
Code of Conduct for Elected Members

SOUTH WAIKATO DISTRICT COUNCIL



Introduction

All councils are required to have a code of conduct under the Local Government Act 2002, Schedule 7, Clause 15.

This code of conduct provides guidance on the standards of behavior that are expected from the Mayor and Elected Members of the South Waikato District Council (SWDC). The code applies to Elected Members in their dealings with:

- each other
- the Chief Executive
- all staff employed by the Chief Executive on behalf of the Council
- the media
- the general public.

This code does not apply to Members of Community Boards.

The objective of the code is to enhance:

- the effectiveness of the Council as the autonomous local authority with statutory responsibilities for the good local government of the South Waikato.
- the credibility and accountability of the Council within its community
- mutual trust, respect and tolerance between the Elected Members as a group and between the Elected Members and management.

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The code of conduct that follows is based on the following general principles of good governance:

Public interest

Members should serve only the interests of the district as a whole and should never improperly confer an advantage or disadvantage on any one person, or group of persons.

Honesty and integrity

Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behavior.

Objectivity

- Members should make decisions on merit including making appointments, awarding contracts, or recommending individuals for rewards or benefits.
- Members should also note that, once elected, their duty is to the interests of the entire district.

Accountability

Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities and should cooperate fully and honestly with the scrutiny appropriate to their particular office.

Openness

Members should be as open as possible about their actions and those of the Council and should be prepared to justify their actions.

Personal judgment

Members can and will take account of the views of others but should reach their own conclusions on the issues before them, and act in accordance with those conclusions.

Respect for others

- Elected Members should remember the respect and dignity of their office in their dealings with each other, management and the public.
- Members should treat people with respect, regardless of their race, age, religion, gender, sexual orientation, or disability, and should not unlawfully discriminate against any person or group of persons.

Duty to uphold the law

Members should uphold the law, and on all occasions, act in accordance with the trust the public places in them.

Stewardship

Members must ensure that the council uses resources prudently and for lawful purposes, and that the council maintains sufficient resources to meet its statutory obligations.

Leadership

Members should promote and support these proposals by example and should always endeavor to act in the best interests of the community.

Roles and Responsibilities

This part of the code describes the roles and responsibilities of elected members, the Mayor and Deputy Mayor and Committee Chairpersons.

Elected Members

Elected Members, acting as the Council, are responsible for governance, including:

- the development and adoption of Council policy
- monitoring the performance of the Council against its stated objectives and policies
- prudent stewardship of Council resources.

Elected Members are also responsible for representing the interests of the residents and ratepayers of the district.

Unless otherwise provided in the Local Government Act 2002 or in SWDC's Standing Orders, the Council can only act by majority decisions at meetings. Any individual member (including the Mayor) has no authority to act on behalf of the Council unless provided for by statute or the Council has expressly delegated such authority.

Elected Members are expected to attend the meetings (ordinary and extraordinary) of Council, as well as the committees and subcommittees, working parties, and external organisations to which they are appointed. An Elected Member, unable to attend a meeting, should advise the Chair or Chief Executive as soon as possible.

Mayor

The Mayor is elected by the district as a whole and as one of the Elected Members shares the same responsibilities as other Members of Council. The Mayor also has the following roles:

- presiding at Council meetings. The Mayor is responsible for ensuring the orderly conduct of business during meetings (as determined by Standing Orders).
- advocating on behalf of the community. This role may involve promoting the community and representing its interests. Such advocacy will be most effective where it is carried out with the knowledge and support of the Council.
- spokesperson for the Council.
- ceremonial head of Council.
- providing leadership and feedback to other elected members on teamwork and chairing of committees.
- fulfilling the responsibilities of a Justice of the Peace (while the Mayor holds office).
- lead the development of the Council's plans (including long-term plan and annual plan), policies and budgets for consideration by members of the territorial authority
- appoint the Deputy Mayor
- establish committees of the Council and appoint the Chairperson of each committee established.

Deputy Mayor

If the Mayor has not appointed the Deputy Mayor as noted above, then the Deputy Mayor must be elected by the members of Council, at the first meeting of the Council.

The Deputy Mayor exercises the same roles as other Elected Members, and if the Mayor is absent or incapacitated, the Deputy Mayor must perform all of the responsibilities and duties, and may exercise the powers, of the Mayor (as summarised above). The Deputy Mayor may be removed from office by resolution of Council.

