

DRAFT STANDARD CODE OF CONDUCT

PART 1

PRELIMINARY

Introduction

1. Clause 15, Schedule 7 of the Local Government Act 2002 provides that the Secretary for Local Government may approve and issue a Code of conduct to apply to members of local authorities, local boards and community boards. Clause 15(4) provides that's members must comply with the Code of conduct.¹
2. The Code of conduct must set out:
 - (a) *understandings and expectations adopted by the local authority about the manner in which members may conduct themselves while acting in their capacity as members, including—*
 - (i) *behaviour toward one another, staff, and the public; and*
 - (ii) *disclosure of information, including (but not limited to) the provision of any document, to elected members that—*
 - (A) *is received by, or is in the possession of, an elected member in his or her capacity as an elected member; and*
 - (B) *relates to the ability of the local authority to give effect to any provision of this Act; and*
 - (b) *a general explanation of—*
 - (i) *the Local Government Official Information and Meetings Act 1987; and*
 - (ii) *any other enactment or rule of law applicable to members.*
3. This document sets out the Code of conduct provided for in Clause 15, Schedule 7 of the Act.

¹ This paragraph and paragraph 2 reflect the wording of clause 15 as proposed to be amended by the Local Government (System Improvements) Amendment Bill. It is possible that this wording may alter as a result of Parliament's consideration of the Bill.

Application

4. This Code applies to:

- Members of the governing body of a local authority
- Members of a local board
- Members of a community board
- Members of a committee or sub-committee appointed under clause 31(3), [Schedule 7](#) of the Local Government Act 2002 or pursuant to another Act,

while acting in their capacity as a member of a local authority, local board, community board, committee or sub-committee.

Interpretation

5. In this Code:

Complainant means a person who has made a complaint

Council group means a local authority and its related local boards, community board, committees and sub-committees

Investigator means a person appointed to investigate and determine a complaint appointed from outside the membership and employees of a local authority.

Member means a member of a local authority, local board, committee or sub-committee, and includes a Mayor or a Chairperson.

Respondent means a member who is the subject of a complaint

PART 2

EXPECTATIONS AND BEHAVIOURS OF MEMBERS

General expectations of members

6. The Mayor or the Chairperson of a local authority is expected to take a lead in developing and maintaining a constructive culture amongst the members of that council.
7. Members are expected to:
- contribute to developing and maintaining a constructive culture amongst the members of the local authority, board, committee or sub-committee of which they are a member
 - use their best endeavours to resolve issues outside of the Code of conduct complaints process
 - attend any induction programmes organised by the local authority for the purpose of facilitating agreement on Council's vision, goals and objectives and the manner and operating style by which members will work

- take part in any assessment or evaluation of Council's performance and operating style
- take all reasonable steps to acquire and maintain the required skills and knowledge to effectively fulfil their declaration of office and contribute to the good governance of the [Region/City/District/Local Board Area/Community].

Te Tiriti o Waitangi

8. Members are expected to operate and make decisions in manner that recognises and respects the significance of Te Tiriti o Waitangi taking into account the following principles²:

- Tino Rangatiratanga: The principle of self-determination provides for Māori self-determination and mana motuhake. This requires local authorities to be open to working with mana whenua partners in the design and delivery of their work programmes,
- Partnership: The principle of partnership implies that local authorities will seek to establish a strong and enduring relationship with iwi and Māori, within the context of iwi and Māori expectations. Kaunihera should identify opportunities, and develop and maintain ways for Māori to contribute to kaunihera decisions, and consider ways kaunihera can help build Māori capacity to contribute to council decision-making,
- Equity: The principle of equity requires local authorities to commit to achieving the equitable delivery of local public services,
- Active protection: The principle of active protection requires local authorities to be well informed on the wellbeing of iwi, hapū and whanau within their respective rohe,
- Options: The principle of options requires local authorities to ensure that its services are provided in a culturally appropriate way that recognises and supports the expression of te ao Māori.

Behaviours

9. Clauses 10 to 12 of the Code sets out understanding and expectations about the manner in which members should conduct themselves while acting in their capacity as members.

Trust

10. Members will:

- make decisions on their merits, in the interests of the public and unaffected by illegitimate considerations such as personal interest or other duties or relationships
- disclose personal and outside interests, relationships and duties

² Sourced from the [LGNZ Code of Conduct template 2022](#).

