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1 Background

The Local Government Act 2002 Schedule 7 requires a local authority to adopt a Code of Conduct and that Elected Members of the local authority will comply with the Code.

The Code of Conduct must set out:

- Understandings and expectations adopted by the local authority about the manner in which Elected Members may conduct themselves while acting in their capacity as Elected Members, including:
 - behaviour toward one another, Council staff, the Public and the news media.

The Code also outlines practices in relation to the 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/her capacity as an Elected Member; and
- b) relates to the ability of the local authority to give effect to any provision of the Local Government Act 2002.

The Code also provides an explanation of the obligations on Elected Members under the Local Government Official Information and Meetings Act 1987 (LGOIMA) and any other Act or rule of law that applies to Elected Members.

Standing Orders apply principally to the conduct of meetings (Schedule 7 of the Local Government Act 2002, cl.27). A question concerning the conduct of an Elected Member during a meeting should be dealt with at the meeting under the relevant provisions in the Standing Orders. Where it is not possible at a meeting to deal with a matter of conduct under Standing Orders the conduct may be raised under the Code.

The following governance principles (relevant to the Code of Conduct) are defined under the Local Government Act 2002 (s.39):

- a) A local authority should ensure that the role of democratic governance of the community, and the expected conduct of Elected Members, is clear and understood by the Elected Members and the community.
- b) A local authority should ensure that the relationship between Elected Members and management of the local authority is effective and understood.

In summary, the objectives of a Code of Conduct are to set out:

- The conduct of Elected Members towards one another, staff and public;
- How information is disclosed;
- Legislation that applies to the actions of Elected Members;
- The relationship between Elected Members and management.

2 Key principles

2.1 Introduction

This Code of Conduct is based on a number of key principles. The principles underpin and guide these standards and may be used as an aid in interpreting the substantive provisions of the Code.

2.2 Council core values

Elected Members have a duty to act in accordance with the agreed Council Core Values being:

Integrity

- We will do what we say we will
- We will act with good intent
- We will do the right thing in the right way.

Teamwork

- We will work together
- We will support each other
- We will work as one organisation.

Delivering value

- We will seek to understand needs and deliver to them
- We will apply our skills and knowledge for the benefit of others.

2.3 General principles of good governance

Honesty and integrity

Elected Members have a duty to act honestly and with integrity at all times.

Public interest

Elected Members have a duty to serve the interests of the district as a whole. They must not act in order to gain or provide financial or other benefits for themselves, their families, friends or business interests.

Declare private interests

Elected Members must declare any private interests or personal benefits relating to their public duties and take steps to resolve any conflicts of interest in such a way that protects the public interest. This means fully disclosing actual or potential Conflicts of Interest; avoiding any financial or other obligation to any individual or organisation that might reasonably be thought to influence them in the performance of their duties.

Impartiality

Elected Members should make decisions on merit and in accordance with their statutory obligations when carrying out public business. This includes the making of appointments, awarding of contracts or recommending individuals for rewards or benefits.

Accountability

Elected Members are accountable to the public for their decisions and actions and should consider issues on their merits, taking into account the views of others. This means co-operating fully and honestly with the scrutiny appropriate to their particular office.

Openness

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

Respect

Elected Members should treat others, including Council officers, with respect at all times. This means not using derogatory terms towards others, or about others, including in all types of media, not misrepresenting the actions or statements of others, observing the rights of other people and treating people with courtesy.

Duty to uphold the law

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

Stewardship

Elected Members should ensure that Council uses resources prudently and for lawful purposes and that Council maintains sufficient resources to meet its statutory obligations.

Leadership

Elected Members should promote and support these principles by example, and should always act in the best interests of the whole community.

3 Respective responsibilities

The Local Government Act 2002 envisages a clear separation of roles and responsibilities between Elected Members and management.

Members (Council as a Whole)

The Elected Members, acting as the Council, are responsible for:

- Preparing and adopting the Long Term Plan (LTP), Annual Plan and Annual Report;
- The development and approval of Council strategies, policies, bylaws and plans;
- Setting rates;
- Monitoring and reviewing the performance of Council against its stated objectives and policies;
- Employing, overseeing and monitoring the Chief Executive.

Council can only act by a majority decision at meetings. Each Elected Member has one vote¹. With certain exceptions, the exercise of Council's powers can be delegated to committees, sub-committees or to individual persons.

The Elected Members are accountable to electors through the ballot box. They have declared an oath that:

“They will faithfully and impartially, and according to their best skill and judgment, execute and perform in the interests of the Kaipara district, the statutory powers, authorities and duties vested in or imposed upon them as Elected Members of the Kaipara District Council.”

