



WAIMAKARIRI DISTRICT COUNCIL

Elected Member Code of Conduct

Adopted on 7 November 2023

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1. Introduction and Purpose

The Waimakariri Council Code of Conduct (the Code) 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.

The purpose of the Code is to:

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

The Code sets boundaries on standards of behaviour and provides a means of resolving situations when elected members breach those standards.

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

2. Members' Commitment

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

- treat all people fairly,
- treat all other members, staff, and members of the public, with respect,
- share with the local authority any information received that is pertinent to the ability of the local authority to properly perform its statutory duties,
- make it clear, when speaking publicly, that statements reflect their personal view, unless otherwise authorised to speak on behalf of the local authority,
- take all reasonable steps to equitably undertake the duties, responsibilities, and workload expected of a member,
- not bully, harass, or discriminate unlawfully against any person,
- not bring the local authority into disrepute,
- not use their position to improperly advantage themselves or anyone else or disadvantage another person,

- not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority,
- not disclose information acquired, or given, in confidence, which they believe is of a confidential nature.

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

3. Principles of Good Governance

The Code is designed to give effect to the following principles of good governance:

1. **Public interest:** members should act solely in the public interest.
2. **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.
3. **Accountability:** members should be accountable to the public for their decisions and actions and will submit themselves to the scrutiny necessary to ensure this.
4. **Objectivity:** members should act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias. This includes matters like appointments, awarding contracts, and recommending individuals for rewards or benefits.
5. **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
6. **Stewardship:** members should use long-term perspective when making decisions. Decisions, which impact on past, current and future generations, also affect collective well-being.
7. **Honesty:** members should be truthful and not misleading.
8. **Leadership:** members should not only exhibit the principles listed above in their own behavior, but also be willing to challenge poor behaviour in others, wherever it occurs

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

Any enquiry into a potential breach of the Code will adhere to the concepts of natural justice and fairness and will apply in the determination of any complaints made under this Code. This is in line with the principle that justice should not only be done but should be seen to be done.

4. Behaviours

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

- conducting the business of the Council,
- acting as a representative of the Council,
- acting as a representative of their ward/district
- communicating with other members, the media, the public and staff, and
- using social media and other communication channels.²

Where a member's conduct falls short of these standards, members accept that they may be subject to a complaint for alleged breaches of this Code.

4.1 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.

Members will conduct their dealings with each other in a manner that focuses on issues rather than personalities. They will avoid abuse of meeting procedures, such as a pattern of unnecessary notices of motion and/or repetitious points of order.

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 Chief Executive of the Council, the relevant social media provider or the police.

4.2 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 following:

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

4.3 Disrepute

Members will not bring the local authority into disrepute. 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.

4.4 Expressing views publicly

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

Media contact on behalf of the Council

- the Mayor is the first point of contact for an official view on any issue, unless delegations state otherwise. Where the Mayor is absent requests for comment will be referred to the Deputy Mayor or relevant standing committee chairperson or portfolio holder;
- operational questions should be referred to the Chief Executive and policy-related questions referred to the Mayor or the member with the appropriate delegated authority;
- the Mayor may refer any matter to the relevant committee chairperson, portfolio holder, community board chairperson or to the Chief Executive for their comment; and
- no other elected member may comment on behalf of the Council without having first obtained the approval of the Mayor, or his/her delegate.

Media comment on a member's own behalf

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

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

4.5 Information

Elected members will disclose to other elected members and, where appropriate the Chief Executive, 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

Members will not disclose information acquired, or given, in confidence, which they believe is of a confidential nature, unless they have the consent of a person to give it,

- they are required by law to do so,
- 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
- 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.

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.

4.6 Conflicts of Interest

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

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

If a member is in any doubt as to whether or not a particular course of action (including a decision to take no action) raises a conflict of interest, then the member should seek guidance from the Chief Executive immediately. Elected members may also contact the Office of the Auditor General for guidance as to whether they have a pecuniary interest, and if so, may seek an exemption to allow that member to participate or vote on a particular issue in which they may have a pecuniary interest. The latter must be done before the discussion or vote.

