered. The Code should be read in conjunction with the council's Standing Orders.

3. VALUES

The Code is designed to give effect to the following values:

3.1 PUBLIC INTEREST

Members will serve the best interests of the people within their community, district or region and discharge their duties conscientiously, to the best of their ability.

3.2 PUBLIC TRUST

Members, in order to foster community confidence and trust in their Council, will work together constructively and uphold the values of honesty, integrity, accountability and transparency.

3.3 ETHICAL BEHAVIOUR

Members will not place themselves in situations where their honesty and integrity may be questioned, will not behave improperly and will avoid the appearance of any such behaviour.

3.4 OBJECTIVITY

Members will make decisions on merit; including appointments, awarding contracts, and recommending individuals for rewards or benefits.

3.5 RESPECT FOR OTHERS

Members will treat people, including other members, with respect and courtesy, regardless of their race, age, religion, gender, sexual orientation, or disability. Members will respect the impartiality and integrity of officials.

3.6 DUTY TO UPHOLD THE LAW

Members will comply with all legislative requirements applying to their role, abide by this Code of Conduct, and act in accordance with the trust placed in them by the public.

3.7 EQUITABLE CONTRIBUTION

Members will take all reasonable steps to ensure they fulfil the duties and responsibilities of office, including attending meetings and workshops, preparing for meetings, attending civic events, and participating in relevant training seminars.

3.8 LEADERSHIP

Members will actively promote and support these principles and ensure they are reflected in the way in which the Council operates, including a regular review and assessment of the Council's collective performance.

These values complement, and work in conjunction with, the principles of s.14 of the LGA 2002 and the governance principles of s.39 of the LGA 2002.

4. ROLE AND RESPONSIBILITIES

Good governance requires clarity of roles and respect between those charged with responsibility for the leadership of the council and those responsible for advice and the implementation of council decisions. The key roles are:

4.1 MEMBERS

The role of the governing body includes:

- representing the interests of the people of the city, district or region;
- developing and adopting plans, policies and budgets;
- monitoring the performance of the council against stated goals and objectives set out in its long term plan;
- providing prudent stewardship of the council's resources;
- employing and monitoring the performance of the chief executive; and
- ensuring the council fulfils its responsibilities to be a 'good employer' and meets the requirements of the Health and Safety at Work Act 2015.

4.2 CHIEF EXECUTIVE

The role of the chief executive includes:

- implementing the decisions of the council;
- ensuring that all responsibilities delegated to the chief executive are properly performed or exercised;
- ensuring the effective and efficient management of the activities of the local authority;
- maintaining systems to enable effective planning and accurate reporting of the financial and service performance of the local authority;
- providing leadership for the staff of the council; and
- employing staff on behalf of the council (including negotiation of the terms of employment for those staff).

Under s.42 of the LGA 2002 the chief executive is the only person directly employed by the council itself. All concerns about the performance of an individual member of staff must, in the first instance, be referred to the chief executive.

5. RELATIONSHIPS

This section of the Code sets out agreed standards of behaviour between members; members and staff; and members and the public.

5.1 RELATIONSHIPS BETWEEN MEMBERS

Given the importance of relationships to the effective performance of the council, members will conduct their dealings with each other in a manner that:

- maintains public confidence;
- is open and honest;
- is courteous;
- is focused on issues rather than personalities;
- avoids abuse of meeting procedures, such as a pattern of unnecessary notices of motion and/or repetitious points of order; and
- avoids aggressive, offensive or abusive conduct, including the use of disrespectful or malicious language.

Any failure by members to act in the manner described in s.5.1 represents a breach of this Code.

Please note that nothing in this section of the Code is intended to limit robust debate within the council as long as it is conducted in a respectful and insightful manner.

