

Auckland Council Elected Members Code of Conduct

Adopted 27 May 2021



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Introduction

Every local authority must adopt a code of conduct¹:

“(2) The code of conduct must set out—

(a) understandings and expectations adopted by the local authority about the manner in which members may conduct themselves while acting in their capacity as members, including—

(i) behaviour toward one another, staff, and the public; and

(ii) disclosure of information, including (but not limited to) the provision of any document, to elected members that—

(A) is received by, or is in the possession of, an elected member in his or her capacity as an elected member; and

(B) relates to the ability of the local authority to give effect to any provision of this Act; and

(b) a general explanation of—

(i) the [Local Government Official Information and Meetings Act 1987](#); and

(ii) any other enactment or rule of law applicable to members.”

(3) A local authority may amend or replace its code of conduct but may not revoke it without replacement.

(4) A member of a local authority must comply with the code of conduct of that local authority.

(5) 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.

(6) 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.

(7) To avoid doubt, a breach of the code of conduct does not constitute an offence under this Act.”

The Auckland Council Code of Conduct (Code) has two key principles:

(a) The principle of “trust” refers to the high ethical standards the community expects of its elected representatives.

¹ Local Government Act 2002, schedule 7, clause 15

- (b) The principle of “respect” refers to the positive relationships members are expected to have with each other, the public and staff.

The policies and protocols attached to the Code are relevant to the expected conduct of members.

The provisions for complaints provide for independent external assessments and judgements where appropriate. Political involvement is minimised.

Application

The Code applies to elected members² of the governing body and local boards while acting in their capacity as elected members.

Although the Code does not apply to non-elected persons appointed to committees by the governing body or local boards the council expects their conduct to demonstrate the ethical standards described in the trust principle and the positive relationships described in the respect principle.³

² The Act applies to ‘members’, a term which is defined in section 5, Local Government Act 2002. The code of conduct that is adopted by the governing body also applies to local board members, clause 36B, schedule 7, Local Government Act 2002.

³ The Independent Māori Statutory Board also makes appointments to governing body committees. These appointments are not made by the governing body.

1 Principles

1.1 Trust

I can be trusted to act in the community's interest

I will:

- make decisions on their merits, in the interests of the public⁴ and unaffected by illegitimate considerations such as personal interest or other duties or relationships
- disclose personal and outside interests, relationships and duties⁵
- declare a conflict of interest and step aside from a decision where I am unable to approach a decision on its merits or it might appear that I will not approach a decision on its merits, in the interests of the public and unaffected by a personal or outside interest, relationship or duty
- when making decisions, have an open mind to the views of others and to alternatives, and be prepared, despite any predisposition I may have, to change my mind
- ensure that I am not under an obligation to those who might inappropriately try to influence me in the performance of my duties
- be accountable for the decisions I make and enable appropriate public scrutiny⁶
- make an equitable contribution, including attending meetings and workshops, preparing for meetings, attending civic events, and participating in relevant training seminars
- act and make decisions openly and transparently
- be truthful and demonstrate honesty and integrity
- use council resources prudently and lawfully and not for my own purposes
- uphold the law, and promote and support high standards of conduct by leadership and example
- comply with the policies and protocols adopted with the Code (2.2)

⁴ Each member, after being elected, makes the following declaration: "I, [name], declare that I will faithfully and impartially, and according to the best of my skill and judgment, execute and perform, in the best interests of the [Auckland Council / local board] area, the powers, authorities, and duties vested in, or imposed upon, me as [mayor or member] of the [Auckland Council governing body / local board] by virtue of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987, or any other Act"

⁵ As set out in the Conflict of Interest Policy

⁶ This supports the requirements for transparency in the Local Government Act 2002 section 14.

1.2 Respect

I will respect the people I work with

I will interact with other elected members, staff and the public in a way that:

- encourages mutual respect and maintains the dignity of each individual
- recognises others' roles and responsibilities
- is inclusive
- enables the co-existence of individual and collective responsibility
- allows for robust discussion and debate focusing on issues rather than personalities
- is not derogatory
- encourages thoughtful analysis
- maintains public confidence in the office to which I have been elected
- is open and honest
- maintains the confidentiality of confidential information provided to me
- complies with the policies and protocols adopted with the Code (2.2)

2 Attachments

2.1 Definitions

Policy

A policy sets out the principles, priorities and rules on which future actions and decisions will be based.

Protocol

A protocol is similar to a policy but is more focussed on processes.

Guideline

A guideline is a statement of best practice which may be adapted to suit specific circumstances.

