



horizons
REGIONAL COUNCIL

HORIZONS REGIONAL COUNCIL CODE OF CONDUCT

Part 1: The Horizons Regional Council Code of Conduct template

Part 2: Draft policy for dealing with alleged breaches

Part 3: Attachments

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Introduction Kupu whakataki

Congratulations on being elected as a member of local government. Your community has bestowed a unique and special honour on you to represent them and make decisions on their behalf that will provide benefit for current and future generations. It's an honour that should not be taken lightly. The way you conduct yourself while participating as a member of your council should reflect the responsibility you have been given and requires you to be inclusive of all, respectful, and to uphold the mana of your position.

The Code of Conduct is designed to ensure that the governance of our local authorities is undertaken with the highest degree of integrity while also providing a safe and rewarding environment in which all elected members can thrive.

All councils have a statutory obligation under the Local Government Act 2002, to adopt a code of conduct. This guide has been prepared to assist council in meeting that obligation and includes:

- A code of conduct template.
- A draft policy for assessing alleged breaches of the Code of Conduct.
- Supplementary information, including an overview of the legislation that sets standards for ethical behaviour, criteria for assessing alleged breaches and actions that local authorities can take where a complaint has been upheld.

Why a code of conduct? He aha te take o te tikanga whanonga?

Codes of conduct are common features in local government. They complement specific statutes, such as the Local Government and Meetings Act 1987 (LGOIMA), designed to ensure openness and transparency. Codes of conduct are an important part of building community confidence in our system and processes, and contribute to:

- good governance of the region,
- effective decision-making and community engagement,
- the credibility and accountability of the local authority to its communities, and
- a culture of mutual trust and respect between members of the local authority and with management.

Codes of conduct should promote effective working relationships within a local authority and between the authority and its community. It should promote free and frank debate which should in turn result in good decision making.

Codes of conduct are not a means of preventing members from expressing their personal views provided they are clearly signaled as personal views. Rather the code is designed to promote robust debate and the expression of all views by providing a framework to ensure that debate is conducted in a civil and respectful way.

A code of conduct sets boundaries on standards of behaviour and provides a means of resolving situations when elected members breach those standards.

Codes of conduct cannot stand alone

Codes of conduct work best when they are supported by other mechanisms. For example, codes should be linked to other procedural documents, such as Standing Orders, which provide rules for the conduct for meetings, while a code governs day-to-day and less formal relationships.

Matters to consider before adopting a code of conduct

To be effective a code needs to be “owned” by elected members; members must be comfortable with the content and the processes for investigating breaches. Nothing is more likely to promote non-compliance than elected members being expected to adhere to something they have had no input into. To reinforce the importance of the code, the Local Government Commission, in its report on codes of conduct to the Minister of Local Government, recommends that the code is included in the statutory briefing made at each local authority’s inaugural meeting.¹

In addition, members should discuss the nature of good governance and the code at their council-organised induction workshop, usually held in the months immediately following local authority elections. It is also recommended that a review of the code is undertaken part way through the triennium, assisted by an independent facilitator.

Review and amendment

Once adopted, the code continues in force until amended by the council. It can be amended at any time but cannot be revoked unless the council replaces it with another code. Amendments require a resolution supported by 75 per cent of the council members present at the council meeting at which the amendment is considered.

Council 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, to ensure that the code is fully endorsed by all members.

¹ Local Government Commission, Codes of Conduct: Report to the Minister of Local Government, September 2021 at <https://www.lgc.govt.nz/other-commission-work/current-proposals/view/report-to-the-minister-of-local-government-september-2021/?step=main>

Changes to the 2019 LGNZ Code of Conduct template

A significant change to the 2022 template is the focus on managing specific types of behaviours, such as bullying or harassment, regardless of the place or platform on which the member is engaging, such as social media, in meetings, or interactions between members. The following have also been added to the template:

- An explicit description of unacceptable behaviours.
- An acknowledgement of Te Tiriti o Waitangi as the foundational document for Aotearoa New Zealand and a description of Te Tiriti principles and how they apply to council.
- An acknowledgement of the principles of good governance (the Nolan principles), drawn from the UK Government's Committee on Standards in Public Life and the findings of the 1994 Nolan Inquiry²
- An amended approach to investigating and assessing alleged breaches designed to ensure the process is independent and focused on serious rather than minor or trivial complaints.

² <https://www.gov.uk/government/publications/the-7-principles-of-public-life>

Part One: Code of Conduct Wāhanga Tuatahi: Anga Tikanga Whanonga

The Horizons Regional Council Code of Conduct has been adopted in accordance with the requirements of the Clause 15, Schedule 7 of the LGA 2002, which requires every local authority to adopt a code of conduct for members of the local authority.

Members' commitment Ngā herenga a ngā mema

These commitments apply when conducting the business of the local authority as its representative or the representative of an electorate, and communicating with other members, the media, the public, or staff. By adopting the Code of Conduct members agree that they will:

1. treat all people fairly,
2. treat all other members, staff, and members of the public, with respect,
3. share with the local authority any information received that is pertinent to the ability of the local authority to properly perform its statutory duties,
4. operate in a manner that recognises and respects the significance of the principles of Te Tiriti o Waitangi,
5. make it clear, when speaking publicly, that statements reflect their personal view, unless otherwise authorised to speak on behalf of the local authority,
6. take all reasonable steps to equitably undertake the duties, responsibilities, and workload expected of a member,
7. not bully, harass, or discriminate unlawfully against any person,
8. not bring the local authority into disrepute,
9. not use their position to improperly advantage themselves or anyone else or disadvantage another person,
10. not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority,
11. not disclose information acquired, or given, in confidence, which they believe is of a confidential nature.

Please note: a failure to act in accordance with these commitments may result in a complaint being taken against you.

The Code of Conduct sets standards for the behaviour of members towards other members, staff, the public, and the media. It is also concerned with the disclosure of information that members receive in their capacity as members. Members of a local authority must comply with the Code of Conduct of that local authority. More detail explaining the Code of Conduct is set out in Appendix 1.

A copy of clause 15 of Schedule 7 of the LGA, which sets out the requirements for a code of conduct, is contained in Appendix 2.

Appendix 1: The Code of Conduct explained He whakamārama mō te Tikanga Whanonga

1. Definitions

For the purposes of this Code “member” means an elected or appointed member of:

- the governing body of the local authority,
- any committee or sub-committee of the local authority,
- any local board of the local authority, or
- any community board of the local authority.

Local authority means the council, local board or community board which has adopted this Code.

2. Te Tiriti o Waitangi

The council commits to operating in a manner that recognises and respects the significance of the principles of Te Tiriti o Waitangi and acknowledges the following principles:

1. 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,
2. 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. Council should identify opportunities, and develop and maintain ways, for Māori to contribute to council decisions, and consider ways council can help build Māori capacity to contribute to council decision-making,
3. Equity: The principle of equity requires local authorities to commit to achieving the equitable delivery of local public services,
4. 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,
5. 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.

3. Principles of good governance

Members recognise the importance of the following principles of good governance.

- **Public interest:** members should act solely in the public interest.
- **Integrity:** members should not act or take decisions to gain financial or other benefits for themselves, their family, or their friends, or place themselves under any obligation to people or organisations that might inappropriately influence them in their work.
- **Tāria te wā and kaitiakitanga/stewardship:** members should use long-term perspective when making decisions. Decisions, which impact on past, current and future generations, also affect collective well-being.
- **Objectivity:** members should act and take decisions impartially, fairly, and on merit, using the best evidence and without discrimination or bias.
- **Accountability:** members will be accountable to the public for their decisions and actions and will submit themselves to the scrutiny necessary to ensure this.
- **Openness:** members should act and take decisions in an open and transparent manner and not withhold information from the public unless there are clear and lawful reasons for so doing.
- **Honesty:** members should be truthful and not misleading.
- **Leadership:** members should not only exhibit these principles in their own behaviour but also be willing to challenge poor behaviour in others, wherever it occurs.

4. Behaviours

To promote good governance and build trust between the local authority, its members, and citizens, members **agree** to the following standards of conduct when they are:

- conducting the business of the local authority,
- acting as a representative of the local authority,
- acting as a representative of their electorate,
- communicating with other members, the media, the public and staff, and
- using social media and other communication channels.³

Where a member's conduct falls short of these standards, members accept that they may be subject to a complaint made under the council's "Policy for alleged breaches of the Code of Conduct".

³ Please refer to the Guidelines for the responsible use of social media in the LGNZ Good Governance Guide

Respect

Members will treat all other members, staff, and members of the public, with respect.

Respect means politeness and courtesy in behaviour, speech, and writing. Debate and differences are all part of a healthy democracy. As a member of a local authority you can challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. You must not, however, subject individuals, groups of people or organisations to personal attack.