Committee Chairpersons

The Council may create one or more committees (this includes subcommittees) of Council. A Committee Chairperson presides over all meetings of the committee, ensuring that the committee acts within the powers delegated by council. Committee Chairpersons may be called on to act as official spokespersons on issues within the terms of reference for their committees. Chairpersons may be removed from office by resolution of Council. Council may also appoint Deputy Chairpersons of Committees, who shall fulfil the functions of the chair when the Chairperson is absent.

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Relationships and Behaviors

Relationships with other Members

Elected Members will conduct their dealings with each other in ways that:

- maintain public confidence in the office
- to which they have been elected
- are open and honest
- focus on issues rather than personalities
- avoid aggressive, offensive or abusive conduct.

Relationships with Chief Executive and Staff

The effective performance of Council also requires a high level of cooperation and mutual respect between elected members and staff. To ensure that level of cooperation and trust is maintained, Elected Members will:

- recognise that the Chief Executive is the employer (on behalf of Council) of all Council employees, and as such only the Chief Executive or his or her delegated appointee may hire, dismiss or instruct, or censure an employee

- make themselves aware of the obligations that the Council and the Chief Executive have as employers and observe those requirements at all times
- treat all employees with courtesy and respect (including the avoidance of aggressive, offensive or abusive conduct towards employees)
- observe any guidelines that the Chief Executive puts in place regarding contact with employees
- not do anything which compromises, or could be seen as compromising, the impartiality of an employee
- avoid publicly criticising any employee in any way, but especially in ways that reflect the competence and integrity of the employee
- raise concerns about employees only with the Chief Executive, and concerns about the Chief Executive only with the Mayor or the Performance Review Subcommittee
- not seek to improperly influence staff in the normal undertaking of their duties.

Elected Members should be aware that failure to observe this portion of the code of conduct may compromise the council's obligations to act as a good employer and may expose the council to civil litigation and audit sanctions.

Relationships with the Community

Effective Council decision-making depends on productive relationships between Elected Members and the community at large. Members should ensure that individual citizens are accorded respect in their dealings with the council, have their concerns listened to, and deliberated on in accordance with the requirements of the Local Government Act 2002. Members should act in a manner that encourages and values community involvement in local democracy.

Media and social media

The media play an important role in the operation and efficacy of our local democracy. In order to fulfil this role the media needs access to accurate and timely information about the affairs of Council. Any failure by members to comply with the provisions of this section can represent a breach of the Code.

- In dealing with the media Elected Members must clarify whether they are communicating a view endorsed by their Council, committee or community board, or are expressing a personal view.
- Members are free to express a personal view to the media or social media at any time, provided the following rules are observed:
 - Comments shall be consistent with the Code.
 - Comments must not purposefully misrepresent the views of the Council or the views of other Members.
 - Social media pages controlled by members and used for making observations relevant to their role as an Elected Members should be open and transparent, except where abusive or inflammatory content is being posted.; and
 - Social media posts about other members, Council staff or the public must be consistent with section five of this Code. (See Appendix A for guidelines on the personal use of social media).

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- Members must respect the communication and engagement processes in place to ensure the appropriate, timely and prepared release of information; so that information can be effectively managed by relevant staff.

Confidential Information

In the course of their duties members will receive information that they need to treat as confidential. Confidential information includes information that officers have judged there is good reason to withhold under sections 6 and 7 of the Local Government Official Information and Meetings Act 1987. This will often be information that is either commercially sensitive or is personal to a particular individual or organisation.

The Chief Executive is responsible for release of this information under the Local Government Official Information and

Meetings Act 1987. Elected Members should be aware that failure to observe confidentiality will impede the performance of Council by inhibiting information flows and undermining public confidence in the council. Failure to observe these provisions may also expose Council to prosecution under the Privacy Act 1993 and/or civil litigation.

Conflicts of Interest

Elected Members shall ensure they comply with the provisions of the Local Authorities (Members' Interests) Act 1968, which covers financial interests, and with other requirements relating to non-pecuniary conflicts of interest. Members should ensure they are familiar with the guidance contained in the Council publication Conflict of Interest Guidelines.

Members shall, within 30 days of a request by the Chief Executive, or following the triennial election, complete a declaration of interests. That declaration shall be updated whenever members' interests change.

Please note: Failure to observe the requirements of LAMIA could potentially invalidate a 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 B). In the event of a conviction elected members can be ousted from office.

Ethics

SWDC seeks to promote the highest standards of ethical conduct amongst its elected members. Accordingly, elected members will:

- claim only for legitimate expenses as laid down by any determination of the Remuneration Authority then in force, and any lawful policy of Council developed in accordance with that determination
- not influence, or attempt to influence, any Council employee to take actions that may benefit the member, or the member's family or business interests
- not use Council resources for personal business (including campaigning)
- not abuse the advantages of their official position for personal gain, or solicit or accept gifts, entertainment, rewards or benefits that might compromise their integrity.