5.2 RELATIONSHIPS WITH STAFF

An important element of good governance involves the relationship between the council and its chief executive. Members will respect arrangements put in place to facilitate this relationship, and:

- raise any concerns about employees, officers or contracted officials with the chief executive;
- raise any concerns about the performance or behaviour of the chief executive with the mayor;
- make themselves aware of the obligations that the council and the chief executive have as employers and observe those requirements at all times, such as the duty to be a good employer;
- treat all employees with courtesy and respect and avoid publicly criticising any employee;

- observe any protocols put in place by the chief executive concerning contact between members and employees;
- avoid doing anything which might compromise, or could be seen as compromising, the impartiality of an employee.

Any failure by members to act in the manner described above represents a breach of this Code.

Please note: Elected members should be aware that failure to observe this portion of the Code may compromise the council's obligations to be a good employer and consequently expose the council to civil litigation or affect the risk assessment of council's management and governance control processes undertaken as part of the council's audit.

5.3 RELATIONSHIP WITH THE PUBLIC

Given that the performance of the council requires the trust and respect of individual citizens, members will:

- interact with members of the public in a fair, respectful, equitable and honest manner;
- be available to listen and respond openly and honestly to community concerns;
- consider all points of view or interests when participating in debate and making decisions;
- treat members of the public in a courteous manner; and
- act in a way that upholds the reputation of the local authority.

Any failure by members to act in the manner described above represents a breach of this Code.

6. CONTACT WITH THE MEDIA (INCORPORATES SOCIAL MEDIA SUCH AS FACEBOOK, TWITTER)

The media play an important part in the operation and efficacy of local democracy. In order to fulfil this role the media needs access to accurate and timely information about the affairs of council.

From time to time individual members will be approached to comment on a particular issue either on behalf of the council, or as an elected member in their own right. When responding to the media members must be mindful that operational questions should be referred to the chief executive and policy-related questions referred to the mayor or the member with the appropriate delegated authority.

When speaking to the media more generally members will abide by the following provisions:

6.1 MEDIA CONTACT ON BEHALF OF THE COUNCIL

- the mayor is the first point of contact for an official view on any issue, unless delegations state otherwise. Where the mayor is absent requests for comment will be referred to the deputy mayor or relevant committee chair or portfolio holder;
- the mayor may refer any matter to the relevant committee chair or to the chief executive for their comment; and
- no other member may comment on behalf of the council without having first obtained the approval of the mayor.

6.2 MEDIA COMMENT ON A MEMBER'S OWN BEHALF

Elected members are free to express a personal view in the media, at any time, provided the following rules are observed:

- media comments must not state or imply that they represent the views of the council;

- media comments which are contrary to a council decision or policy must clearly state that they do not represent the views of the majority of members;
- media comments must observe the other requirements of the Code; for example, comments should not disclose confidential information, criticise, or compromise the impartiality or integrity of staff; and
- media comments must not be misleading and should be accurate within the bounds of reasonableness.

Any failure by members to meet the standards set out above represents a breach of this Code.

7. INFORMATION

Access to information is critical to the effective performance of a local authority and the level of public trust felt by the public.

7.1 CONFIDENTIAL INFORMATION

In the course of their duties members will occasionally receive information that is confidential. This will generally be information that is either commercially sensitive or is personal to a particular individual or organisation. Accordingly, members agree not to use or disclose confidential information for any purpose other than the purpose for which the information was supplied to the member.

7.2 INFORMATION RECEIVED IN CAPACITY AS AN ELECTED MEMBER

Members will disclose to other members and, where appropriate the chief executive, any information received in their capacity as an elected member that concerns the council's ability to give effect to its responsibilities.

Members who are offered information on the condition that it remains confidential will inform the provider of the information that it is their duty to disclose the information and will decline the offer if that duty is likely to be compromised.

Any failure by members to act in the manner described above represents a breach of this Code.

Please note: failure to observe these provisions may impede the performance of the council by inhibiting information flows and undermining public confidence. It may also expose the council to prosecution under the Privacy Act and/or civil litigation.