In your contact with the public, you should treat them politely and courteously. Offensive behaviour lowers the public's expectations of, and confidence in, your local authority. In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening, you are entitled to stop any conversation or interaction in person or online and report them to the local authority, the relevant social media provider or the police.

Bullying, harassment, and discrimination

Members will treat all people fairly and will not:

- bully any person,
- harass any person, or
- discriminate unlawfully against any person.

For the purpose of the Code of Conduct, bullying is offensive, intimidating, malicious, or insulting behaviour. It represents an abuse of power through means that undermine, humiliate, denigrate, or injure another person. It may be:

- a regular pattern of behaviour, or a one-off incident,
- occur face-to-face, on social media, in emails or phone calls, happen in the workplace, or at work social events, and
- may not always be obvious or noticed by others.

Harassment means conduct that causes alarm or distress, or puts people in fear of violence, and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.

Unlawful discrimination occurs when a person is treated unfairly, or less favourably, than another person because of any of the following⁴:

age	skin, hair, or eye colour	race
disability	employment status	ethical belief
ethnic or national origin	family status	marital status
political opinion	religious belief	gender identity
sex	sexual orientation.	

Sharing information

Members will share with the local authority any information received that is pertinent to the ability of the local authority to properly perform its statutory duties.

Occasionally members will receive information in their capacity as members of the governing body, which is pertinent to the ability of their council to properly perform its statutory duties. Where this occurs members will disclose any such information to other members and, where appropriate, the chief executive. Members who are offered information on the condition that it remains confidential will inform the person making the offer that they are under a duty to disclosure such information, for example, to a governing body meeting in public exclusion.

Expressing personal views publicly

Members, except when authorised to speak on behalf of the local authority, will make it clear, when speaking to the media, on social media, or in hui and presentations, that statements reflect their personal view.

The media play an important role in the operation and efficacy of our local democracy and need accurate and timely information about the affairs of the local authority to fulfil that role. Members are free to express a personal view to the media and in other public channels at any time, provided the following rules are observed:

- they do not purport to talk on behalf of the local authority, if permission to speak on behalf of the authority has not been given to them
- their comments must not be inconsistent with the Code, for example, they should not disclose confidential information or criticise individual members of staff, and

⁴ See Human Rights Commission <https://www.govt.nz/browse/law-crime-and-justice/human-rights-in-nz/human-rights-and-freedoms/>

- their comments must not purposefully misrepresent the views of the local authority or other members.

Members will abide by the social media protocols described in Attachment A, LGNZ's Good Governance Guide, (attached at the end of this document) and also available at <https://www.lgnz.co.nz/assets/Induction/The-Good-Governance-Guide.pdf>.

Members guidelines (from Horizons Regional Council's media policy)

The Chair is the designated spokesperson for Council on governance matters such as council decisions. When absent, media enquiries will be referred to the Chair's elected deputy.

The Chair may suggest another Council member or relevant committee chairperson as spokespeople for some specific issues. A committee chairperson may comment on matters relating to his/her committee, and the subsequent council decisions.

Council members are free to express a personal view in the media at any time provided the following rules (as stated in their Code of Conduct) are observed:

- Media comments must neither state nor imply that they represent the views of the Council or operational matters;
- Where a member is making a statement contrary to a Council decision or Council policy, the member must not state or imply that his or her statements represent a majority view;
- When a member is making a statement in the media that is his or her personal opinion about a Council matter, the statement needs to be identified as such;
- Comments to the media must not disclose confidential information, or compromise the impartiality or integrity of Horizons' staff;
- Media interviews and commentary should be reported to the Media and Communications Manager via a short email so that potential stories can be researched, recorded, and followed up. The email could contain the following information; name of reporter and paper, story angle and expected publication or broadcast.
- Special circumstances apply for the three months leading up to local body elections. The Auditor-General's office requires Horizons to not promote existing Councillors during this period as it could result in an electoral advantage. This includes media opportunities and Council publications above and beyond business as usual-such as committee spokespeople. Instead, management will be quoted for matters that still need to be communicated during this time.

Provide equitable contribution

Members will take all reasonable steps to equitably undertake the duties, responsibilities, and workload expected of them.

Being a member is a position of considerable trust, given to you by your community to act on their behalf. To fulfil the expectations of your constituents and contribute to the good governance of your area it is important that you make all reasonable efforts to attend meetings and workshops, prepare for meetings, attend civic events, and participate in relevant training seminars.

The local government workload can be substantial, and it is important that every member contributes appropriately. This requires members to often work as a team and avoid situations where the majority of the work falls on the shoulders of a small number of members.

Disrepute

Members will not bring the local authority into disrepute.

Members are trusted to make decisions on behalf of their communities and as such their actions and behaviours are subject to greater scrutiny than other citizens. Members' actions also reflect on the local authority as well as themselves and can serve to either boost or erode public confidence in both.

Behaviours that might bring a local authority into disrepute, and diminish its ability to fulfil its statutory role, include behaviours that are dishonest and/or deceitful. Adhering to this Code does not in any way limit a member's ability to hold the local authority and fellow members to account or constructively challenge and express concerns about decisions and processes undertaken by their local authority.

Use of position for personal advantage

Members will not use, or attempt to use, their position to improperly advantage themselves or anyone else, or disadvantage another person.

Being a member of a local authority comes with certain opportunities and privileges, including the power to make choices that can impact on others. Members must not take advantage of such opportunities to further their own or others' private interests or to disadvantage anyone unfairly. A member found to have personally benefited by information gained as an elected member may be subject to the provisions of the Secret Commissions Act 2010.

Impartiality

Members will not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority.

Officers work for the local authority as a whole and must be politically neutral (unless they are political assistants). They must not be coerced or persuaded to act in a way that would undermine their neutrality. Members can question officers to gain understanding of their thinking and decision-making, however, they must not seek to influence officials to change their advice or alter the content of a report, other than in a meeting or workshop, if doing so would prejudice their professional integrity. Members should:

- make themselves aware of the obligations that the local authority and chief executive have as employers and always observe these requirements, such as the obligation to be a good employer, and
- observe any protocols put in place by the chief executive concerning contact between members and employees, and not publicly criticise individual staff.

If you have concerns about the behaviour of an official, whether permanent or contracted, you should raise your concerns with the local authority's chief executive, or, if the concerns are to do with the chief executive, raise them with the, the council chair, or chief executive performance committee.

Maintaining confidentiality

Members will not disclose information acquired, or given, in confidence, which they believe is of a confidential nature, unless.

1. they have the consent of a person authorised to give it,
2. they are required by law to do so,
3. the disclosure is to a third party to obtain professional legal advice, and that the third party agrees not to disclose the information to any other person, or
4. the disclosure is reasonable and in the public interest, is made in good faith, and in compliance with the reasonable requirements of the local authority.

Appendix 2: Requirement for a code of conduct Te herenga kia whai tikanga whanonga

Clause 15, Schedule 7 of the Local Government Act 2002 requires every local authority to adopt a code of conduct for members of the local authority. It states:

15 Code of conduct

A local authority must adopt a code of conduct for members of the local authority as soon as practicable after the commencement of this Act.

The code of conduct must set out –

1. 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:
 - a. behaviour towards one another, staff, and the public; and
 - b. disclosure of information, including (but not limited to) the provision of any document, to elected members that –
 - i. is received by, or is in possession of, an elected member in his or her capacity as an elected member; and
 - ii. relates to the ability of the local authority to give effect to any provision of this Act; and
 - c. 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.
2. A local authority may amend or replace its code of conduct but may not revoke it without replacement.
3. A member of a local authority must comply with the code of conduct of that local authority.
4. A local authority must, when adopting a code of conduct, consider whether it must require a member or newly elected member to declare whether or not the member or newly elected member is an undischarged bankrupt.
5. After the adoption of the first code of conduct, an amendment of the code of conduct or the adoption of a new code of conduct requires, in every case, a vote in support of the amendment of not less than 75% of the members present.
6. To avoid doubt, a breach of the code of conduct does not constitute an offence under this Act.

Part 2: Policy for dealing with alleged breaches of the Code

Te kaupapahere hei whakahaere i ngā whakapae i takahia te Tikanga

Introduction

In its 2006 report on codes of conduct, the Office of the Auditor General (OAG) noted that many councils lacked a process for distinguishing between trivial and serious breaches of the code and consequently spent considerable time and resource hearing complaints on inconsequential matters. Many other issues have also arisen, such as:

- failure to adequately guard against the risk of members with an interest in a complaint taking part in the decision on whether or not to uphold a complaint,
- examples of members of the public making complaints about the behaviour of individual members for reasons that appear to be more concerned with settling ‘political’ differences, and
- lack of preparedness. Many councils discover, when faced with a code of conduct complaint, that they have failed to establish in advance the processes for handling the complaint, thus exacerbating the original issue.