- declare a conflict of interest and step aside from a decision where they are unable to approach a decision on its merits or it might appear that they will not approach a decision on its merits, in the interests of the public and unaffected by a personal or outside interest, relationship or duty
- when making decisions, have an open mind to the views of others and to alternatives, and be prepared, despite any predisposition they may have, to change their mind
- ensure that they are not under an obligation to those who might inappropriately try to influence them in the performance of their duties
- be accountable for the decisions they make and enable appropriate public scrutiny
- make an equitable contribution, including attending meetings and workshops, preparing for meetings, attending civic events, and participating in relevant training seminars
- act and make decisions openly and transparently
- be truthful and demonstrate honesty and integrity
- use council resources prudently and lawfully and not for their own purposes
- uphold the law, and promote and support high standards of conduct by leadership and example
- comply with the policies and protocols adopted with the Code.

Respect

11. Members will:

- respect the people they work with
- interact with other elected members, staff and the public in a way that:
 - encourages mutual respect and maintains the dignity of each individual
 - recognises others' roles and responsibilities
 - is inclusive
 - enables the co-existence of individual and collective responsibility
 - allows for robust discussion and debate focusing on issues rather than personalities
 - is not derogatory
 - encourages thoughtful analysis
 - maintains public confidence in the office to which they have been elected
 - is open and honest
 - maintains the confidentiality of confidential information provided to them.

Policies

12. Members are expected to be aware of and comply with the policies of the local authority listed below:

A local authority may include here a policy or similar document dealing with any of the following matters:

- *Conflicts of interest*

- *Confidential information*
- *Working with staff*
- *Election year policy*
- *Communications policy*
- *Media protocols*
- *Social media guidelines*
- *Governance role and responsibilities*
- *Expenses policy*

PART 3

BREACHES AND COMPLAINTS

Breaches of the Code

13. A breach of this Code occurs if:
- One or more of the principles listed in paragraphs 10 to 11 are breached
 - A policy listed in paragraph 12 is breached.

COMPLAINTS

Who may make a complaint?

14. Complaints about an alleged breach of the Code by a member may be made by:
- Members of a local authority, local board, community board, committee or sub-committee
 - An employee of a local authority
 - A member of the public

Making a complaint

15. Where a person listed in paragraph 14 believes that a member has breached the Code that person may make a complaint.
16. A complaint must be made in writing and lodged with the Chief Executive, and:
- Describe the breach
 - Reference the part of the Code which is alleged to have been breached
 - Provide evidence of the alleged breach; and
 - Provide evidence of any attempts to resolve the breach prior to the complaint having been lodged.

Member's capacity

17. A complaint must relate to the conduct of a member while acting in their capacity as a member.

18. For the avoidance of doubt, this Code applies to any interaction between a member and an employee of a local authority where:
- The member is acting in a personal capacity; and
 - The employee is employed by the local authority forming part of the council grouping the member relates to.

PRINCIPLES AND MATERIALITY

Principles for dealing with complaints

19. Complaints will be considered and dealt with in accordance with the following principles:
- The approach for investigating and assessing a complaint will be proportionate to the apparent seriousness, nature and complexity of the alleged breach.
 - The concepts of natural justice, fairness and reasonableness will apply in the determination of any complaints made under this Code.

Information privacy principles

20. When receiving or collecting information about a complaint or when providing information about a complaint the Chief Executive and the investigator shall apply the information privacy principles set out in [section 22](#) of the Privacy Act 2020.

Materiality

21. An alleged breach under this Code is material if, in the opinion of an investigator, it would if proven, bring a member or the local authority into disrepute or, if not addressed, reflect adversely on another member of the local authority.
22. The following may be taken into account when assessing materiality:
- The conduct was not stopped on request
 - The conduct appeared to be intentional, malicious or motivated by ill-will
 - The conduct caused serious harm, such as reputational harm for an individual or organisation, bringing the local authority into disrepute
 - There has been an ongoing pattern of breaches
 - Even though the conduct complained of occurs on only one or two occasions it represents a major departure from expected standards.
23. The following types of conduct shall be dealt with by an investigator as if they were material:
- participating in a decision where the member has been formally advised through the 'conflict of interest' provisions Part 4 of this Code that a conflict of interest exists
 - bullying, aggressive or offensive behaviour
 - discrimination
 - undermining the role of other elected members

- misrepresentation of the statements or actions of others
- disclosure of confidential information
- misuse of council resources
- harassment, including
 - violent threats or language directed against another person
 - discriminatory jokes and language
 - posting sexually explicit or violent material
 - posting (or threatening to post) other people's personally identifying information
 - personal insults
 - unwelcome sexual attention
 - advocating for, or encouraging, any of the above behaviour
- publicly criticising staff or calling into question their professionalism or integrity.