4.7 Register of Interests

Elected members will be requested to make a bi-annual declaration of interest at the ordinary Council meeting held in June and December each year. These declarations are recorded in a Register of Interests pursuant to the Local Government (Pecuniary Interests Register) Act 2022 maintained by the Council and listed on the Council website.

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

4.8 Ethical behaviour

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

- claim only for legitimate expenses as determined by the Remuneration Authority and any lawful policy of the Council developed in accordance with that determination;
- not influence, or attempt to influence, any Council employee, officer or member in order to benefit their own, or families personal or business interests;
- only use the Council resources (such as facilities, staff, equipment and supplies) in the course of their duties and not in connection with any election campaign or personal interests; and not solicit, demand, or request any gift, reward or benefit by virtue of their position and notify the Chief Executive if any such gifts are accepted. Where a gift to the value of \$500 or more is accepted by a member, that member must immediately disclose this to the Chief Executive for inclusion in the publicly available register of interests.

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

4.9 Creating a supportive and inclusive environment

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

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

5. Breaches of the Code

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

The process for the receipt of a complaint, assessment, investigation, decision making, and resolution is contained in **Appendix B**.

6. Review of Code

Once adopted, a Code of Conduct continues in force until amended by the Council. The Code can be amended at any time but cannot be revoked unless the Council replaces it with another Code (LGA 2002 Schedule 7 s.15). Once adopted, amendments to the Code require a resolution supported by 75 per cent of the elected members of the Council present at a Council meeting where the amendment is considered.

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

7. Disqualification of Elected Members from Office

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

Appendix A: Legislation which sets standards for ethical behaviour

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 organisation 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

The 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 organisation’s 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](#).

Appendix B: Process for dealing with alleged breaches of the Code the determination and investigation of complaints

Principles:

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

- that the approach for investigating and assessing a complaint will be proportionate to the apparent seriousness of the breach complained about;
- that the roles of complaint, investigation, advice and decision-making will be kept separate as appropriate to the nature and complexity of the alleged breach; and
- that the concepts of natural justice and fairness will apply in the determination of any complaints made under this Code. This requires, conditional on the nature of an alleged breach, that affected parties:
 - have a right to know that an investigation process is underway;
 - are given due notice and are provided with an opportunity to be heard;
 - have a right to seek appropriate advice and be represented; and
 - have their privacy respected.
- The presumption is that the outcome of a complaints process will be made public unless there are grounds, such as those set out in the Local Government Official Information and Meetings Act 1987 (LGOIMA), for not doing so.

Step 1: Chief Executive receives complaint

On receipt or initiation of a complaint under this Code of Conduct the Chief Executive will:

- acknowledge receipt of a complaint under the Code, and advise steps that will be taken;
- inform the Mayor (or Deputy Mayor if the complaint is against the Mayor);
- inform the respondent that a complaint has been made against them.

Step 2: Initial assessment

On receipt of a complaint the Chief Executive, in conjunction with the Mayor (or Deputy Mayor if the complaint is against the Mayor¹), will undertake a preliminary assessment to assess whether:

1. the complaint is frivolous or without substance;
2. the complaint is outside the scope of the Code and should be redirected to another agency or process;
3. the complaint is non-material

¹ In circumstances where a complaint directly involves the Mayor, the Deputy Mayor will work in conjunction with the Chief Executive in steps outlined in Schedule B (where CE and Mayor are referenced).

The Chief Executive and Mayor can also request from the complainant further information/evidence in support of the complaint and, and if considered appropriate, may also request a preliminary statement in response from the elected member against whom the complaint is lodged. They may also obtain and independent expert advice to assist them with this initial assessment.

The complaint may be dismissed if the Chief Executive in conjunction with the Mayor (or Deputy Mayor if the complaint is against the Mayor) finds the complaint to be trivial, vexatious, frivolous, or politically motivated.