The Mayor

The Mayor is the head of the governing body of Kaipara District Council, providing leadership to other Elected Members and the organisation. They are one of the Elected Members and share the same collective responsibilities. The Mayor is the presiding Elected Member at meetings of Council and as such is responsible under Standing Orders for the orderly conduct of Council business at meetings.

The Mayor has no power to commit the Council to any particular course of action except where specifically authorised to act under duly delegated authority.

The Office of the Mayor carries with it an element of community leadership. The leadership role frequently requires the Mayor to act as a community advocate, promoting the attributes of the community and representing its interests. Community leadership and advocacy will be more effective where it is carried out with the knowledge and support of Council.

Chief Executive

The Chief Executive (CE) is appointed by the governing body and is responsible for the implementation and management of Council's policies and objectives within the budgetary constraints established by Council. In terms of the Local Government Act 2002, the CE's responsibilities are:

- a) Implementing the decisions of Council.
- b) Providing advice to Elected Members.
- c) Ensuring that all functions, duties and powers delegated to the CE or to any person employed by Council or imposed or conferred by any Act, regulation or bylaw are properly performed and exercised.
- d) Ensuring the effective, efficient and economic management of the activities and planning of the local authority.
- e) Maintaining systems to enable effective, planning and accurate reporting of the financial and service performance of the local authority.
- f) Providing leadership to the staff of the local authority.

¹ With the exception of statutory deadlines or compliance where the Mayor or Chair will have a casting vote.

- g) Employing staff on behalf of the local authority (including negotiating terms of employment).

4 Confidential information

In the course of their duties Elected Members will occasionally receive information that may need to be treated as confidential or Public Excluded. Confidential information includes information that officers have judged there is good reason to withhold under s6 and s7 of LGOIMA. This will often be information that is either commercially sensitive or is personal to a particular individual or organisation.

- The CE is responsible for the release of information under LGOIMA. Any confidential information will be clearly marked as Confidential or Public Excluded.
- Members must not use or disclose confidential information for any purpose other than the purpose for which the information was supplied to the Elected Member.
- Members should be aware that failure to observe these provisions will impede the performance of Council by inhibiting information flows and undermining public confidence in Council.
- Failure to observe these provisions may also expose Council to prosecution under the Privacy Act 1993 and/or civil litigation.
- Elected Members should also be aware that as Elected Members they are accountable to the public and that all official information held by themselves, whether on Council equipment or their own personal equipment, is subject to LGOIMA. Official information, if sought as part of a request, must be made available to the CE or nominee so that it can be assessed in terms of the requirements of the Act for possible release or eligibility to be withheld.

5 Relationships and behaviours

5.1 Relationships with other Elected Members

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

- maintain 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.

5.2 Relationships with Chief Executive and staff

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

- Recognise that the CE is the employer (on behalf of Council) of all Council employees, and as such only the CE or his/her delegated appointees may hire, dismiss, instruct or censure an employee;

- Make themselves aware of the obligations that Council and CE 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 CE puts in place regarding contact with employees;
- Not do anything that 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 on the competence and integrity of the employee;
- Raise concerns about employees only with the CE and concerns about the CE only with the Mayor/Deputy Mayor present;
- Not seek to improperly influence staff in the normal undertaking of their duties.

Members should be aware that failure to observe the requirements of this section of the Code of Conduct may compromise Council's obligations to act as a good employer and may expose Council to civil litigation and audit sanctions.

5.3 Relationships with the community

Effective Council decision-making depends on productive relationships between Elected Members and the community at large.

Elected Members should ensure that individual citizens are accorded respect in their dealings with Council and have their concerns listened to and deliberated on in accordance with the requirements of the Local Government Act 2002 and other relevant legislation.

Elected Members should act in a manner that encourages and values community involvement in local democracy.

5.4 External and media communications

The media plays an important part in local democracy. In order to fulfill this role, the media needs access to accurate, timely information about the affairs of Council. From time to time, individual Elected Members will be approached to comment on a particular issue either on behalf of Council or as an Elected Member in their own right. This part of the Code deals with the rights and duties of Elected Members when speaking to the media on behalf of Council or in their own right.

Public statements representing Council policy or reporting decisions of Council will be made only with specific or general authority of Council and will clearly state the person's authority for making the statement on behalf of the Council.

The following rules apply for media contact on behalf of Council:

- The Mayor is the first point of contact for the official view of the governing body on any issue;

- The Mayor may refer any matter to the relevant Committee Chair or to another Commissioner;
- No other Elected Member may comment on behalf of the governing body without having first obtained the approval of the Mayor;
- The CE is authorised to make statements relating to any of the areas for which the CE has statutory responsibility;
- Department Managers may make factual statements relating to the functions of their departments;
- Otherwise the CE, Mayor or any Elected Member or Council officer may make specific statements on behalf of Council only with the specific authority of the relevant Council, committee or sub-committee meeting.