Processes need to be put in place for investigating and resolving breaches of the code and the principles of natural justice must apply to the investigation, assessment and resolution of complaints made under the code.

Public Interest

In their report on codes of conduct, the Local Government Commission noted a lack of consistency in the way in which information about complaints and sanctions is communicated to the public. It stated that *“codes should provide for the proactive release of investigation outcomes in a timely manner and consistent fashion, in line with LGOIMA”* (LGC p.16).⁵ Reflecting the Commission’s sentiments, the draft template for dealing with alleged breaches does not require minor breaches, or those that can be resolved through mediation, to be reported to the council. Maintaining confidentiality should reduce the incentive to use a code of conduct for political purposes.

Where a complaint has been referred to an independent investigator the draft policy recommends that the investigator’s full report should be tabled at a council meeting and that should be public unless grounds to exclude the public exist. This reflects the likelihood that complaints that have been found to be material, and which have not been able to be resolved through mediation, or less, will of necessity be of high public interest.

⁵ Local Government Commission, Codes of Conduct: Report to the Minister of Local Government, September 2021 at <https://www.lgc.govt.nz/other-commission-worlk/current-proposals/view/report-to-the-minister-of-local-government-september-2021/?step=main>

Applying a penalty or sanction under the Code of Conduct should ideally be the last, rather than the first response. Most situations should be able to be resolved without the need for sanctions – frequently an apology is all it will take to resolve an issue.

Matters to consider when adopting a policy for dealing with alleged breaches

Having adopted the Code of Conduct members should consider adopting a policy for dealing with alleged breaches of the code. A policy to investigate and assess alleged breaches needs to be tailored to the circumstances of each council, given the diversity in capacity, resources, and cultural context.

The following policy template sets out procedures for investigating and assessing alleged breaches of the Code of Conduct. To ensure the policy is appropriate for the different scale and circumstances of council, the template provides a range of procedural options that need to be considered before the Policy should be adopted. The options are:

Decision 1 - A single step or two step assessment process?

This option is concerned with the process that should be followed once a complaint is received. Both are independent of the local authority; however the two-step process is designed to quickly address those complaints that have a low level of materiality, and with a minimum expense to the council. (See Attachment 3.3 for guidance on selecting the initial assessor and independent investigator.)

1. A **single step process**, in which the chief executive refers all complaints to an independent investigator who determines whether the complaint is valid and, if so, recommends an action(s) appropriate to the level of materiality or significance of the breach.
2. A **two-step process**, in which the chief executive refers all complaints to an initial assessor who determines whether the complaint is valid and, if so, can refer the complaint to a chair or recommend that the parties undertake mediation. Where the nature of a breach is significant and where mediation is not an option (or not agreed to) then the initial assessor will refer the complaint to an independent investigator, who may also re-assess the complaint.

Please Note: The LGNZ template employs the two-step process which will need to be removed if a council chooses a single step process, or a third option.

Decision 2 – Binding or non-binding recommendations from an investigator?

A key principle is that the process for investigating an alleged breach must be politically independent and be seen to be so. The proposal for investigating and making recommendations is designed to achieve that independence, however, the perception of independence and objectivity may be lost if it is elected members who decide the nature of the action to be taken when a complaint is upheld, particularly in councils with small numbers of elected members.

One solution is for a local authority to agree to be bound by an independent investigator's recommendations. A slight variation would be to create an independent committee to consider an independent investigator's recommendations and either endorse or amend them. The local authority would agree to be bound by that external committee's recommendations.

Please note: The draft template policy (below) makes an investigator’s recommendations binding as the default. Before adopting the template, local authorities need to make sure they are comfortable with this option or amend it as appropriate.

Process for adopting a policy for dealing with alleged breaches

Whether discussed at a council’s induction, a stand-alone workshop, or at a local authority meeting, choices are available, for example:

- The Code of Conduct may be adopted without a policy for dealing with breaches, which may be left for further discussion at a later date.
- The Code of Conduct and the breach policy are adopted together, after members have made decisions about the investigation process (one or two step) and recommendations (binding or not) have been made.

The Attachments (set out in Part 3) are not part of the Code of Conduct or the breach policy, except where they are referenced explicitly. They have been prepared to assist members and officials implement the Code of Conduct and the breach policy.

The Horizons Regional Council policy for investigating and ruling on alleged breaches of the Code of Conduct

Te kaupapahere o te Kaunihera o Horizons Regional Council hei tiro tiro me te whakataui i ngā whakapae kua takahia te Tikanga Whanonga

Principles

The following principles will guide the investigation into, and assessment of, complaints made against a member for breaching the Code of Conduct:

- The complaints process will be independent, impartial, and respect members' privacy.
- Members will be given due notice that an investigation is underway and will be provided with an opportunity to be heard.
- Members will have a right to seek independent advice, be represented, and, if they choose, be accompanied by a support person throughout the process.
- Complaints will be resolved at the lowest level of resolution as possible, with priority given to finding a mediated settlement.
- Complainants, and members subject to a complaint, will have access to advice and support for the time it takes to find a resolution⁶.

Who can make a complaint?

The Code of Conduct is designed to be a self-regulatory instrument and complaints regarding a breach of the Code can only be made by members themselves, or the chief executive, who can make a complaint on behalf of their staff. On receipt of a complaint, the chief executive must forward the complaint to an independent person, either an independent investigator or an initial assessor, for an assessment.

Role of the initial assessor⁷

On receipt of a complaint an initial assessor will undertake an assessment to determine the relative merit and seriousness of the complaint, and the nature of the subsequent process that will be followed. The complaint may be dismissed if the initial assessor finds them to be trivial, vexatious, frivolous, or politically motivated.

⁶ For example, by enabling both parties to access a council's Employee Assistance Programme (EAP) or elected members' equivalent.

⁷ See Attachment 3.2 for advice on the appointment of an Initial Assessor.

If a complaint is not dismissed, the initial assessor (or independent investigator in a one-step process) may initiate one of the following:

1 Refer to a chair

In the case of a breach that is not serious or amendable to mediation, the initial assessor may refer the person responsible for the alleged breach to the chair for their advice and guidance. These will not be reported to the local authority. A meeting or meetings with the chair will be regarded as sufficient to resolve the complaint. Where a member is referred to the chair, the initial assessor may also recommend, for the chair's consideration:

- That the member attends a relevant training course.
- That the member work with a mentor for a period.
- That the member tenders an apology.

2 Mediation

If the complaint concerns a dispute between two members, or between a member and another party, the initial assessor may recommend mediation. If mediation is agreed by both parties, then its completion will represent the end of the complaints process. 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 the local authority unless the complaint is referred to an independent investigator, usually due to a failure of the mediation.

3 Refer to an independent investigator

Where the initial assessor finds that the complaint is serious or no resolution can be reached and/or mediation is refused, the initial assessor will refer the complaint to an independent investigator. The independent investigator will be selected from the local authority's independent investigators' panel assembled by the chief executive, or an independent investigator service that is contracted to the council. Complaints that involve a chair or chief executive will be referred directly to the independent investigator.

Complaints that are dismissed, referred to a chair, or resolved by mediation, will not be reported to the local authority.

Role of the independent investigator⁸

The independent investigator will:

- determine whether a breach has occurred,
- if so, determine the seriousness of the breach, and
- determine actions that a local authority should take in response to the breach.

Any recommended actions made in response to a complaint that has been upheld are binding on the local authority. This is to ensure the process for investigation is free of any suggestion of bias and reduces the cost of the complaints process, by reducing the time spent on it, by members and officials.

Determining the significance of an alleged breach

The independent investigator may take whatever actions they need to determine the significance of a complaint, within the budgetary constraints set down, including re-assessing the complaint.

The independent investigator will undertake an investigation appropriate to the scale of the breach, which may include interviews with other affected parties, and prepare a report for the chief executive which will set out the rationale for their findings and may include recommendations for resolving the breach and appropriate penalties.

When considering the issue of significance, the independent investigator will need to consider a range of factors before deciding, such as:

- Was the breach intentional or unintentional?
- Did it occur once or is there a pattern of recurring behaviour?
- Does the breach have legal or financial ramifications for the council?
- What is the impact of the breach on other elected members, on kaimahi (officials) and on the community in general?

Independent investigator can make a binding rule

On completing their investigation, an independent investigator may dismiss a complaint or make a binding ruling which the governing body will implement. The independent investigator's ruling will be contained in a report to the council's chief executive which will form the basis of a consequent report to the governing body to inform them of the decision and the actions that they may be required to take.

Please note: All actions taken in the implementation of a policy must be consistent with the Bill of Rights Act 1990. No appeal right is included in the Code of Conduct. Members who are unhappy with an independent investigator's decision have access to judicial review and/or the Ombudsman's Office.