2.2 Complying with attachments

All the attachments are relevant to members' expectations and understandings about conduct.

Some attachments contain provisions which, if breached, constitute a breach of the Code.

A Conflict of interest policy

Relevant to the ethical principle of "trust". This provides for a breach of the Code.

B Confidential information – policy and protocol

Relevant to the relationship principle of "respect" such as maintaining the confidentiality of information (members are responsible to each other and to the council organisation to not disclose confidential information). This provides for a breach of the Code.

C Working with staff

Relevant to the relationship principle of "respect" such as encouraging mutual respect, maintaining the dignity of each individual and recognising others roles and responsibilities. This provides for a breach of the Code.

D Election year policy

Relevant to the ethical principle of “trust” such as using council resources prudently and lawfully and not for personal purposes (for example as a candidate for election).

E Communications policy

Relevant to the ethical principle of “trust” (such as not using council communications for personal benefit).

F Media protocols

Relevant to the relationship principle of “respect” such as recognising others’ roles and responsibilities (for example media spokespersons).

G Social media guidelines

Relevant to the relationship principle of “respect”.

H Governance roles and responsibilities

Relevant to the relationship principle of “respect”.

I Expenses policy

Relevant to the ethical principle of “trust” such as “use council resources prudently”. This policy is adopted separately to the Code and is approved by the Remuneration Authority.

J Legislation relevant to the conduct of members

Provides a general explanation of the Local Government Official Information and Meetings Act 1987 and other laws applicable to elected members. The LGA 2002 requires that this explanation is included in the adopted Code.

3 Material breaches

A material breach relates to specific types of conduct which are in breach of the code, and which meet a materiality threshold. Material breaches of the code are referred to a Conduct Commissioner for mediation and/or full investigation.

Types of conduct

The following are types of conduct that may be referred to a Conduct Commissioner if assessed in the process for dealing with complaints to be material:

- participating in a decision where the member has been formally advised through the 'complaints' provisions of this code that a conflict of interest exists
- breaching cl 2.22 and cl 3.7 of the Conflict of Interest policy
- bullying, aggressive or offensive behaviour
- discrimination
- undermining the role of other elected members
- misrepresentation of the statements or actions of others
- disclosure of confidential information
- misuse of council resources
- harassment, including:
 - violent threats or language directed against another person
 - discriminatory jokes and language
 - posting sexually explicit or violent material
 - posting (or threatening to post) other people's personally identifying information
 - personal insults
 - unwelcome sexual attention
 - advocating for, or encouraging, any of the above behaviour
- publicly criticising staff or calling into question their professionalism or integrity.

Materiality

The following may be taken into account when assessing materiality:

- the conduct was not stopped on request

- the conduct appeared to be intentional, malicious, motivated by ill-will
- the conduct caused serious harm, for example reputational harm, or brought the council into disrepute
- there is an ongoing pattern of breaches
- even though the conduct occurred on only one or two occasions, it represents a major departure from expected standards

Definitions⁷

Bullying

Bullying is usually repeated and unreasonable behaviour directed towards a person, or a group of people, that poses a risk to their wellbeing. A single episode of demanding and unreasonable behaviour may be so significant it constitutes bullying. Bullying is sometimes associated with a power imbalance.

Harassment

Harassment is any unreasonable, unwelcome or unsolicited comment, conduct, gesture or behaviour that can be characterised as:

- insulting
- intimidating
- malicious
- degrading
- offensive.

This could be repeated behaviour or an isolated incident so significant that it poses a risk to a person's well-being.

⁷ References: "Our Charter – Respect at Work",
Employment New Zealand: (<https://www.employment.govt.nz/resolving-problems/types-of-problems/bullying-harassment-and-discrimination/bullying/>)
Ministry of Education: (<https://www.bullyingfree.nz/about-bullying/what-is-bullying/>)

4 Complaints

4.1 Breach of the Code

All elected members must comply with this Code. A breach of the Code occurs if:

- one or both of the principles of trust and respect are breached; and / or
- a breach arises from a provision in an attachment which is adopted as part of the Code (2.2)

This part of the Code provides for making a formal complaint about a breach. Less formal methods for addressing breaches are preferred, if they are available, with a formal complaint being a last resort.

4.2 Complaints

Where an elected member, the chief executive (including on behalf of a member of staff from the council family) or a member of the public believes that an elected member has breached the Code, a complaint may be made. The complaint must be made in writing and lodged with the chief executive, reference the part of the Code which is alleged to be breached (as defined in 4.1), provide evidence of the alleged breach and evidence of any attempts to resolve the complaint.