8. CONFLICTS OF INTEREST

Elected members will maintain a clear separation between their personal interests and their duties as elected members in order to ensure that they are free from bias (whether real or perceived). Members therefore must familiarise themselves with the provisions of the Local Authorities (Members' Interests) Act 1968 (LAMIA).

Members will not participate in any council discussion or vote on any matter in which they have a pecuniary interest, other than an interest in common with the general public. This rule also applies where the member's spouse contracts with the authority or has a pecuniary interest. Members shall make a declaration of interest as soon as practicable after becoming aware of any such interests.

If a member is in any doubt as to whether or not a particular course of action (including a decision to take no action) raises a conflict of interest, then the member should seek guidance from the chief

executive immediately. Members may also contact the Office of the Auditor General for guidance as to whether they have a pecuniary interest, and if so, may seek an exemption to allow that member to participate or vote on a particular issue in which they may have a pecuniary interest. The latter must be done before the discussion or vote.

Please note: Failure to observe the requirements of the LAMIA could potentially invalidate the decision made, or the action taken, by the council. Failure to observe these requirements could also leave the elected member open to prosecution (see Appendix A). In the event of a conviction, elected members can be ousted from office.

9. REGISTER OF INTERESTS

Members shall annually make a declaration of interest. These declarations are recorded in a Register of Interests maintained by the council. The declaration must include information on the nature and extent of any interest, including:

- a) any employment, trade or profession carried on by the member or the members' spouse for profit or gain;
- b) any company, trust, partnership etc for which the member or their spouse is a director, partner or trustee;
- c) the address of any land in which the member has a beneficial interest within the jurisdiction of the local authority; and
- d) the address of any land owned by the local authority in which the member or their spouse is:
 - a tenant; or
 - the land is tenanted by a firm in which the member or spouse is a partner, a company of which the member or spouse is a director, or a trust of which the member or spouse is a trustee;
- e) any other matters which the public might reasonably regard as likely to influence the member's actions during the course of their duties as a member (if the member is in any doubt on this, the member should seek guidance from the chief executive)

Please note: Where a member's circumstances change they must ensure that the Register of Interests is updated as soon as practicable.

10. ETHICAL BEHAVIOUR

Members will seek to promote the highest standards of ethical conduct. Accordingly members will:

- claim only for legitimate expenses as determined by the Remuneration Authority and any lawful policy of the council developed in accordance with that determination;
- not influence, or attempt to influence, any council employee, officer or member in order to benefit their own, or families personal or business interests;
- only use the council resources (such as facilities, staff, equipment and supplies) in the course of their duties and not in connection with any election campaign or personal interests; and
- not solicit, demand, or request any gift, reward or benefit by virtue of their position and notify the chief executive if any such gifts are accepted. Where a gift to the value of \$100 or more is accepted by a member, that member must immediately disclose this to the chief executive for inclusion in the publicly available register of interests.

Any failure by members to comply with the provisions set out in this section represents a breach of this Code.

10.1 UNDISCHARGED BANKRUPT

In accordance with clause 15(5) of Schedule 7 (LGA 2002) any member who is an “undischarged bankrupt” will notify the chief executive prior to the inaugural meeting or as soon as practicable after being declared bankrupt. The member will also provide the chief executive with a brief explanatory statement of the circumstances surrounding the member’s adjudication and the likely outcome of the bankruptcy.

11. CREATING A SUPPORTIVE AND INCLUSIVE ENVIRONMENT

In accordance with the purpose of the Code, members agree to take all reasonable steps in order to participate in activities scheduled to promote a culture of mutual trust, respect and tolerance. These include:

- Attending post-election induction programmes organised by the council for the purpose of facilitating agreement on the council’s vision, goals and objectives and the manner and operating style by which members will work.
- Taking part in any assessment of the council’s overall performance and operating style during the triennium.¹
- Taking all reasonable steps to ensure they possess the skills and knowledge to effectively fulfil their Declaration of Office and contribute to the good governance of the city, district or region.