⁸ See Attachment 3.2 for advice on the appointment of an Independent Investigator.

Costs and support

Council must ensure that members who make a complaint are not left to meet any costs created by doing so. Members, those who make complaints, and those who are subject to a complaint, should be given appropriate and reasonable support.

The costs of assessment and investigatory services will be met by the relevant council.

Part 3: Attachments Ngā tāpiritanga

3.1: Process for determining and investigating complaints Te tukanga whakatau me te tiroiro i ngā amuamu

Step 1: Chief executive receives complaint

All complaints made under this Code of Conduct must be made in writing and forwarded to the chief executive who will refer the complaint to the initial assessor. The chief executive will also:

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

Step 2: Initial assessor makes an assessment and arranges mediation

1. The initial assessor will undertake an assessment of the merits of the complaint. If they consider it is not valid, the complaint will be dismissed. The complainant will have no recourse or appeal. Grounds for concluding that a complaint has no merit include that it is trivial, vexatious, frivolous, or politically motivated.
2. If deemed to have merit, the initial assessor will contact the parties to seek their agreement to independently facilitated mediation. If the parties agree and the issue is resolved by mediation the matter will be closed and no further action is required.
3. If the parties do not agree to mediation, or mediation is unsuccessful in resolving the matter, the initial assessor will refer the complaint to an independent investigator selected from a panel established by the chief executive at the start of the triennium, or service contracted to the local authority. The initial assessor will also inform the complainant and the respondent that the complaint has been referred to the independent investigator and the name of the independent investigator.

Step 3: Independent investigator to inquire and conclude on the matter

If the complaint is found to be a breach of the Code of Conduct the independent investigator will inform the initial assessor, who will inform the complainant and respondent. The independent investigator will then assess the nature and effect of the breach and prepare a report for the council on the seriousness of the breach and recommend actions commensurate with that breach. In preparing that report the independent 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.

At any stage in their inquiry the independent investigator may find that a breach has not occurred, or the matter should be referred to a relevant agency. If this is the case the independent investigator will inform the initial assessor who will inform the complainant and respondent that the complaint is dismissed or has been referred to a relevant named agency.

On receipt of the independent investigator's report the chief executive, or initial assessor, will prepare a report for the council, which will meet to consider the findings and implement any recommended actions. The report will include the full report prepared by the investigator.

Step 4: Process for considering the investigator's report

The process for responding to the independent investigator's report will vary according to the adopted Policy for determining and investigating complaints.

Process if the independent investigator's recommendations are binding

Where the council's policy for determining and investigating complaints provides for an independent investigator's recommendations to be binding on the local authority, then:

- the chief executive's report, containing the independent investigator's recommendations and their full report, will be presented to the governing body for its information only.
- The chief executive's report may also outline the plan for the report's public release, for the governing body's information and comment.
- The report will be received in public meeting unless grounds, such as s.48 LGOIMA, exist for the exclusion of the public.

Process if the independent investigator's recommendations are non-binding

Where the council's Policy for determining and investigating complaints give an independent investigator the power to make recommendations to the local authority, then:

- the chief executive's report, containing the independent investigator's recommendations and report, will be presented to the governing body, or committee/sub-committee with delegated authority to consider code of conduct complaints,
- The governing body, or local/community board, will ensure that members with an interest in the complaint are not present during the discussion on the independent investigator's recommendations.
- The report will be received in public meeting unless grounds, such as s.48 LGOIMA, exist for the exclusion of the public.
- The chief executive's report may also outline the plan for the report's public release, for the governing body's information and comment.
- The governing body, local/community board, or committee/sub-committee with delegated authority, may accept the investigator's recommendations or, if they believe it is justified, amend the independent investigator's recommendations. As part of these considerations the complainant may be asked to appear before the governing body, board or committee and answer questions from members.
- The penalty or sanction that might be applied will depend on the seriousness of the breach and may include actions set out in Attachment Three.

3.2: Selecting the initial assessor and independent investigator Te kōwhiri i te tangata motuhake me te kaitirotiro motuhake

Selecting an initial assessor

The chief executive is responsible for this. In selected the initial assessor, the chief executive will consult with the local authority.

The initial assessor should be a person, or a position, that is independent of a local authority's political governance, while also being easily accessible, as their role is crucial if complaints are to be expedited quickly and without controversy. For example:

- The external appointee on a council's Audit and Risk Committee.
- A member of staff, such as an internal ombudsman or ethics adviser, as long as they have operational independence from the chief executive (similar to the independence afforded an Electoral Officer).
- A retired local authority chief executive.
- A retired local authority politician.
- A member of the public with relevant experience and competency.

Selecting an independent investigator⁹

The chief executive is responsible for compiling a panel or list of independent investigators.

At the beginning of each triennium the chief executive, in consultation with the council, will compile a list of independent investigators. In selecting them, a chief executive may consider:

- the council's legal advisers,
- a national service specialising in public sector integrity,
- a national service providing assessment and investigation services, or
- an individual with relevant skills and competencies.

Please note: Given the litigious nature of some code of conduct disputes independent investigators should have relevant liability insurance, provide on their own behalf or by the local authority. The chief executive also needs to ensure that investigations are undertaken within budgetary limits negotiated in advance.

⁹ At time of publication LGNZ is exploring options for the establishment of a national investigation and assessment service.

3.3: Actions that may be applied when a breach has been confirmed Ngā mahi ka whāia pea ina whakatauhia tētahi takahanga

Where a complaint that the Code of Conduct was breached has been upheld, any actions taken against the member found to be in breach should be consistent with the following principles.

- Actions should be commensurate with the seriousness of the breach.
- Actions should be applied in a manner that is culturally appropriate and safe for the members involved.
- Actions should, to the degree practical, contribute to an inclusive culture in the local authority by focusing on constructive mediation, learning, and member improvement.

In determining a response to a breach of the Code of Conduct, one or more of the following could be selected:

1. That no action is required.
2. That the member meets with the chair for advice.
3. That the member attends a relevant training course.
4. That the member agrees to cease the behaviour.
5. That the member work with a mentor for a period.
6. That the member tenders an apology.
7. That the member participates in voluntary mediation (if the complaint involves a conflict between two members).
8. That the local authority sends a letter of censure to the member.
9. That the local authority passes a vote of no confidence in the member.
10. That the member loses certain council-funded privileges (such as attendance at conferences).
11. That the member loses specific responsibilities, such as committee chair, deputy committee chair or portfolio holder.
12. That the member be subject to restricted entry to council offices, such as no access to staff areas (where restrictions may not previously have existed).
13. That the member be subject to limitations on their dealings with council staff, other than the chief executive or identified senior manager.
14. That the member be suspended from committees or other bodies to which the member has been appointed.
15. That the member be invited to consider resigning from the council.

Please note: Actions 1-6 will typically not be reported to the local authority. Actions 7-15, which have a high degree of public interest, namely democratic representation, should be considered in an open meeting, unless there are grounds, such as those set out in LGOIMA, for not doing so.

Responses to statutory breaches

In cases where a breach of the Code of Conduct is found to involve regulatory or legislative requirements, the chief executive will refer the complaint 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 section 44 LGA 2002 which may result in the member having to make good the loss or damage).
- 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).

3.4: Legislation which sets standards for ethical behaviour Ngā ture e whakatakoto ana i ngā paerewa mō ngā whanonga matatika

Clause 15 of Schedule 7 of the Local Government Act (the Act) 2002, requires that the Code of Conduct provides members with a general explanation of the Local Government Official Information and Meetings Act 1987, and any other enactment or rule of law that affects members.

The key statutes that promote ethical behaviour are the Local Government Act 2002 (LGA), Local Government Official Information Act 1987 (LGOIMA), the Local Authorities (Members' Interests) Act 1968 (LAMIA), the Protected Disclosures (Protection of Whistleblowers) Act 2022, the Serious Fraud Office Act 1990, the Local Government (Pecuniary Interests Register) Act 2022, the Health and Safety at Work Act 2015, and the Harmful Digital Communications Act 2015.

The Local Government Act 2002

The LGA 2002 is local government's empowering statute. It establishes our system of local government and sets out the rules by which it operates. Those rules include the principles underpinning council decision-making, governance principles, Te Tiriti obligations as set by the Crown, and the role of the chief executive which is:

1. implementing the decisions of the local authority,
2. providing advice to members of the local authority and to its community boards, if any and
3. ensuring that all responsibilities, duties, and powers delegated to him or her or to any person employed by the local authority, or imposed or conferred by an Act, regulation, or bylaw, are properly performed, or exercised,
4. ensuring the effective and efficient management of the activities of the local authority,
5. facilitating and fostering representative and substantial elector participation in elections and polls held under the Local Electoral Act 2001,
6. maintaining systems to enable effective planning and accurate reporting of the financial and service performance of the local authority,
7. providing leadership for the staff of the local authority,
8. employing, on behalf of the local authority, the staff of the local authority (in accordance with any remuneration and employment policy), and
9. negotiating the terms of employment of the staff of the local authority (in accordance with any remuneration and employment policy).