PROCESS FOR DEALING WITH COMPLAINTS

Chief Executive receives complaint

24. On receipt of a complaint under this Code the Chief Executive will refer the complaint to an investigator. The Chief Executive will also:
- inform the complainant that the complaint has been referred to the investigator and the name of the investigator, and refer them to the process for dealing with complaints as set out in the Code
 - inform the respondent that a complaint has been made against them, the name of the investigator and remind them of the process for dealing with complaints as set out in the Code.

Investigator makes preliminary assessment

25. On receipt of a complaint the investigator will undertake a preliminary assessment to determine the relative merit and seriousness of the alleged breach and the nature of the subsequent process that will be followed. The investigator will consider whether:
- the complaint is trivial, vexatious, frivolous, not made in good faith or politically motivated and should be dismissed
 - the complaint is without substance, or does not appear to be a breach of the Code and should be dismissed
 - the complaint is relatively minor and no further action is necessary
 - the complaint is outside the scope of the Code and should be re-directed to another agency or process
 - The complaint is not material and should be referred to the Mayor or Chairperson to be dealt with under paragraph 33
 - The complaint should in the first instance be dealt with by mediation
 - the complaint is material and a full investigation is required.

26. Factors that can be considered when determining if a complaint is trivial, frivolous, vexatious, not made in good faith, or without substance include whether complaints are intended to:
- intimidate or harass another member or employee
 - damage another member's reputation
 - obtain a political advantage
 - influence the council in the exercise of its functions or to prevent or disrupt the exercise of those functions
 - avoid disciplinary action under this Code
 - prevent or disrupt the effective administration of this Code.
27. In making the assessment the investigator may make whatever initial inquiry is necessary to determine their recommendations, including interviewing relevant parties.
28. Subject to clause 29, a full copy of the complaint will be provided to the respondent which will include the name of the complainant.
29. Where appropriate and having considered relevant matters such as natural justice obligations, legal issues, privacy issues and potential prejudice to the future supply of complaint information the investigator may:
- Decline to provide a copy of the complaint to the respondent; or
 - Provide a redacted copy of the complaint to the respondent.

Outcomes of preliminary assessment

30. Where an investigator determines that a complaint is trivial, vexatious, frivolous, or politically motivated, the complaint may be dismissed. The Chief Executive will advise both the complainant and the respondent of the investigator's decision.
31. Where the investigator finds that the complaint involves a potential legislative breach and/or is outside the scope of the Code, they may recommend that it should be re-directed by the Chief Executive to another agency or process. The Chief Executive will advise both the complainant and the respondent of the investigator's decision.
32. If the complaint is not dismissed or redirected, the investigator may initiate any of the following processes:
- referral to the Mayor or Chairperson
 - mediation
 - a full investigation

Referral to Mayor or Chairperson

33. If the subject of a complaint is found to be non-material (not serious) and not amenable to mediation, the investigator will inform the Chief Executive and suggest that the respondent is referred to the Mayor or Chairperson for advice and guidance. A meeting or meetings with the Mayor or Chairperson will be regarded as sufficient to resolve the complaint. The investigator may also recommend a course of action appropriate to the breach for the Mayor or Chairperson's consideration, such as:
- that the respondent attend appropriate courses or programmes to increase their knowledge and understanding of the matters resulting in the complaint
 - that the respondent work with a mentor for a period
 - that the respondent tenders an apology to the complainant.
34. 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.
35. The outcomes of any referral to the Mayor or Chairperson will be confidential and, other than reporting that a complaint has been resolved through referral to the Mayor or Chairperson for guidance, there will be no additional report to council.

Mediation

36. If the complaint concerns a dispute between two members, or between a member and another party, the investigator may recommend mediation.
37. The investigator will contact the parties and seek their agreement to independently facilitated mediation.
38. If the parties agree and the issue is resolved by mediation the matter will be closed and no further action is required. The outcomes of any mediation will be confidential and, other than reporting that a complaint has been resolved through mediation, there will be no additional report to council unless the complaint is referred for further investigation due to a failure of the mediation process.
39. The investigator will use their best endeavours to resolve a complaint through mediation before determining that a complaint is to be resolved through an investigation.