12. BREACHES OF THE CODE

Members must comply with the provisions of this Code (LGA 2002, schedule 7, s. 15(4)). Any member, or the chief executive, who believes that the Code has been breached by the behaviour of a member, may make a complaint to that effect. All complaints will be considered in a manner that is consistent with the following principles.

12.1 PRINCIPLES

The following principles will guide any processes for investigating and determining whether or not a breach under this Code has occurred:

- that the approach for investigating and assessing a complaint will be proportionate to the apparent seriousness of the breach complained about;
- that the roles of complaint, investigation, advice and decision-making will be kept separate as appropriate to the nature and complexity of the alleged breach; and
- that the concepts of natural justice and fairness will apply in the determination of any complaints made under this Code. This requires, conditional on the nature of an alleged breach, that affected parties:
 - have a right to know that an investigation process is underway;

¹ A self-assessment template is provided in the Guidance to this Code.

- are given due notice and are provided with an opportunity to be heard;
- have a right to seek appropriate advice and be represented; and
- have their privacy respected.

12.2 COMPLAINTS

All complaints made under this Code must be made in writing and forwarded to the Mayor, unless the Mayor is a party to the complaint. On receipt of a complaint, the Mayor will attempt to resolve the complaint through informal dispute resolution.

If the Mayor is a party to a complaint, or fails to resolve the complaint to the satisfaction of the complainant within a reasonable time, the complainant has the right to forward the complaint to the chief executive.

The Mayor and Chief Executive, acting jointly, have the power to dismiss a complaint prior to the preliminary assessment stage if they are of the view that the complaint does not have a reasonable prospect of being declared substantial or material.

If the Mayor is a party to the complaint, a Committee consisting of the current Chairpersons of Council standing committees have the power to dismiss a complaint prior to the preliminary assessment stage if they are of the view that the complaint does not have a reasonable prospect of being declared substantial or material.

A complaint and all information relating to its resolution are strictly confidential up to and including the preliminary investigation stage. This is to allow the equivalent of 'without prejudice' discussions, with a view to the early resolution of complaints, where possible.

On receipt of a complaint, the chief executive must forward that complaint to an independent investigator for a preliminary assessment to determine whether the issue is sufficiently serious to warrant a full investigation.²

Only members may make a complaint under this Code.

For clarity, a complaint under this Code can be made by a member in reliance on information or evidence provided by the public or an organisation.

If a complaint from the public or an organisation, touching on matters dealt with by the Code, is received by Council staff, it will be forwarded to the Mayor. The Mayor will assess the complaint (in consultation with staff, if necessary) and may make a complaint under the Code or forward the complaint to a particular member. If a complaint from the public or an organisation of this nature is dismissed, the complainant will be advised in writing.

12.3 FORM OF COMPLAINTS

Before making a complaint under this Code, a complainant should first make all reasonable attempts to resolve the matter, if appropriate.

A complaint must contain the following:

- a. The nature of the complaint, including the parts of the Code that are alleged to have been breached.

² On behalf of the Council the Chief Executive will, shortly after the start of a triennium, prepare, in consultation with the Mayor, a list of investigators for this purpose of undertaking a preliminary assessment. The Chief Executive may prepare a list specifically for his council, prepare a list jointly with neighbouring councils or contract with an agency capable of providing appropriate investigators.

- b. How the breach, if proven, would bring a member or Council into disrepute, or, if not addressed, reflect adversely on another member of Council.
- c. What steps the complainant has already taken to resolve the complaint.
- d. Include all the information and evidence relied on to substantiate the breach.

A complaint could be rejected at any stage as incomplete, if it did not contain these details.

The requirements to provide all information and evidence relied on also apply to a member defending a complaint.

12.4 INVESTIGATION, ADVICE AND DECISION

The process, following receipt of a complaint, will follow the steps outlined in Appendix B.