The Local Government Official Information and Meetings act 1987

The LGOIMA sets rules for ensuring the public are able to access official information unless there is a valid reason for withholding it. All information should be considered public and released accordingly unless there is a compelling case for confidentiality. Even where information has been classified as confidential, best practice is for it to be proactively released as soon as the grounds for confidentiality have passed.

There are both conclusive and other reasons for withholding information set out in sections 6 and 7 of LGOIMA, which include:

Conclusive reasons for withholding – if making the information available would likely:

- prejudice the maintenance of the law, including the prevention, investigation and detection of offences, and the right to a fair trial; or
- endanger the safety of any person.

Other reasons for withholding – withholding the information is necessary to:

- protect the privacy of natural persons, including that of deceased natural persons;
- protect information where it would disclose a trade secret or would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information;
- in the case of an application for resource consents or certain orders under the Resource Management Act 1991, to avoid serious offence to tikanga Māori, or to avoid the disclosure of the location of waahi tapu;
- protect information the subject of an obligation of confidence, where making that information available would prejudice the supply of similar information (and it is in the public interest for this to continue), or would be likely otherwise to damage the public interest;
- avoid prejudice to measures protecting the health or safety of members of the public;
- avoid prejudice to measures that prevent or mitigate material loss to members of the public;
- maintain the effective conduct of public affairs through free and frank expression of opinions between or to members and local authority employees in the course of their duty or the protection of such people from improper pressure or harassment;
- maintain legal professional privilege;
- enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations); or
- prevent the disclosure or use of official information for improper gain or improper advantage.

Regarding these ‘other’ reasons, a public interest balancing test applies. In these cases the council must consider whether the withholding of that information is outweighed by other considerations that render it desirable, in the public interest, to make that information available. Decisions about the release of information under LGOIMA need to be made by the appropriately authorised people within each council, and elected members must work within the rules adopted by each council.

The LGOIMA also sets the rules that govern public access to meetings and the grounds on which that access can be restricted, which occurs when meetings consider matters that are confidential.

The role of the Ombudsman

An Ombudsman is an Officer of Parliament appointed by the Governor-General on the recommendation of Parliament. An Ombudsman's primary role under the Ombudsmen Act 1975 is to independently investigate administrative acts and decisions of central and local government departments and organisations that affect someone in a personal capacity. Ombudsmen investigate complaints made under LGOIMA.

Anyone who has a complaint of that nature about a local authority may ask an Ombudsman to investigate that complaint. Investigations are conducted in private. The Ombudsman may obtain whatever information is considered necessary, whether from the complainant, the chief executive of the local body involved, or any other party. The Ombudsman's decision is provided in writing to both parties.

If a complaint is sustained, the Ombudsman may recommend the local authority takes whatever action the Ombudsman considers would be an appropriate remedy. Any such recommendation is, however, not binding. Recommendations made to the local authority under this Act will, in general, become binding unless the local authority resolves otherwise. However, any such resolution must be recorded in writing and be made within 20 working days of the date of the recommendation.

The Local Authorities (Members' Interests) Act 1968

Pecuniary interests

The LAMIA provides rules about members discussing or voting on matters in which they have a pecuniary interest and about contracts between members and the council. LAMIA has two main rules, referred to here as the contracting rule (in section 3 of the LAIMA) and the participation rule (in section 6 of the LAIMA).

- The **contracting rule** prevents a member from having interests in contracts with the local authority that are worth more than \$25,000 in any financial year, unless the Auditor-General approves the contracts. Breach of the rule results in automatic disqualification from office.
- The **participation rule** prevents a member from voting or taking part in the discussion of any matter in which they have a financial interest, other than an interest in common with the public. The Auditor-General can approve participation in limited circumstances. Breach of the rule is a criminal offence, and conviction results in automatic disqualification from office.

Both rules have a complex series of subsidiary rules about their scope and exceptions.

The LAMIA does not define when a person is “concerned or interested” in a contract (for the purposes of section 3) or when they are interested “directly or indirectly” in a decision (for the purposes of section 6). However, it does set out two situations where this occurs. These are broadly where:

- a person’s 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.

However, in some situations outside the two listed in the Act a person can be “concerned or interested” in a contract or have a pecuniary interest in a decision, for example, where a contract is between the members family trust and the council.

Non-pecuniary conflicts of interest

In addition to the issue of pecuniary interests, which are addressed through the LAMIA, there are also legal rules about conflicts of interest more generally. These are rules that apply to non-pecuniary conflicts of interest and include the common law rule about bias. To determine if bias exists, consider this question: 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. This is in line with the principle that justice should not only be done but should be seen to be done. Whether or not you believe that you are not biased is irrelevant. The focus should be on the nature of any 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:

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

Seeking exemption from the Auditor-General

Members who have a financial conflict of interest that is covered by section 6 of the LAMIA, may apply to the Auditor-General for approval to participate. The Auditor-General can approve participation in two ways.

1. Section 6(3)(f) allows the Auditor-General to grant an exemption if, in their opinion, a member’s interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence the councillor when voting or taking part in the discussion.

2. Section 6(4) allows the Auditor-General to grant a declaration enabling a member to participate if they are satisfied that:
 - a. the application of the rule would impede the transaction of business by the council;
or
 - b. it would be in the interests of the electors or residents of the district/region that the rule should not apply.

More information on non-pecuniary conflicts of interest and how to manage them can be found in the Auditor-General’s Guidance for members of local authorities about the law on conflicts of interest.

Protected Disclosures (Protection of Whistleblowers) Act 2022

The Protected Disclosures (Protection of Whistleblowers) Act 2022 is designed to facilitate the disclosure and investigation of serious wrongdoing in the workplace, and to provide protection for employees and other workers who report concerns. A protected disclosure occurs when the discloser believes, on reasonable grounds, that there is, or has been, **serious wrongdoing** in or by their organisation, they disclose in accordance with the Act, and they do not disclose in bad faith.

A discloser is a person who has an employment type relationship with the organisation they are disclosing about and includes current and former employees, homeworkers, secondees, contractors, volunteers, and board members. Serious wrongdoing includes:

- an offence
- a serious risk to public health, or public safety, or the health or safety of any individual, or to the environment
- a serious risk to the maintenance of the law including the prevention, investigation and detection of offences or the right to a fair trial
- an unlawful, corrupt, or irregular use of public funds or public resources
- oppressive, unlawfully discriminatory, or grossly negligent or that is gross mismanagement by a public sector employee or a person performing a function or duty or exercising a power on behalf of a public sector organisation or the Government

Council need to have appropriate internal procedures that identify who in the organisation a protected disclosure may be made to, describe the protections available under the Act, and explain how the organisation will provide practical assistance and advice to disclosers. A discloser does not have to go through their organisation first. An appropriate authority can include the head of any public sector organisation and any officer of Parliament, such as the Ombudsman and Controller and Auditor-General. Ombudsmen are also an “appropriate authority” under the Protected Disclosures (Protection of Whistleblowers) Act 2022.

The Serious Fraud Office Act 1990

The Serious Fraud Office (SFO) is the lead law enforcement agency for investigating and prosecuting serious financial crime, including bribery and corruption. The SFO has an increasing focus on prevention by building awareness and understanding of the risks of corruption – noting that the extent of corruption is influenced by organisational frameworks and support given to staff. The SFO encourages organisations to adopt appropriate checks and balances and build a culture based on ethics and integrity.

The four basic elements of best practice organisational control promoted by the SFO involve:

- Operations people with the right skills and experience in the relevant areas, with clear accountability lines.
- Risk mitigation to manage risks that can't be eliminated through segregation, discretion reduction, delegations, management oversight, and audit.
- Basic standards of behaviour moderated by a Code of Conduct, ongoing interests and gift processes (not simply annual declaration), plenty of opportunities and ways to speak up, disciplinary options, training and support.
- Design and oversight based on a clear understanding of operational realities (design, governance, management, audit, investigation, business improvement, and legal).