If a complaint is not dismissed, the Chief Executive may take one of the following steps:

Chief Executive and/or Mayor to address directly

Where it is determined the matter to be a non-material (low level) breach, frivolous or without substance the Chief Executive and Mayor will inform the complainant and respondent directly; neither of which persons are open to challenge the decision. The Chief Executive and Mayor may inform other elected members (if there are no grounds for confidentiality) of the decision.

The Chief Executive and/or Mayor may meet with the member(s), and such a meeting may be regarded as sufficient to resolve the complaint. The Chief Executive and/or Mayor may recommend:

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

Refer to Mediation/Facilitation

If the complaint concerns a dispute between two members, or between a member and another party, the Chief Executive and Mayor may recommend mediation or a facilitation. If mediation or facilitation is agreed by both parties, then its completion will represent the end of the complaints process. The outcomes of any mediation or facilitation 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 or facilitation.

Step 3: Investigation

Where the Chief Executive and Mayor finds through an initial assessment that the complaint is serious or no resolution can be reached and/or mediation or facilitation is refused, the Chief Executive will refer the complaint to the Code of Conduct Committee (Committee). The Committee, established at the start of each triennium, is responsible for overseeing alleged complaints that require independent investigation.

The Committee will determine the scope and terms of reference of any further enquiry or investigation required. The Committee may appoint an independent investigator (the Investigator) to inquire and report on the matter. The Chief Executive will provide guidance to the Committee as to suitably qualified independent investigators for consideration.

The Investigator will:

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

The Investigator will undertake an investigation appropriate to the scale of the allegations and prepare a report (the Report) which sets out the rationale for their findings.

In preparing the Report the Investigator may:

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

On completing an investigation of the allegation/complaint, the Investigator will furnish the Report to the Chief Executive, who in turn will report to the Code of Conduct Committee.

Step 4: Process for considering the Investigator's Report

On receiving the Report the Committee will meet to consider the findings (alongside any legal advisor that may be engaged by the Council to assist with the process) and take the following steps:

- Ensure that elected members with a direct interest in the proceedings, including the complainant and the respondent, do not take part in deliberation or discussion on the Report.
- Ensure that before making any decision in respect of the Report the Committee, and as necessary, the Council will give the member against whom the complaint has been made an opportunity to appear and speak in their own defence.
- Where an Investigator determines that an allegation/complaint is frivolous or without substance, inform the Chief Executive and Mayor, who will in turn inform the complainant and respondent directly and inform other elected members (if there are no grounds for confidentiality) of the Investigator's decision.
- Where the Investigator finds that the allegation/complaint involves a potential legislative breach and outside the scope of the Code, forward the complaint to the relevant agency and inform the Chief Executive, the Mayor and both the complainant and respondent of the action.
- Where the Investigator finds a breach of the Code occurred, the Committee can accept the Investigator's recommendations or, if they believe it is justified, amend the Investigator's recommendations. As part of these considerations the complainant may be asked to appear before the Committee and answer questions from members.

- Consider and determine what action should be taken and make a recommendation in a report to the Chief Executive. The penalty or sanction that might be applied will depend on the seriousness of the breach and may include actions set out in Step 5. This Committee Report will form the basis of a consequent report to the governing body (the Council) to inform them of the decision and the actions they may be required to take.
- The Council will consider the Report in open meeting, except where the alleged breach concerns matters that justify the exclusion of the public, such as the misuse of confidential information or a matter that would otherwise be exempt from public disclosure under s.48 of the LGOIMA, in which case it will be a closed meeting.

Step 5: Actions applied where a breach has been determined

Where a complaint that the Code was breached has been upheld, any actions decided to be taken by the Council 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 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, one or more of the following could be selected (but are not limited to):

1. That no action is required.
2. That the member meets with the Chief Executive or Mayor (or Deputy Mayor if the complaint is against the Mayor) 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 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.

The Council notes the membership of the Code of Conduct Committee was determined at the 3 October 2023 Council meeting and remains in place until the end of the Triennium in October 2025.