Referral for full investigation by investigator

40. If the subject of a complaint is found by the investigator to be material or if no resolution can be reached through mediation and/or mediation is refused by the complainant or the respondent, the investigator will inform the Chief Executive that the matter should proceed to full investigation and the Chief Executive will inform the complainant and respondent.

Investigator to undertake full investigation

41. Where a complaint proceeds to full investigation the investigator will undertake an investigation appropriate to the scale of the seriousness of the alleged breach and in doing that may:

- consult with the complainant, respondent, and any directly affected parties
 - undertake a hearing with relevant parties
 - refer to any relevant documents or information.
42. Following an investigation the investigator may uphold the complaint in whole or in part, or dismiss the complaint.
43. Where a complaint is upheld, the investigator will also determine whether to impose any of the following sanctions³ on the member:
- a requirement to apologise and, if applicable, withdraw remarks
 - a requirement to make a public statement correcting or clarifying previous remarks
 - a requirement to undertake specified training or personal development
 - suspending the elected member from committees or other representative bodies
 - requiring the member to seek guidance from the chairperson or a mentor
 - for a nominated period, restrict the member's access to council staff (other than the Chief Executive or their specific nominees) and/or to council offices or parts of council offices.
44. In deciding whether to impose a sanction, and what the sanction should be the investigator must take into account the materiality of the breach.
45. Following the investigation, the investigator will provide the Chief Executive with a report on the findings of the investigation and any sanctions that are imposed on the respondent.
46. The Chief Executive will within 2 weeks of having received it provide the report to the complainant, respondent, and the relevant local board or governing body for information purposes only.
47. There is no right of appeal of any decision made by the investigator.

Public disclosure of complaints and outcomes

48. The public interest in the accountability of elected members needs to be balanced against the requirements of natural justice and privacy. The outcomes of complaints relating to non-material breaches will not be publicly reported by the council, except in an anonymised form for the purpose of sharing good practice.
49. Where the complaint relates to a material breach of the Code, the investigator will determine whether the outcome of the investigation, or the report, should be publicly reported (having regard to [Local Government Official Information and Meetings Act 1987](#)). If such information is publicly reported, compliance with any sanctions imposed by the investigator will also be publicly reported.

³ The terms of reference given by the Minister of Local Government exclude from the Commission's consideration (1) disqualification from office as a potential penalty; (2) creation of offences. These issues, along with the wider issue of sanctions, are being considered by the Department of Internal Affairs and the Department's work may result in proposals to amend the legislation in relation to disqualification and offences. This part of the draft Code may require change after the outcome of the Department's work is known.

After a complaint has been dealt with

50. After a complaint has been dealt with:

- Members should reflect on how to rebuild any relationships impacted by the cause of a complaint
- The Chief Executive shall consider whether there are administrative actions that can be taken to help ensure that the causes of a complaint are less likely to occur in the future or that the negative impacts of those causes can be better mitigated.

PART 4

CONFLICTS OF INTEREST

51. Members are expected to:

- Maintain a clear separation between their personal interests and their duties as members in order to ensure they are free from bias or predetermination (either real or perceived) when making decisions
- Familiarise themselves with the provisions of the Local Authorities (Members' Interests) Act 1968 in relation to pecuniary interests
- Familiarise themselves with the policies and protocols of the local authority relating to conflicts of interest
- Identify actual or perceived conflicts of interest existing in relation to a matter they may make decisions on, and taking appropriate action to ensure they do not compromise the decisions of the local authority, board or committee they are a member of
- Seek advice from the Chief Executive or other appropriate officer of the council about conflict of interest issues.

52. Where an alleged breach of the Code relates to a conflict of interest, the Chief Executive will inform the respondent of the complaint and arrange for the member to receive advice from the Chief Executive on the conflict of interest.

53. The Chief Executive will inform the complainant that advice on the matter has been sought. The complainant will not have any further involvement in the complaint following this.

54. The advice is provided to the member and to the governing body (in relation to a complaint against a governing body member), or the local board or community board (in relation to a complaint against a member of a local board) or community board.

55. If the advice is that it would be reasonable to conclude that the member has a conflict of interest, they are required to declare the conflict and recuse themselves from any future decision on that matter to which the conflict of interest relates and while the interest continues to exist. If the elected member does not take that action, the matter will be referred to an Investigator who will consider whether it should be investigated as a material breach of the Code.