The Local Government (Pecuniary Interests Register) Act 2022

Following passage of the Local Government (Pecuniary Interests Register) Amendment Bill in 2022, a local authority must now keep a register of the pecuniary interests of their members, including community and local board members. The purpose of the register is to record members' interests to ensure transparency and strengthen public trust and confidence in local government processes and decision-making. Registers must comprise the following:

- the name of each company of which the member is a director or holds or controls more than 10% of the voting rights and a description of the 30 main business activities of each of those companies,
- the name of every other company or business entity in which the member has a pecuniary interest, other than as an investor in a managed investment scheme, and a description of the main business activities of each of those companies or business entities,
- if the member is employed, the name of each employer of their employer and a description of the main business activities of those employers,
- the name of each trust in which the member has a beneficial interest,
- the name of any organisation or trust and a description of the main activities of that organisation or trust if the member is a member of the organisation, a member of the governing body of the organisation, or a trustee of the trust, and the organisation or trust receives funding from the local authority, local board, or community board to which the member has been elected,
- the title and description of any organisation in which the member holds an appointment by virtue of being an elected member,

- the location of real property in which the member has a legal interest, other than an interest as a trustee, and a description of the nature of the real property,
- the location of real property, and a description of the nature of the real property, held by a trust if the member is a beneficiary of the trust and it is not a unit trust (disclosed under subclause 20) or a retirement scheme whose membership is open to the public.

Each council must make a summary of the information contained in the register publicly available; and ensure that information contained in the register is only used or disclosed in accordance with the purpose of the register; and is retained for seven years.

The Health and Safety Act at Work Act 2015

The Health and Safety at Work Act 2015 aims to create a new culture towards health and safety in workplaces. A council is termed a Person Conducting a Business or Undertaking (PCBU) - all involved in work, including elected members, are required to have a duty of care. Elected members are “officers” under the Act and officers are required to exercise due diligence to ensure that the PCBU complies with its duties. However, certain officers, such as elected members, cannot be prosecuted if they fail in their due diligence duty. Despite this, as officers, the key matters to be mindful of are:

- stepping up and being accountable,
- identifying and managing your risks,
- making health and safety part of your organisation’s culture, and
- getting your workers involved.

Councils have wide discretion about how these matters might be applied, for example:

- adopting a charter setting out the elected members’ role in leading health and safety – with your chief executive,
- publishing a safety vision and beliefs statement,
- establishing health and safety targets for the organisation with your chief executive,
- ensuring there is an effective linkage between health and safety goals and the actions and priorities of your chief executive and their senior management, or
- having effective implementation of a fit-for-purpose health and safety management system.

Elected members, through their chief executive need to ensure their organisations have sufficient personnel with the right skill mix and support, to meet the health and safety requirements. This includes making sure that funding is sufficient to effectively implement and maintain the system and its improvement programmes.

The Harmful Digital Communications Act 2015

The Harmful Digital Communications Act (HDCA) was passed to help people dealing with serious or repeated harmful digital communications. The Act covers any harmful digital communications (like text, emails, or social media content) which can include racist, sexist and religiously intolerant comments – plus those about disabilities or sexual orientation and sets out 10 communication principles for guiding communication online. Under the Act a digital communication should not:

- disclose sensitive personal facts about an individual
- be threatening, intimidating, or menacing
- be grossly offensive to a reasonable person in the position of the affected individual
- be indecent or obscene
- be used to harass an individual
- make a false allegation
- contain a matter that is published in breach of confidence
- incite or encourage anyone to send a message to an individual for the purpose of causing harm to the individual
- incite or encourage an individual to commit suicide
- denigrate an individual by reason of colour, race, ethnic or national origins, religion, gender, sexual orientation or disability

More information about the Act can be found at [Netsafe](#).

3.5: Case studies for assessing potential breaches: Ngā rangahau whakapūaho mō te aromatawai i ngā tūpono takahanga

Example one: staff accused of improper motives

Councillor Smith was elected on a platform of stopping the sale of council housing. The council has made a decision to sell the council housing. Cr Smith makes media comments against the decision after it is made. Those same statements suggested that council staff advising on the sale “must have owned shares” in the company that proposed to buy the houses.

Cr Smith’s actions in releasing a media statement criticising a decision after it has been made would probably not in and of itself constitute a breach of a reasonable code of conduct. Cr Smith has a right to express a viewpoint and, provided that he makes it clear he is expressing a personal view, then issuing a critical press statement is an action he is entitled to take. If his statements failed to make it clear that he was expressing a personal or minority view then it may be a non-material breach of the Code, probably one where censure would be the appropriate response.

However, this media statement includes an allegation that staff advice was based on improper motives or corruption. This is a breach of most codes of conduct. It is most likely to be a material breach given the potential impact on the council’s reputation and the reputation of staff.

Also, there is no qualified privilege attached to public statements about employees which are false and damaging. In other words, elected members may be sued for defamatory statements made about employees.

Example two: leak of confidential information

Cr Jones is on the council’s Works and Services Committee. The Committee is currently considering tenders for the construction of a new wastewater treatment plant and has received four tenders in commercial confidence. The Committee has recommended to council that they award the contract to the lowest tenderer. Cr Jones is concerned the lowest tender proposes to treat sewage to a lesser standard than others. She leaks all four tenders to the local media. A subsequent investigation by the council conclusively traces the leak back to her.

In leaking the tender information to the media, Cr Jones will have breached most codes of conduct. This breach has potentially serious consequences for the council as a whole. It not only undermines elected members trust of each other, it also undermines the confidence of suppliers in the council, which may lead to them not dealing with council in future, or even complaints under the Privacy Act 2020.

In circumstances such as these where an elected member fails to respect a commercial confidence censure and removal from the committee is an obvious first step. The council may be liable for prosecution under the Privacy Act 2020 and even to civil litigation.

In the event that the council suffers financial loss it may elect to ask the Auditor-General to prepare a report on the loss (or the Audit Office may do so on their own initiative), which may result in Cr Jones having to make good the loss from her own pocket.

Example three: member purports to speak on behalf of council

Eastland Regional Council is conducting a performance review of the chief executive. It has established a chief executive Performance Management Committee to conduct the review. In the course of that review the committee meets informally with the chief executive to review which performance targets were met and which were not. The meeting notes that the chief executive has been unable to meet two of his twenty targets and resolves to formally report this to the full council for its consideration. At the conclusion of that meeting Councillor Black leaves to find a local reporter waiting outside and makes the comment that “Jack White won’t be getting a pay increase this year because he didn’t meet all his targets”.

This action will probably constitute a breach of most codes of conduct in that it:

- breached a confidence,
- presumed to speak on behalf of council,
- purported to commit council to a course of action before the council and made a decision (or even met to consider the matter), and
- failed to treat a staff member with respect and/or courtesy.

In addition to the provisions of the Code of Conduct, Cr Black’s actions will severely undermine the relationship between the chief executive and the council, which may well constitute grounds for litigation against the council both in terms of employment and privacy law.

Example four: member criticises staff performance in media

Cr Mary Fogg, concerned about the failure of her council to respond quickly to resident complaints about flooding in their neighbourhood, expressed her frustration when speaking at a public meeting and, as part of her response to questions stated that council staff had dropped the ball and failed to take residents’ concerns seriously.

The councillor’s remarks were reported in the local suburban paper and were read by council staff, some of whom felt that they had been unfairly criticised and raised the matter with their chief executive. The chief executive felt it necessary to lodge a complaint under the council’s Code of Conduct because the member’s comments were disrespectful of staff.

The question for the initial assessor is whether, publicly expressing disappointment in the performance of the staff is a breach of the Code of Conduct. Considerations might include:

- Whether there was a basis of fact for the member’s comments.
- How the member’s views were expressed, that is, as a form of constructive criticism or not.
- The right of an employer (staff are employed by the local authority) to express a view should an organisation fail to live up to expectations.
- Whether a general statement about the performance of staff is in anyway comparable to a public criticism of an individual staff member, which would be a clear breach and might be an example of intimidation or harassment.

In this case the initial assessor concluded that it was not unreasonable for a member to make general statement about the performance of staff as a collective, indeed, one of her pre-election commitments was to improve the responsiveness of council staff. However, the assessor also concluded that the article lacked sufficient context to explain why she was disappointed, especially when some of the concerns were outside the control of staff and recommended that the member meet with the mayor to get guidance on how to raise such concerns in the future.

Example five: member accused of using sexist language and humour

Towards the end of the first year of the new triennium, the chief executive received a complaint, signed by four councillors, alleging that Cr Rob Jones regularly used sexist language in meetings, workshops and other official engagements. The councillors who made the complaint alleged that his tendency to call female colleagues 'girls'; interrupt them while speaking or ignore their comments; and that his use of sexist humour was demeaning to women and inconsistent with the behaviours set out in the Code of Conduct; the commitment to treat other members, staff and members of the public with respect. The chief executive forwarded the complaint to the independent investigator.