12.5 MATERIAL OR SUBSTANTIAL BREACH

An alleged breach under this Code is material if, in the opinion of the independent investigator, it would, if proven, bring a member or the council into disrepute or, if not addressed, reflect adversely on another member of the council.

An alleged breach under this Code is substantial if, in the opinion of the independent investigator, it is less than material but more than minor or trivial.

13. PENALTIES AND ACTIONS

Where a complaint is determined to be substantial or material and referred to the council the nature of any penalty or action will depend on the seriousness of the breach.

13.1 SUBSTANTIAL OR MATERIAL BREACHES

In the case of substantial or material breaches of this Code the council, or a committee with delegated authority, may require one of the following:

1. a letter of censure to the member;
2. a request (made either privately or publicly) for an apology;
3. a vote of no confidence in the member;
4. removal of certain council-funded privileges (such as attendance at conferences);
5. restricted entry to council offices, such as no access to staff areas (where restrictions may not previously have existed);
6. limitation on any dealings with council staff so that they are confined to the chief executive only;
7. suspension from committees or other bodies; or
8. an invitation for the member to consider resigning from the council.
9. reimbursement of all or a portion of Council's external costs, including meeting payments to external committee members, incurred in investigating the matter.

A council or committee may decide that a penalty will not be imposed where a respondent agrees to one or more of the following:

- attend a relevant training course; and/or

- work with a mentor for a period of time; and/or
- participate in voluntary mediation (if the complaint involves a conflict between two members); and/or
- tender an apology.

The process at this stage is based on the presumption that the outcome of a complaints process will be made public unless there are grounds, such as those set out in the Local Government Official Information and Meetings Act 1987 (LGOIMA), for not doing so.

13.2 STATUTORY BREACHES

In cases where a breach of the Code is found to involve regulatory or legislative requirements, the complaint will be referred to the relevant agency. For example:

- breaches relating to members' interests (where members may be liable for prosecution by the Auditor-General under the LAMIA);
- breaches which result in the council suffering financial loss or damage (where the Auditor-General may make a report on the loss or damage under s.30 of the LGA 2002 which may result in the member having to make good the loss or damage); or
- breaches relating to the commission of a criminal offence which will be referred to the Police (which may leave the elected member liable for criminal prosecution).

14. REVIEW

Once adopted, a Code of Conduct continues in force until amended by the council. The Code can be amended at any time but cannot be revoked unless the council replaces it with another Code. Once adopted, amendments to the Code require a resolution supported by 75 per cent of the members of the council present at a council meeting where the amendment is considered.

Council may formally review the Code as soon as practicable after the beginning of each triennium. The results of that review will be considered by the council in regard to potential changes for improving the Code.

APPENDIX A: LEGISLATION BEARING ON THE ROLE AND CONDUCT OF ELECTED MEMBERS

This is a summary of the legislative requirements that have some bearing on the duties and conduct of elected members. The full statutes can be found at www.legislation.govt.nz.

THE LOCAL AUTHORITIES (MEMBERS' INTERESTS) ACT 1968

The Local Authorities (Members' Interests) Act 1968 (LAMIA) provides rules about members discussing and voting on matters in which they have a pecuniary interest and about contracts between members and the council.

A pecuniary interest is likely to exist if a matter under consideration could reasonably give rise to an expectation of a gain or loss of money for a member personally (or for their spouse or a company in which they have an interest). In relation to pecuniary interests the LAMIA applies to both contracting and participating in decision-making processes.

With regard to pecuniary or financial interests a person is deemed to be “concerned or interested” in a contract or interested “directly or indirectly” in a decision when:

- a person, or spouse or partner, is “concerned or interested” in the contract or where they have a pecuniary interest in the decision; or
- a person, or their spouse or partner, is involved in a company that is “concerned or interested” in the contract or where the company has a pecuniary interest in the decision.

There can also be additional situations where a person is potentially “concerned or interested” in a contract or have a pecuniary interest in a decision, such as where a contract is between an elected members’ family trust and the council.