Elected Members are free to express a personal view in the media at any time. When doing so, they should observe the following guidelines:

- Media comments must not state or imply that they represent the views of the governing body;
- Where an Elected Member is making a statement that is contrary to a governing body decision or policy, the Elected Member must not state or imply that his or her statements represent a majority view;
- Media comments must observe the other requirements of the Code of Conduct e.g. not disclose confidential information or compromise the impartiality or integrity of staff or be derogatory in respect of another Elected Member.

The CE, management and staff should not comment publicly on the performance of Council or Elected Members.

6 Conflicts Of Interest

It is a requirement of this Code of Conduct that Elected Members fully acquaint themselves with, and strictly adhere to, this section on Conflicts of Interest. There are two main classes of Conflict of Interest:

- A financial Conflict of Interest is where a decision or act of the governing body could reasonably give rise to an expectation of financial gain or loss by an Elected Member.
- A non-financial Conflict of Interest does not have a direct personal financial impact. It may arise from a personal relationship or involvement with a non-profit organisation or from conduct that indicates prejudice or pre-determination.

Elected Members need to familiarise themselves with the provisions of the Local Authorities (Members' Interests) Act 1968 which concerns financial interests and with other legal requirements concerning non-financial Conflicts of Interest.

It is an Elected Member's responsibility to declare Conflicts of Interest at Council meetings where matters in which they have any interest arise.

Elected Members are also required to make full and complete annual Declarations of Interest.

The Local Authorities (Member's Interest) Act 1968 provides that an Elected Member is disqualified from office or from election to office if that Elected Member is concerned or interested in contracts under which payments made by or on behalf of the local authority exceed \$25,000 in any financial year.

If any Elected 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, the Elected Member should seek guidance from the CE immediately.

Elected Members may also contact the Office of the Auditor-General for guidance as to whether that Elected Member has a pecuniary interest. If there is a pecuniary interest, the Elected Member may seek an exemption from the Audit Office to allow that Elected 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. Elected Members must also seek approval from the Office of the Auditor-General for contractual payments to themselves, their spouses or their companies that exceed the \$25,000 annual limit. The CE can assist the Elected Member with this if requested.

Failure to observe the requirements of the Local Authorities (Members' Interests) Act 1968 could potentially invalidate the particular decision made, or the action taken, by Council. Failure to observe these requirements could also leave the Elected Member open to prosecution under the Local Authorities (Members' Interests) Act 1968. In the event of a conviction Elected Members can be ousted from office.

7 Ethics and public duty

Kaipara District Council seeks to promote the highest standards of ethical conduct amongst its Elected Members. The reputation of Council is dependent on Elected Members' conduct and the public perception of this conduct.

Elected Members should not influence, or attempt to influence, any Council employee to take actions that may benefit the Elected Member or the Elected Member's family or business interests.

Elected Members should not use Council resources of any sort for personal business.

Elected Members must not solicit, demand or request any gift, reward or benefit by virtue of their position. The offer and receipt of gifts, including special occasion goodwill gifts, must be reported to the CE.

8 Pre-election period

During the three months prior to polling date for local body elections, Council resources should not be used in any way that could be deemed to give any sitting Elected Member an advantage.

During this period Elected Members will:

- not use Council stationery, email, postage or facsimile/telephone facilities of any other Council resource explicitly for campaign purposes;
- not attempt to make any use of Council communications that could be construed as giving that Elected Member an unfair electoral advantage by raising their profile;
- abide by any Council policies adopted by the Governing Body relating to conduct during the pre-election period.

9 Disclosure of pecuniary and other interests

The law makes specific provision requiring Elected Members to disclose pecuniary (financial) interests. However interests that are not pecuniary can be just as important; family connections, kinship, friendship, membership of an association, society, company or trade union, trusteeship and many other kinds of relationships can influence Elected Member's judgement and may give the impression that an Elected Member might be acting for personal motives. If Elected Members are in doubt, disclose the interest, seek advice from the Mayor, Committee Chair or CE and, if necessary, withdraw from the meeting.

An Elected Member or some firm or organisation with which the Elected Member is personally connected may have professional, business or personal interest within the areas for which Council is responsible. Such interests may be substantial and closely related to the work of one or more of Council's committees or sub-committees. Before seeking or accepting membership and particularly the chairing of any such committee or sub-committee, Elected Members should seriously consider whether membership would necessarily involve them:

- disclosing an interest so often that the Elected Member would be of little value to the committee or sub-committee;
- Weakening public confidence in the impartiality of the committee or sub-committee.