The investigator, having access to minutes, video recordings and the testimony of other members, was able to easily confirm that the complaint was justified and that both Cr Jones' language and behaviour was inconsistent with the Code. That left the Investigator with the task of determining how serious the breach was and what actions should be taken. Factors that the investigator took into consideration included:

- that the issue had been raised with Cr Jones earlier in the year by a colleague, with no obvious change in behaviour
- that Cr Jones was one of the council's representatives on its Youth Committee, bringing him into regular contact with young people
- that the council had adopted a specific policy to be a safe and supportive workplace for both elected members and staff.

Taking these factors into account the Investigator recommended that Cr Jones be removed from his role as a council representative on the Youth Committee; should be enrolled in a relevant course to better understand offensive behaviour and its impacts; and meet monthly with mayor to monitor his behaviour.

Example six: Councillor Facebook page used to disparage others

Councillors Sarah Smith and William Getty share political views in common and have recently established a Facebook group through which they promote debate and discussion with like-minded people in their district. Some of the participants in that Facebook Group make posts that include explicit criticism of other councillors, sometimes using explicit language, commenting on things like the way they voted, their motivations and personal matters. Some of the councillors targeted by the abuse complained to Cllrs Smith and Getty who, in response, closed the Facebook page to other councillors, preventing them from joining or viewing the content.

Rather than solve the concerns the decision to close the Facebook to others created additional anxiety for some councillors who became concerned that the page may be sharing their personal details and mis-representing their views. A complaint was made to the chief executive that the Code of Conduct had been breached, on the basis that the decision to exclude them from the website, and the fact that it appeared to me unmoderated, was intimidating, potentially exposed them to harm and allowed promoted statements about them and the council that were clearly untrue. The chief executive referred the complaint to the council's independent investigator.

The investigator found that, while Cllrs Smith and Getty were not directly mis-representing the views of their colleagues, they were indirectly encouraging it, which breached the Code. Because this was the first complaint, and because the two councillors believed that by limiting access to the website, they had addressed the initial concerns, the investigator did not regard the breach as material. She recommended that the two councillors remove the block preventing other councillors from joining or accessing the site and install a system for approving posts, such as a moderator, before they are published.

Attachment

A ●

**Experiencing
abuse,
harassment, and
intimidation from
the public >>**

Please note that this chapter includes information about harassment and intimidation and provides options for how to respond. Some people may find these topics distressing and should seek support before reading this material. The information contained in this attachment should not be a substitute for legal advice – no liability is assumed by Local Government New Zealand.

As many a public figure will tell you, there are both upsides and downsides to having a public profile. There is unfortunately, a high chance that you will experience abuse, intimidation and even harassment during your time in office. However, tolerating or ‘putting up with it’ is not an expectation of the job and is not a phrase that will appear in any job description, code of conduct or legislation that governs the role of an elected member.

Abuse, harassment, and intimidation can take place in person, via mail, phone and also online. The channel of delivery makes no difference to the severity of the behaviour; online abuse and abusive mail should never be minimised just because they didn’t occur in a face-to-face environment.

Many things can serve as catalysts for harassment and abuse such as kaunihera events or decisions or a media article. However, the reason or cause of the behaviour is irrelevant and there are times when there is no discernible trigger for what can occur.

How it affects you as an elected member should be the main consideration when deciding how to respond. No matter who the concerning behaviour comes from or the ‘reason’ for it, if it impacting on you in any way, you should take action, whether that be seeking support for your wellbeing, discussing it with your kaunihera, colleagues, friends or whānau or alerting the police.

Delaying action may increase the risk to your and your whānau’s safety. Do not be discouraged to seek help and support.

If you’re concerned about the immediate safety of yourself or someone else, call 111.

What the law says

Harassment and intimidating behaviour have legal definitions in Aotearoa New Zealand meaning that legal action can be pursued if you experience harassment and intimidation. The following acts are relevant:

- » [The Harassment Act 1997](#)
- » [The Summary of Offences Act 1981 \(Section 21\)](#)
- » [The Harmful Digital Communications Act 2015](#)

Harassment and the Harassment Act 1997

The Harassment Act 1997 states it’s a criminal offence for someone to harass you, if they intended to make you fear for your safety or if they knew that what they were doing was likely to make you fear for your safety. If you report harassment to the police and they believe the harassment is criminal, they can arrest and charge the person responsible.

If what happened doesn’t meet the test for criminal harassment, you may still be able to use the non-criminal process under the Harassment Act against the person responsible. This will involve going to the District Court to get a restraining order.

Harassment is limited to intimidating behaviour; if a person has attacked you or destroyed your property, talk to the Police about criminal charges.

[See the Harassment Act 1997 here.](#)

For there to be “harassment”, there must be both of the following:

- » the type of behaviour set out in the Harassment Act, and
- » a pattern of behaviour, not just a one-off incident.
- » **Twice in one year:** if the person does any of the things listed above twice or more within 12 months. It doesn’t have to be the same kind of thing each time.
- » **A continuing act:** there’ll also be a pattern if the person does any of the things listed above as one continuing act over a period of time.

Under the Harassment Act 1997, these are the types of acts or incidents that can amount to harassment:

- // a** watching, hanging around, or blocking access to or from your home or workplace, or any other place you regularly or often visit; or
- // b** following, stopping or confronting you; or
- // c** coming into your home or onto your property, or interfering with your home or any of your things; or
- // d** contacting you either by phone, letter, email or text, or through social media sites or apps like Facebook, or in any other way; or
- // e** giving you offensive material, or leaving it where you'll find it or where someone else will give it to you or bring it to your attention – this includes posting offensive pictures or other material online; or
- // f** doing anything else that makes you fear for your safety, and that would make a reasonable person in your situation fear for their safety. This includes where the harasser does the thing to a member of your family, rather than to you directly, in order to target you, and even if that family member doesn't in fact fear for their own safety.

Intimidation and the Summary of Offences Act 1981

The Summary of Offences Act 1981 states it's an offence to intimidate you and defines intimidation as when a person commits an offence with intent to frighten or intimidate any other person, or knowing that their conduct is likely to cause that other person reasonably to be frightened or intimidated:

This includes when someone:

- // a** threatens to injure that other person or any member of his or her family, or to damage any of that person's property; or
- // b** follows that other person; or
- // c** hides any property owned or used by that other person or deprives that person of, or hinders that person in the use of, that property; or
- // d** watches or loiters near the house or other place, or the approach to the house or other place, where that other person lives, or works, or carries on business, or happens to be; or
- // e** stops, confronts, or accosts that other person in any public place.

[See the section on intimidation in the Summary of Offences Act 1981](#)

What about indirect harassment through targeting whānau?

It is still harassment if any of the acts above are directed toward someone's whānau in a bid to indirectly harass someone else. An example of this could be if a letter is sent to a member of your whānau with the intention of upsetting you.

Online harm and the Harmful Digital Communications Act (HDCA) 2015

Netsafe (Aotearoa New Zealand's independent, non-profit online safety organisation) describes distressing content as that which is hateful, sexual or illegal material (like age-restricted material or extreme violence). Offensive or illegal content could include topics, images or other information that could be prohibited in Aotearoa. It is illegal for anyone to send or publish threatening, offensive, or sensitive material and damaging rumours.

Online abuse includes cyberbullying and the distribution of inappropriate material, such as violent and sexual material that can cause emotional and physiological distress. Online bullying or cyberbullying is when digital platforms or technology are used to send, post or publish content intended to cause harm to another person.

The Harmful Digital Communications Act (HDCA) 2015 aims to help people dealing with serious or repeated harmful digital communications. It includes criminal penalties of fines and jail-time.

The HDCA covers any digital communications that are harmful such as text messages, social media messages, emails and social media content which contain discriminatory, sexist, racist, religiously intolerant comments as well as discriminatory comments about sexual orientation or disabilities.

The HDCA sets out 10 communications principles that a digital communication should not include:

// **1**

disclose sensitive personal facts about an individual

// **2**

be threatening, intimidating, or menacing

// **3**

be grossly offensive to a reasonable person in the position of the affected individual

// **4**

be indecent or obscene

// **5**

be used to harass an individual

// **6**

make a false allegation

// **7**

contain a matter that is published in breach of confidence

// **8**

incite or encourage anyone to send a message to an individual for the purpose of causing harm to the individual

// **9**

incite or encourage an individual to commit suicide

// **10**

denigrate an individual by reason of colour, race, ethnic or national origins, religion, gender, sexual orientation, or disability

[See the Harmful Digital Communications Act 2015](#)

SHIELD principles for handling harassment and intimidation

While there is no expectation that anyone ‘put up with’ harassment and intimidation as part of the job, each elected member will have a different tolerance threshold. Seeking support is a personal decision and is actively encouraged; if you have an instinct to seek support and protection, do so.

In some instances, not dealing with the behaviour may increase risks to safety.

In the United Kingdom, the Local Government Association (the national membership body for local authorities) has developed the SHIELD principles to support elected members when responding to harassment and intimidation.