Bankruptcy

Elected Members who are declared bankrupt shall notify the Chief Executive as soon as practicable after being declared bankrupt.

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Compliance and Review

Compliance

Elected Members must comply with the provisions of the code (LGA 2002, schedule 7, cl. 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.

Principles

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

- That the approach for investigating and assessing a complaint will be proportionate to the apparent seriousness of the alleged breach;
- That the processes 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 the Code. This includes, conditional on the nature of an alleged breach, directly affected parties:

- Have a right to know that an investigation process is underway;
- Are given due notice and are provided with an opportunity to be heard;
- Have confidence that any hearing will be impartial;
- Have a right to seek appropriate advice and be represented; and
- Have their privacy respected.

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Complaints

All complaints made under the code must be made in writing and forwarded to the Chief Executive. On receipt of a complaint the Chief Executive must forward the complaint to the Mayor/Chair or, where the Mayor/Chair is a party to the complaint, an independent investigator, drawn from a pool of names or agency agreed in advance.

Please note, only Members and the Chief Executive may make a complaint under the code.

Complaint referred to Mayor/Chair

On receipt of a complaint made under the provisions of the Council's Code of Conduct the Mayor/Chair will, as the situation allows:

- Interview the complainant to assess the full extent of the complaint.
- Interview the Member(s) subject to the complaint.
- Assess the complaint to determine materiality.
- Where a complaint is assessed by the Mayor/Chair to be trivial, frivolous or minor, either dismiss the complaint, require an apology or other course of action, or assist the relevant parties to find a mutually agreeable solution.
- Where a complaint is found to be material, or no mutually agreed solution can be reached, the Mayor/Chair will refer the complaint back to the Chief Executive who will forward it, along with any recommendations made by the Mayor/Chair, to the Council or an adjudicative body established by the Council to assess and rule on complaints made under the Code.¹

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¹ Advice on establishing adjudication bodies can be found in the Guide to the Code of Conduct.

If the Mayor/Chair chooses they may, instead of undertaking an initial assessment, immediately refer the complaint to the independent investigator, via the Chief Executive.

Complaint referred to Independent Investigator

On receipt of a complaint from a member which concerns the Mayor/Chair, or from the Mayor/Chair after initial consideration, the Chief Executive will forward that complaint to an independent investigator for a preliminary assessment to determine whether the issue is sufficiently serious to be referred, with recommendations if necessary, to the Council or an adjudicative body for assessing and ruling on complaints.² The process, following receipt of a complaint, will follow the steps outlined in **Appendix C**.

Materiality

An alleged breach under the Code is material if, in the opinion of the Mayor/Chair or independent investigator, it would bring the Council into disrepute or, if not addressed, adversely affect the reputation of a member.

An alleged breach under this Code is non-material if, in the opinion of the Mayor/Chair or independent investigator, any adverse effects are minor and no investigation or referral is warranted.

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

Penalties and actions

Where a complaint is determined to be material and referred to the Council or an adjudicative body established to consider complaints, the nature of any penalty or action will depend on the seriousness of the breach.

Material breaches

In the case of material breaches of the Code, the Council, or the adjudicative body 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. Removal of certain Council-funded privileges (such as attendance at conferences).
4. Removal of responsibilities, such as Committee Chair, Deputy Committee Chair or portfolio holder.
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 other than the Chief
7. Executive or identified Senior Manager.
8. A vote of no confidence in the Member.
9. Suspension from committees or other bodies to which the member has been appointed.
10. Invitation to the member to consider resigning from the Council.

A Council or adjudicative body with delegated authority may decide that instead of a penalty, one or more of the following may be required:

- 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 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.

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 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.44 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).

Review

Once adopted, the Code 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. Amendments to the Code require a resolution supported by 75 per cent of the members of the Council present at the Council meeting at which the amendment is considered. Councils are encouraged to formally review their existing Code and either amend or re-adopt it as soon as practicable after the beginning of each triennium in order to ensure that all members have the opportunity to provide their views on the Code's provisions.

Appendix

Appendix A: Guidelines on the personal use of social media ³

There's a big difference in speaking *on behalf of Council* and speaking *about* the Council. While your rights to free speech are respected, please remember that citizens and colleagues have access to what you post. The following principles are designed to help you when engaging in **personal or unofficial online** communications that may also refer to your Council.