DETERMINING WHETHER A PECUNIARY INTEREST EXISTS

Elected members are often faced with the question of whether or not they have a pecuniary interest in a decision and if so whether they should participate in discussion on that decision and vote. When determining if this is the case or not the following test is applied:

“...whether, if the matter were dealt with in a particular way, discussing or voting on that matter could reasonably give rise to an expectation of a gain or loss of money for the member concerned.” (OAG, 2001)

In deciding whether you have a pecuniary interest, members should consider the following factors.

- What is the nature of the decision being made?
- Do I have a financial interest in that decision - do I have a reasonable expectation of gain or loss of money by making that decision?
- Is my financial interest one that is in common with the public?
- Do any of the exceptions in the LAMIA apply to me?
- Could I apply to the Auditor-General for approval to participate?

Members may seek assistance from the mayor or other person to determine if they should discuss or vote on an issue but ultimately it is their own judgment as to whether or not they have pecuniary interest in the decision. Any member who is uncertain as to whether they have a pecuniary interest is advised to seek legal advice. Where uncertainty exists members may adopt a least-risk approach which is to not participate in discussions or vote on any decisions.

Members who do have a pecuniary interest will declare the pecuniary interest to the meeting and not participate in the discussion or voting. The declaration and abstention needs to be recorded in the meeting minutes. (Further requirements are set out in the council's Standing Orders.)

THE CONTRACTING RULE

A member is disqualified from office if he or she is “concerned or interested” in contracts with their council if the total payments made, or to be made, by or on behalf of the council exceed \$25,000 in any financial year. The \$25,000 limit includes GST. The limit relates to the value of all payments made for all contracts in which you are interested during the financial year. It does not apply separately to each contract, nor is it just the amount of the profit the contractor expects to make or the portion of the payments to be personally received by you.

The Auditor-General can give prior approval, and in limited cases, retrospective approval for contracts that would otherwise disqualify you under the Act. It is an offence under the Act for a person to act as a member of the council (or committee of the council) while disqualified.

NON-PECUNIARY CONFLICTS OF INTEREST

In addition to the issue of pecuniary interests, rules and common law govern conflicts of interest more generally. These rules apply to non-pecuniary conflicts of interest, including common law rules about bias. In order to determine if bias exists or not members need to ask:

“Is there a real danger of bias on the part of the member of the decision-making body, in the sense that he or she might unfairly regard with favour (or disfavour) the case of a party to the issue under consideration?”

The question is not limited to actual bias, but relates to the appearance or possibility of bias reflecting the principle that justice should not only be done, but should be seen to be done. Whether or not members believe they are not biased is irrelevant.

Members should focus be on the nature of the conflicting interest or relationship and the risk it could pose for the decision-making process. The most common risks of non-pecuniary bias are where:

- members' statements or conduct indicate that they have predetermined the decision before hearing all relevant information (that is, members have a “closed mind”); and
- members have a close relationship or involvement with an individual or organisation affected by the decision.

In determining whether or not they might be perceived as biased, members must also take into account the context and circumstance of the issue or question under consideration. For example, if a member has stood on a platform and been voted into office on the promise of implementing that platform then voters would have every expectation that the member would give effect to that promise, however he/she must still be seen to be open to considering new information (this may not apply to decisions made in quasi-judicial settings, such as an RMA hearing).

LOCAL GOVERNMENT OFFICIAL INFORMATION AND MEETINGS ACT 1987

The Local Government Official Information and Meetings Act 1987 sets out a list of meetings procedures and requirements that apply to local authorities and local/community boards. Of particular importance for the roles and conduct of elected members is the fact that the chair has the responsibility to maintain order at meetings, but all elected members should accept a personal responsibility to maintain acceptable standards of address and debate. No elected member should:

- create a disturbance or a distraction while another councillor is speaking;
- be disrespectful when they refer to each other or other people; or

- use offensive language about the council, other members, any employee of the council or any member of the public.