The SHIELD principles provide a basic framework for elected members for engaging with the public to mitigate risks and handle incidents if they occur.

The SHIELD principles are:

- » **Safeguard:** protect yourself online and in-person by proactively setting a zero-tolerance policy for abuse, harassment or intimidation. Seek advice regarding your safety online and in-person.
- » **Help:** ensure you are safe before you take further action and get help if you need it. If the threat is immediate, call 111.
- » **Inform:** only if it is safe to do so, say that you consider the actions to be harassing and intimidating and challenge poor behaviour.
- » **Evidence:** gather evidence of harassment or intimidation, threatening communications, take photos, recordings or screenshots, keep any letters, emails and details of any witnesses.
- » **Let people know:** report the incident to the appropriate people such as your council or the police if necessary.
- » **Decide:** determine whether you want to continue interacting with the person. If you do not, use social media functions to end engagements online and consider further options to inhibit them from approaching you in person.

[Source: LGA Shield Principles – Local Government Association UK](#)

Other tips for keeping safe

If you’re concerned about the immediate safety of you or someone else, call 111.

Have a safety network with your whānau, friends and colleagues

Creating a safety network with people you trust is a good way to have support if you need it. This could look like:

- » Letting your safety network work know about any activities or engagements you have planned so that they are aware of where you may be and when to expect you back home for example.
- » Asking someone to come with you to public activities, engagements, and events.
- » You could consider having a safety word, you could text or say on the phone if you need support or assistance.
- » Elected members sharing their experiences so that they can support each other.

Keep a record of events that make you feel unsafe. Not only is this useful if you need to go to the police, but keeping a record of ongoing acts of aggression, harassment, or intimidation no matter what the scale will help identify patterns of behaviour. This could be used to warn your peers and colleagues of red flags. It could also help your council create a coordinated response if it is required.

Try to stay calm

Some people could be infuriated, angry or upset with local issues and may expect elected members to fix issues beyond their control or mandate. In conversations like these, try your best to keep calm and do not debate with the person. Staying calm, does not mean you have to ‘take it’ and tolerate aggressive behaviour but more so about de-escalating a situation for your own safety.

You don’t have to ‘take it’

Putting up with harassment and intimidating behaviour from the public is not an expectation or a part of the job description of being an elected member or representative of your local community.

If you are on the receiving end of threatening, intimidating, racist, homophobic, sexist or derogatory remarks, it is your right to bring any meeting or interaction to an end and seek assistance and support. If you feel comfortable and safe doing so, you could try to tell the person that you could pick up the conversation again when the situation is calmer.

Let your council know and contact the police if you feel unsafe

If you experience harassment, abuse or intimidation make a detailed note of the incident and those involved. Let your council know that it has happened. You can make a call on whether you want to inform the police.

Dealing with online or digital abuse or distressing content.

Many elected members use social media to connect with their local communities. Online abuse, harassment, bullying, and intimidation can be common but should not be minimised as ‘normal political banter’ or ‘freedom of expression’.

If you feel unable to deal with abuse yourself or have any concerns about your safety, report any incidents to Netsafe, your council or the police. If you are unsure about the seriousness of what you are experiencing, get in touch with Netsafe.

Netsafe

Netsafe is Aotearoa New Zealand’s independent, non-profit online safety organisation providing online safety support, expertise and education. Netsafe is responsible for helping resolve reports related to alleged breaches of the 10 communication principles. They are not enforcement agency, but do have a high rate of resolution.

Some of the things Netsafe can do include:

- » liaising with website hosts, Internet Service Providers (ISP) and other content hosts (both here and overseas) and request they takedown or moderate posts that are clearly offensive
- » using advice, negotiation, mediation and persuasion (as appropriate) to resolve complaints

[Learn more about Netsafe’s services here](#)

If Netsafe have tried to resolve the incident but can’t, you may be able to apply to the District Court for action e.g. for a takedown order against the author or host of the allegedly harmful content.

Netsafe will provide you with a Netsafe Summary that can be taken to the District Court to show that someone has tried to resolve the incident and that there are no further options that can be considered. The Netsafe summary will include a report of the incident and the resolution options offered, completed or attempted. The Netsafe Summary informs the District Court but does not impact the decision the District Court makes.

Netsafe’s services are free, confidential, non-judgemental and available seven days a week.

- » Email help@netsafe.org.nz
- » Call toll free on 0508 NETSAFE (0508 638 723)
- » Online report at netsafe.org.nz/report
- » Text ‘Netsafe’ to 4282

Here are some practical tips to deal online abuse:

Be security conscious

Social media profiles are actively targeted by cyber criminals, foreign intelligence services and others. Maintaining good online security practices can help mitigate the risks involved in using social media. Members should:

- » Choose a strong password (preferably a whole phrase rather than a single word) and never share it.
- » Use two-factor authentication where it is offered.
- » Keep operating systems and apps up to date as they will contain the latest security improvements. Seek the advice of your kaunihera staff if you do not know how to do this.
- » Be careful about locations for accessing social media: public wi-fi networks (such as in cafes, airports, hotels etc) put members at greater risk of being hacked.
- » Only install trusted apps and avoid granting them access to contacts, camera, photos, files etc.
- » Avoid posting information about their location by disabling location-sharing.

Get familiar with social media platform settings

Make sure that you know the different setting and processes to block, mute, report and delete comments and users on the platforms you are using. If you're not sure how, you can visit the safety settings of social media platforms to find out how or talk to you council communications staff.

Set expectations on your social media platforms

You can post your own rules of engagement on your social media platforms establishing clear expectations on behaviour, boundaries and the possible response to those who breach those rules.

Here's an example of a rules of engagement statement:

“I welcome your comments and interactions but have two simple rules for a safe social community: 1) Be respectful to others; and 2) Do not post any harmful content. Content that I judge to be harmful will be hidden or removed. This includes misinformation, swearing, hate speech, trolling and spam. If I believe you are repeatedly disrespectful of myself or others, or if harmful content is repeatedly posted, then you may be banned or blocked.”

Plan your approach to responding, before you post

Some information and content will be more controversial than others. Before you post it, think about how you intend to manage any engagement (comments and questions) with the content. For example will you respond to all engagements or only those specifically addressing the content itself?

Wait to de-escalate

Fires burn out when they have no fuel. Heat can be taken out of a situation if you hold-off responding for a time. Don't feel obliged to reply immediately as it may be more beneficial to wait before responding to abusive or angry messages. If you do not feel comfortable replying at all, you do not have to.

Be firm and factual

De-escalate negative situations by acknowledging a person's frustrations, assuring them that they have been heard, and committing to follow up where appropriate

Call out inappropriate comments

Make it clear that the language being used is unacceptable and inappropriate. Publicly challenging inappropriate behaviour can be a powerful tool in stopping it.

Know that you can step back if you need to

You never have to engage with online abuse, bullying or harassment. While you may wish to respond with factual information, you are under no obligation to do so. You can step back or step away at any time.

Block email addresses and numbers/callers on your phone

You can block phone numbers and email addresses that are sending harassing, intimidating or abusive messages or calls. Search online using the words “how to block phone numbers” and the model of your cell phone. Your mobile service provider may also be able to help you block numbers. You may also want to consider having a separate work and personal phone. You can also talk to council staff for assistance with email and phone security.

Record and report any abuse or threatening communications

Screenshot comments, content or messages and keep a record of abusive or threatening communications. Report abusive comments using the social media platform’s reporting functions, and mute or block repeat offenders.

Dealing with misinformation

There are three kinds of misinformation:

- » Misinformation is information that is false, but not created with the intention of causing harm.
- » Disinformation is information that is false and was created to harm a person, social group, organisation or country.
- » Malinformation is information that is based on reality, used to inflict harm on a person, organisation or country.

Misinformation can be stopped by reporting fake accounts, pages and domains that post or share misinformation. Most misinformation is legal, and people have the right to express their views or opinions. However, if you see content on social media that you believe to be false or misleading, you can report it to the social media platform you found the information on:

- » How do I mark a Facebook post as false news? — <https://www.facebook.com/help>
- » Report inappropriate content — [YouTube.com](https://www.youtube.com)
- » Report a tweet, list or direct message — [Twitter.com](https://www.twitter.com)
- » Reduce the spread of false information — [Instagram.com](https://www.instagram.com)
- » Staying safe on Whatsapp — [WhatsApp.com](https://www.whatsapp.com)
- » Report a problem — [TikTok.com](https://www.tiktok.com)

Misinformation, including leaflets and scams, can be reported to Government agency CERT NZ (Computer Emergency Response Team) and you can report to Netsafe any online harms including misinformation and hate speech or extremism.

With thanks to Auckland Council for sharing their social media policy and guidelines.