The complaint must relate to conduct of the member when acting in their capacity as a member.

Conduct matters that arise in meetings should be dealt with under the meeting's standing orders. Where a conduct matter arises at a meeting but is not addressed at the meeting it may be raised under the Code.

4.3 Principles

All complaints will be considered in a manner consistent with the principles that:

- the approach for investigating and assessing a complaint will be proportionate to the apparent seriousness, nature and complexity of the alleged breach
- the concepts of natural justice, fairness and reasonableness will apply in the determination of any complaints made under this code.

4.4 Investigator, Conduct Commissioner, mediators

General

The Investigator, Conduct Commissioner and mediator will be separate persons in the case of any specific complaint.

Investigator

The chief executive will be responsible for the appointment of a suitable Investigator. This may be a staff member or external person. The Investigator will be external for any complaint lodged by the chief executive on behalf of staff.

Conduct Commissioner

The chief executive will recommend to the Governing Body, for approval, a list of persons who may be called on to fulfil the role of Conduct Commissioner. There will be consultation with local boards through the local board chairs forum prior to approval by the Governing Body.

Mediators

Mediators will be external and have established skills as mediators.

4.5 Receipt of complaint

On receipt of a complaint, the chief executive will follow the process set out in cl 4.11 if the complaint relates to a breach of the conflict of interest provision in the Code.

All other complaints will be referred to an Investigator.

The chief executive will inform:

- the complainant that the complaint has been referred to the Investigator
- the respondent that a complaint has been made against them, the process for dealing with complaints as set out in the Code, and the name of the Investigator.

4.6 Preliminary assessment

On receipt of a complaint, the Investigator will determine if the complaint:

- is trivial, frivolous, vexatious, or not made in good faith and should be dismissed

- is without substance, or does not appear to be a breach of the code and should be dismissed
- is relatively minor and no further action is necessary
- relates to conduct that occurred so long ago that it is unrealistic to investigate and/or resolve the matter, and should be dismissed
- is outside the scope of the code and should be redirected or dismissed
- relates to a non-material breach of the Code
- relates to a material breach of the Code and an investigation is required.

Factors that can be considered when determining if a complaint is trivial, frivolous, vexatious, not made in good faith, or without substance include whether complaints are intended to:

- intimidate or harass another member or employee
- damage another member's reputation
- obtain a political advantage
- influence the council in the exercise of its functions or to prevent or disrupt the exercise of those functions
- avoid disciplinary action under this Code
- prevent or disrupt the effective administration of this Code.

The Investigator can make any initial inquiry that is necessary to determine the appropriate course of action, including consultation with a Conduct Commissioner

Unless the Investigator determines otherwise, a full copy of the complaint will be provided to the respondent which will include the name of the complainant, where appropriate and having considered relevant matters such as natural justice obligations, legal issues⁸, privacy issues and potential prejudice to the future supply of complaint information.

4.7 Dismissal of complaint

Where the Investigator decides that the complaint should be dismissed, the Investigator will inform the chief executive.

The chief executive will inform the complainant and the respondent of the Investigator's decision.

⁸ Such as the Protected Disclosures Act 2000

The Investigator has full discretion to dismiss any complaint. There is no right of appeal of any decision made by the Investigator⁹.

4.8 Non-material breach

A non-material breach is a breach of the Code which is not material¹⁰.

Where the Investigator finds that the complaint relates to a non-material breach of the code, but has not decided that the complaint should be dismissed, the Investigator will inform the chief executive and may recommend an appropriate non-binding course of action for the respondent, which may include:

- seeking guidance from the chairperson or mayor, or other suitable mentor
- attending appropriate courses or programmes to increase their knowledge and understanding of the matters leading to the complaint
- apologising to the complainant
- participating in voluntary mediation
- resolving the complaint in any other manner that is appropriate.

The chief executive will inform the complainant and respondent of the Investigator's decision and any recommendations. The Investigator may also choose to recommend that the chief executive inform the mayor or relevant local board chair, for information purposes only.

An Investigator may refer a non-material complaint to a Conduct Commissioner if the Investigator considers this is necessary to resolve the complaint.

There is no right of appeal of any decision made by the Investigator¹¹.

4.9 Material breach

Where the Investigator considers the complaint relates to a material breach of the code and that an investigation is required, the Investigator will inform the chief executive and refer the complaint to a Conduct Commissioner. The chief executive will inform the complainant and respondent.