PART 5

RIGHTS AND OBLIGATIONS OF MEMBERS

56. This Part of the Code provides an outline:

- of members' rights and obligations
- the ability of members to access information as part of their role.

Obligations of members

57. The obligations of members include:

- Taking responsibility for ensuring they understand their roles and responsibilities and this Code, and attending any appropriate training opportunities provided by the local authority
- Attending all meetings (including external organisations to which they are appointed), workshops and working groups
- Coming to meetings prepared, including having read relevant material
- Seeking personal and skill development opportunities to effectively fulfil their statutory declaration of office and contributing to the good governance of the local authority
- Ensuring that pecuniary interest returns are provided in an accurate and timely manner.

Rights of members

58. The rights of members include:

- subject to any conflicts of interest identified:
 - the right to attend and participate in any meeting of the local authority, local board, community board, committee or sub-committee they are a member of
 - the right to vote on decisions to be made by the local authority, local board, community board, committee or sub-committee
- the same rights as members of the public to request information under the [Local Government Official Information and Meetings Act 1987](#).
- the right, under section 26A of the Local Government Act 2002 to access information held by the local authority.⁴

Access to information

59. Section 26A of the Local Government Act 2002 sets out the entitlement of members access to documents held by local authority. These are that:

- (1) A member of a local authority is entitled to have access to documents held by the local authority that are reasonably necessary to enable the member to effectively perform their duties as a member of the local authority.*
- (2) A member of a local authority may request access to the documents specified in subclause (1) from the Chief Executive of the local authority.*

⁴ The ability for members to access information under section 26A is proposed to be included in the Local Government Act 2002 by the Local Government (System Improvements) Amendment Bill.

PART 6

FREEDOM OF EXPRESSION

60. This Part of the Code provides an explanation of how freedom of expression as guaranteed by the New Zealand Bill of Rights Act 1990 applies, including the limits placed on this right by other statutes such as the incitement provisions of the Human Rights Act 1993.
61. [Section 14](#) of the New Zealand Bill of Rights Act 1990 provides that:
- Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.*
62. The Code of conduct is not a means of preventing members from expressing their personal views provided they are clearly signalled as personal views. Rather the Code is designed to permit robust debate and the expression of a variety of points of view by providing a framework to ensure that debate is conducted in a civil and respectful way.
63. The right to freedom of expression should be used responsibly and not be used to breach the Code in a manner that is, for example, disruptive or derogatory.
64. Some Acts contain specific limitations to the freedom of expression. These include limitations relating to:
- Discrimination causing racial disharmony, [section 61, Human Rights Act 1993](#)
 - Communication constituting sexual harassment, [section 62, Human Rights Act 1993](#)
 - Communication constituting racial harassment, [section 63, Human Rights Act 1993](#)
 - Communication Inciting racial disharmony, [section 131, Human Rights Act 1993](#)
 - Offensive behaviour or language, [section 4, Summary Offences Act 1981](#)
 - Posting a digital communication with the intention it causes harm to a victim, [section 22, Harmful Digital Communications Act 2015](#)
 - Privacy breaches under the Privacy Act 2020, including those causing interference with the privacy of an individual, as described in [section 69](#) or breaches that either have caused or are likely to cause anyone serious harm as described in [section 112](#)
 - In relation to offers of stocks or bonds, disclosure of information that breaches the [Financial Markets Conduct Act 2013](#), in particular [Part 2](#) relating to fair dealing, [Subpart 2 of Part 5](#) relating to insider trading, and [Subpart 3 of Part 5](#) relating to market manipulation
 - The [Defamation Act 1992](#), which gives individuals the right to seek remedy against false statements that could harm reputation.

PART 7

GENERAL EXPLANATION OF ENACTMENTS

Explanations similar to those set out in the [LGNZ Code of Conduct template 2022](#) for:

- *Local Government Act 2002*
- *Local Government Official Information and Meetings Act 1987*
- *Local Authorities (Members' Interests) Act 1968*
- *Protected Disclosures (Protection of Whistleblowers) Act 2022*
- *Serious Fraud Act 1990*
- *Local Government (Pecuniary Interests Register) Act 2022*
- *Health and Safety at Work Act 2015*
- *Harmful Digital Communications Act 2015*