1. **Adhere to the Code of Conduct and other applicable policies.** Council policies and legislation, such as LGOIMA and the Privacy Act 1993, apply in any public setting where you may be making reference to the Council or its activities, including the disclosure of any information online.
2. **You are responsible for your actions.** Anything you post that can potentially damage the Council's image will ultimately be your responsibility. You are encouraged to participate in the social media but in so doing you must exercise sound judgment and common sense.
3. **Be an advocate for compliments and criticism.** Even if you are not an official online spokesperson for the Council, you are one of its most important advocates for monitoring the social media landscape. If you come across positive or negative remarks about the Council or its activities online that you believe are important you are encouraged to share them with the governing body.
4. **Let the subject matter experts respond to negative posts.** Should you come across negative or critical posts about the Council or its activities you should consider referring the posts to the Council's authorised spokesperson, unless that is a role you hold, in which case consider liaising with communications staff before responding.
5. **Take care mixing your political (Council) and personal lives.** Elected members need to take extra care when participating in social media. The public may find it difficult to separate personal and Council personas. Commenting online in any forum, particularly if your opinion is at odds with what Council is doing, can bring you into conflict with the Code should it not be clear that they are your personal views.
6. **Never post sensitive and confidential information** provided by the Council, such as confidential items, public excluded reports and/or commercially sensitive information. Such disclosure will contravene the Code.
7. **Elected Members' social media pages should be open and transparent.** When commenting on matters related to the South Waikato District Council no members should represent themselves falsely via aliases or differing account names or block. Neither should they block any post on any form of social media that they have control over unless there is clear evidence that the posts are actively abusive. Blocking constructive debate or feedback can be seen as bringing the whole Council into disrepute.

³ Based on the Ruapehu District Council Code of Conduct.

Appendix B: 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/partner 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/partner, is "concerned or interested" in the contract or where they have a pecuniary interest in the decision; or
- A person, or their spouse/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/Chair 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’ focus should 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 chairperson 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 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 person's, monetary gain or advantage.

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, and details the 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 s44 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.⁸⁹⁰

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 (s47 LGA 2002).

Appendix C: Process where a complaint is referred to an independent investigator

The following process is a guide only and Councils are encouraged to adapt this to their own specific circumstances.

Step 1: Chief Executive receives complaint

On receipt of a complaint under the Code, whether from a member (because the complaint involves the Mayor/Chair) or from the Mayor/Chair after an initial assessment, the Chief Executive will refer the complaint to an investigator selected from a list agreed at the start of the triennium. 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 remind them of the process for dealing with complaints as set out in the Code.

Step 2: Investigator makes preliminary assessment

On receipt of a complaint the investigator will assess whether:

1. The complaint is trivial or frivolous and should be dismissed;
2. The complaint is outside the scope of the Code and should be re-directed to another agency or institutional process;
3. The complaint is minor or non-material; or
4. The complaint is material and a full assessment is required.

In making the assessment the investigator may make whatever initial inquiry is necessary to determine their recommendations, including interviewing relevant parties, which are then forwarded to the Council's Chief Executive. On receiving the investigator's preliminary assessment the Chief Executive will:

1. Where an investigator determines that a complaint is trivial or frivolous, inform the complainant, respondent and 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 the Chief Executive who will then inform the complainant, the respondent and members.

Step 3: Actions where a breach is found to be non-material

If the subject of a complaint is found to be non-material, but more than trivial or frivolous, 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 is referred to the Mayor/Chair for guidance; and/or
- That the respondent attend appropriate courses or programmes to increase their knowledge and understanding of the matters resulting in 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 breach are non-binding on the respondent and the Council.

Step 4: Actions where a breach is found to be material

If the subject of a complaint is found to be material, 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 directly affected parties; and/or
- 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 relevant Council body charged with assessing and ruling on material complaints, 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 investigator's full report.

Step 5: Process for considering the investigator's report

The investigator's report will be considered by the Council or adjudicative body established for considering reports on Code of Conduct complaints, or any other body that the Council may resolve, noting that the process will meet the principles set out in section 12.1 of the Code.

The Council, or adjudicative body, will consider the Chief Executive's report in open meeting, except where the alleged breach concerns matters that justify, in accordance with LGOIMA, the exclusion of the public. Before making any decision on a specific complaint, the relevant body will give the respondent an opportunity to appear and speak in their own defense. Members with an interest in the proceedings, including the complainant and the respondent, should not take part in these proceedings in a decision-making capacity.

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

The report, including recommendations from the adjudicative body, should that body have no formal delegations, will be heard and accepted by the Council in open session, unless grounds for excluding the public exist, without debate.