⁹ A dissatisfied complainant may seek review of an Investigator's decision by complaint to the Ombudsman or judicial review proceedings in the High Court. A review will usually be confined to procedural issues rather than a substantive review of the decision.

¹⁰ "Material" is defined in section 3 "Materiality"

¹¹ .See footnote 9.

The Conduct Commissioner may, in his or her complete discretion, direct that the complaint should be mediated if the Conduct Commissioner considers there is a reasonable prospect that mediation will resolve the complaint. Alternatively, the Conduct Commissioner may decide to investigate the complaint to determine whether a breach is made out and the seriousness of it.

If mediation is directed, the mediator will be independent from the Investigator and the Conduct Commissioner. If the mediation is successful, the outcome of the mediation will be reported to the chief executive. If the mediation is unsuccessful, the Conduct Commissioner will undertake an investigation.

If the Conduct Commissioner investigates the complaint, the Conduct Commissioner may:

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

Sanctions

Following an investigation, the Conduct Commissioner will also determine whether to impose any of the following sanctions on the elected member:

- a requirement to apologise and, if applicable, withdraw remarks¹²
- a requirement to make a public statement correcting or clarifying previous remarks
- a requirement to undertake specified training or personal development
- suspending¹³ the elected member from committees or other representative bodies
- seeking guidance from the chairperson or mayor, or other mentor
- for a nominated period, restrict the member's access to council staff (other than the chief executive or his/her specific nominees) and/or to council offices or parts of council offices.

Report

Following the investigation, the Conduct Commissioner will provide the chief executive with a report on the findings of the investigation and any sanctions that are imposed on the

¹² Remarks may be oral or written.

¹³ A member cannot be suspended from a body to which they have been elected. The ability to suspend applies only to appointments. The mechanism for suspending a is by a recommendation from the Conduct Commissioner to a body which has the power, or delegated power, to suspend a member from a committee or representative function.

respondent. The chief executive will provide the report to the complainant, respondent, and the relevant local board or governing body for information purposes only.¹⁴

There is no right of appeal of any decision made by the Conduct Commissioner¹⁵.

4.10 Public disclosure of complaints and outcomes

The public interest in the accountability of elected members needs to be balanced against the requirements of natural justice and privacy. The outcomes of complaints relating to non-material breaches will not normally¹⁶ be publicly reported by the council.

Where the complaint relates to a material breach of the code, the Conduct Commissioner will determine whether the outcome of the investigation, or the report, should be publicly reported (having regard to the Local Government Official Information and Meetings Act 1987). If such information is publicly reported, compliance with any sanctions imposed by the Conduct Commissioner will also be publicly reported.

4.11 Alleged breach relates to a conflict of interest:

Where the alleged breach of the code relates to a conflict of interest, the chief executive will inform the respondent of the complaint and arrange for the member to receive advice from legal services or internal audit on conflicts of interest.

The chief executive will inform the complainant that advice on the matter has been sought. The complainant will not have any further involvement in the complaint following this.¹⁷

The advice is provided to the member and to the governing body (in relation to a complaint against a governing body member), or the local board (in relation to a complaint against a member of a local board).¹⁸

If the advice is that it would be reasonable to conclude that the elected member has a conflict of interest, they are required to declare the conflict and recuse themselves from any future decision on that matter. If the elected member does not take that action, the

¹⁴ The decision on whether the report will be included on a public meeting agenda, will be made in light of the requirements of the Local Government Official Information and Meetings Act 1987.

¹⁵ A dissatisfied party may seek review of a Conduct Commissioner's decision by complaint to the Ombudsman or judicial review proceedings in the High Court. A review will usually be confined to procedural issues rather than a substantive review of the decision.

¹⁶ For example, the lodging of a complaint is public knowledge and reporting the outcome is in the interests of fairness. Information may need to be released to media consequent to a request under LGOIMA with the result that it is published.

¹⁷ Involvement by the complainant is not required as a question whether a conflict of interest exists is essentially a legal question. This does not prevent the investigation, and involvement of the complainant, of any parts of the complaints that do not relate to a conflict of interest.

¹⁸ Or to just the mayor / chair possibly – on the basis that the chair has this information should similar decision-making come up again.

matter will be referred to an Investigator under cl 4.6 to determine whether the complaint should be referred to the Conduct Commissioner for investigation as a material breach of the code.

If the complaint is that an elected member has breached cl 2.22 of the Conflict of Interest policy, that complaint will be referred to an Investigator under cl 4.6 to determine whether the complaint should be referred to the Conduct Commissioner for investigation as a material breach of the code.