See Council's Standing Orders for more detail.

SECRET COMMISSIONS ACT 1910

Under this Act it is unlawful for an elected member (or officer) to advise anyone to enter into a contract with a third person and receive a gift or reward from that third person as a result, or to present false receipts to council.

If convicted of any offence under this Act a person can be imprisoned for up to two years, and/or fines up to \$1000. A conviction would therefore trigger the ouster provisions of the LGA 2002 and result in the removal of the member from office.

CRIMES ACT 1961

Under this Act it is unlawful for an elected member (or officer) to:

- accept or solicit for themselves (or anyone else) any gift or reward for acting or not acting in relation to the business of council; and
- use information gained in the course of their duties for their, or another persons, monetary gain or advantage.

These offences are punishable by a term of imprisonment of seven years or more. Elected members convicted of these offences will automatically cease to be members.

FINANCIAL MARKETS CONDUCT ACT 2013

Financial Markets Conduct Act 2013 (previously the Securities Act 1978) essentially places elected members in the same position as company directors whenever council offers stock to the public. Elected members may be personally liable if investment documents such as a prospectus contain untrue statements and may be liable for criminal prosecution if the requirements of the Act are not met.

THE LOCAL GOVERNMENT ACT 2002

The Local Government Act 2002 (LGA 2002) sets out the general powers of local government, its purpose and operating principles. Provisions directly relevant to this Code include:

Personal liability of members

Although having qualified privilege, elected members can be held personally accountable for losses incurred by a local authority where, following a report from the Auditor General under s.44 LGA 2002, it is found that one of the following applies:

- a) money belonging to, or administered by, a local authority has been unlawfully expended; or
- b) an asset has been unlawfully sold or otherwise disposed of by the local authority; or
- c) a liability has been unlawfully incurred by the local authority; or
- d) a local authority has intentionally or negligently failed to enforce the collection of money it is lawfully entitled to receive.

Members will not be personally liable where they can prove that the act or failure to act resulting in the loss occurred as a result of one of the following:

- a) without the member's knowledge;

- b) with the member's knowledge but against the member's protest made at or before the time when the loss occurred;
- c) contrary to the manner in which the member voted on the issue; and
- d) in circumstances where, although being a party to the act or failure to act, the member acted in good faith and relied on reports, statements, financial data, or other information from professional or expert advisers, namely staff or external experts on the matters.

In certain situation members will also be responsible for paying the costs of proceedings (s.47 LGA 2002).

APPENDIX B: PROCESS FOR THE DETERMINATION AND INVESTIGATION OF COMPLAINTS

STEP 1: MAYOR RECEIVES COMPLAINT

On receipt of a complaint under this Code, the mayor will attempt to resolve the complaint through informal dispute resolution, within a reasonable time.

If the complainant is not satisfied with the proposed resolution or the complaint has not been resolved within a reasonable time, the complainant has the right to forward the complaint to the chief executive.

The Mayor and Chief Executive, acting jointly, have the power to dismiss a complaint prior to the preliminary assessment stage if they are of the view that the complaint does not have a reasonable prospect of being declared substantial or material.

If the Mayor is a party to the complaint, a Committee consisting of the current Chairpersons of Council standing committees have the power to dismiss a complaint prior to the preliminary assessment stage if they are of the majority view that the complaint does not have a reasonable prospect of being declared substantial or material.

STEP 2: CHIEF EXECUTIVE RECEIVES COMPLAINT

On receipt of a complaint under this Code by either the Mayor or a complainant not satisfied with the process or proposed resolution under Step 1, the Chief Executive will refer the complaint to an independent investigator.

The brief to the investigator will make the following clear:

1. The onus is on the complainant and subject of the complaint to provide all the information and evidence relied on, as part of their initial complaint or defence.
2. The expectation is that telephone calls may be made to clarify the information or evidence, but that face-to-face interviews or further investigation of the issues will only be undertaken if the complaint is of a particularly serious nature.
3. The investigation should be proportionate to the potential harm that might result if the breach is proven.