The principles about disclosures of interest should be borne in mind with regard to unofficial relations with other Elected Members, at informal occasions and formal Council or Committee meetings.

10 Representing Council

Members who are invited or wish to represent Council at an event such as a seminar or conference must forward a written report to Council, which summarises the event including its potential significance to the business of Council. Where Council is represented by a delegation, one Elected Member of the party will report back on their behalf.

11 Disqualification of Elected Members from Office

Members are automatically disqualified from office if they are convicted of a criminal offence punishable by two or more year's imprisonment or if they cease to be or lose their status as an elector or of certain breaches of the Local Authorities (Members' Interests) Act 1968.

12 Compliance

Elected Members must comply with the provisions of this Code of Conduct. Elected Members are also bound by the Local Government Act 2002, the Local Authorities (Members' Interests) Act 1968, the Local Government Official Information and Meetings Act 1987 (LGOIMA), the Secret Commissions Act 1910, the Crimes Act 1961 and the Securities Act 1978. The CE will ensure that an explanation of these Acts is provided at the first meeting after each triennial election and that copies of these Acts are freely available to Elected Members. Short explanations of the obligations that each of these Acts has with respect to conduct of Elected Members are attached as Appendix 1 to this Code.

13 Code of Conduct complaints

13.1 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;
 - 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.

13.2 Complaints

All complaints made under this Code must be made in writing and forwarded to the CE. On receipt of a complaint the CE must forward that complaint to an independent investigator for a preliminary assessment to determine whether the issue is sufficiently serious to warrant a full investigation².

Only Elected Members and the CE may make a complaint under this Code.

13.3 Investigation, advice and decision

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

² On behalf of Council the Chief Executive will, shortly after the start of a triennium, prepare, in consultation with the Mayor or Chair, 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.

13.4 Materiality

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

14 Review of the Code of Conduct

Once adopted, the Code of Conduct continues in force until amended by the Governing Body. The Code can be amended at any time however cannot be revoked unless the Governing Body replaces it with another Code. Once adopted, amendments to the Code of Conduct require a resolution supported by 75% or more of the Elected Members of the Governing Body present.

15 Implementation

The parties to this Code agree to abide by its provisions at all times having regard to the declaration of Office and Council policy.

For the avoidance of doubt, an Elected Member must adhere to the Code of Conduct. A breach of the Code does not constitute an offence under the Local Government Act 2002 however may raise questions about the Elected Member's standing within Council.

Appendix 1 - 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 Elected Members discussing and voting on matters in which they have a pecuniary interest and about contracts between Elected Members and 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 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 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 they have a pecuniary interest, Elected 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?

Elected 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 Council's Standing Orders.)

The contracting rule

An Elected Member is disqualified from office if they are "concerned or interested" in contracts with their Council if the total payments made, or to be made, by or on behalf of 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 the Elected Member under the Act. It is an offence under the Act for a person to act as an Elected Member of Council (or Committee of 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 Elected 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, however 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 Elected Members believe they are not biased is irrelevant.

Elected 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:

- Elected Members' statements or conduct indicate that they have pre-determined the decision before hearing all relevant information (that is, Elected Members have a "closed mind"); and
- Elected 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, Elected Members must also take into account the context and circumstance of the issue or question under consideration. For example, if an Elected 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 Elected Member would

give effect to that promise, however they 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 (LGOIMA) 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, however 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 Elected Member is speaking;
- be disrespectful when they refer to each other or other people; or
- use offensive language about Council, other Elected Members, any employee of 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 fined up to \$1,000. A conviction would therefore trigger the ouster provisions of the LGA 2002 and result in the removal of the Elected 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.

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 Elected 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.

Appendix 2 : Process for the determination and investigation of complaints

Step 1: Chief Executive receives complaint

On receipt of a complaint under this Code the Chief Executive (CE) will refer the complaint to an investigator selected from a panel agreed at the start of the triennium. The CE 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 2: 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 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 materiality.

On receiving the investigator's preliminary assessment the CE 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 3: Actions where a breach is found to be non-material

If the subject of a complaint is found to be non-material the investigator will inform the CE and, if they choose, recommend a course of action appropriate to the breach, such as:

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

The CE 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 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 CE who will inform the complainant and respondent. The investigator will then prepare a report for 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 CE will prepare a report for Council or the 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 CE's report will include the full report prepared by the investigator.

Step 5: 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.

Council or the Committee will consider the CE'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 s48 of LGOIMA, in which case it will be a closed meeting.

Before making any decision in respect of the investigator's report Council or the Committee will give the Elected Member against whom the complaint has been made an opportunity to appear and speak in their own defence. 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 s13.1 of this Code.

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