The Chief Executive will also:

- inform the complainant that the complaint has been referred to the independent investigator and the name of the investigator, and refer them to the process for dealing with complaints as set out in the Code; and
- inform the respondent that a complaint has been made against them, the name of the investigator and refer them to the process for dealing with complaints as set out in the Code.

STEP 3: INVESTIGATOR MAKES PRELIMINARY ASSESSMENT

On receipt of a complaint the investigator will assess whether:

1. the complaint is frivolous or without substance and should be dismissed;
2. the complaint is outside the scope of the Code and should be redirected to another agency or process;
3. the complaint is non-material; and
4. the complaint is substantial or material and a full investigation is required.

In making the assessment the investigator may make whatever initial inquiry is necessary to determine the appropriate course of action. The investigator has full discretion to dismiss any complaint which, in their view, fails to meet the test of substantial or material.

On receiving the investigator's preliminary assessment the Chief Executive will:

1. where an investigator determines that a complaint is frivolous or without substance, inform the complainant and respondent directly and inform other members (if there are no grounds for confidentiality) of the investigator's decision;
2. in cases where the investigator finds that the complaint involves a potential legislative breach and outside the scope of the Code, forward the complaint to the relevant agency and inform both the complainant and respondent of the action.

STEP 4: ACTIONS WHERE A BREACH IS FOUND TO BE NON-MATERIAL AND NOT SUBSTANTIAL

If the subject of a complaint is found to be non-material and not substantial the investigator will inform the Chief Executive and, if they choose, recommend a course of action appropriate to the breach, such as;

- that the respondent seek guidance from the Chair or Mayor;
- that the respondent attends appropriate courses or programmes to increase their knowledge and understanding of the matters leading to the complaint.

The Chief Executive will advise both the complainant and the respondent of the investigator's decision and any recommendations, neither of which are open to challenge. Any recommendations made in response to a non-material and not substantial breach are non-binding on the respondent and the council.

STEP 5: ACTIONS WHERE A BREACH IS FOUND TO BE MATERIAL OR SUBSTANTIAL

If the subject of a complaint is found to be material or substantial the investigator will inform the Chief Executive, who will inform the complainant and respondent. The investigator will then prepare a report for the council on the seriousness of the breach.

In preparing that report the investigator may:

- consult with the complainant, respondent and any affected parties;
- undertake a hearing with relevant parties; and/or
- refer to any relevant documents or information.

On receipt of the investigator's report the Chief Executive will prepare a report for the council or committee with delegated authority, which will meet to consider the findings and determine whether or not a penalty, or some other form of action, will be imposed. The Chief Executive's report will include the full report prepared by the investigator.

STEP 6: PROCESS FOR CONSIDERING THE INVESTIGATOR'S REPORT

Depending upon the nature of the complaint and alleged breach the investigator's report may be considered by the full council, excluding the complainant, respondent and any other 'interested' members, or a committee established for that purpose.

In order to avoid any suggestion of bias, a Code of Conduct Committee may often be the best mechanism for considering and ruling on complaints. Committees should be established at the start of

a triennium with a majority of members selected from the community through either an application process or by invitation.

The council or committee will consider the chief executive's report in open meeting, except where the alleged breach concerns matters that justify the exclusion of the public, such as the misuse of confidential information or a matter that would otherwise be exempt from public disclosure under s.48 of the LGOIMA, in which case it will be a closed meeting.

Before making any decision in respect of the investigator's report the council or committee will give the member against whom the complaint has been made an opportunity to appear and speak in their own defense. Members with an interest in the proceedings, including the complainant and the respondent, may not take part in these proceedings.

The form of penalty that might be applied will depend on the nature of the breach and may include actions set out in section 13.1 of this Code.

In accordance with this Code councils will agree to implement the recommendations of a Code of Conduct Committee without debate.

For more information contact:
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