

Waipā District Council Policy for Investigating and Ruling on alleged breaches of the Code of Conduct

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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 resolution.

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.

The term 'Member(s)' in this policy shall have the same meaning as in the adopted Waipā District Council Code of Conduct.

Role of the initial assessor¹

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.

¹ See Attachment 1.2 for advice on the appointment of an Initial Assessor.

If a complaint is not dismissed, the initial assessor may initiate one of the following:

1 Refer to the Mayor

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 Mayor for their advice and guidance. These will not be reported to Council. A meeting or meetings with the Mayor will be regarded as sufficient to resolve the complaint. Where a Member is referred to the Mayor, the initial assessor may also recommend, for the Mayor'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 advising that a complaint has been resolved through mediation, there will be no additional reporting 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 Council's independent investigators' panel assembled by the Chief Executive, or an independent investigator service that is contracted to the Council. Complaints that involve the Mayor or Chief Executive will be referred directly to the independent investigator.

Complaints that are dismissed, referred to the Mayor, or resolved by mediation, will not be reported to a Council meeting.

Role of the independent investigator²

The independent investigator will:

- determine whether a breach has occurred,
- if so, determine the seriousness of the breach, and
- determine recommended actions for Council to consider in response to the breach.

Any recommended actions made in response to a complaint that has been upheld will be presented to a Council meeting for consideration.

² See Attachment 1.2 for advice on the appointment of an Independent Investigator.

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 Council staff and on the community in general?

Independent investigator recommendations

On completing their investigation, an independent investigator may dismiss a complaint or make a recommendation to Council on the actions they suggest be taken. The independent investigator's ruling will be contained in a report to the Chief Executive which will form the basis of a consequent report to a Council meeting to inform them of the recommendation and the actions to consider.

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.

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 Council.

Part 1: Attachments - Processes

1.1: Process for determining and investigating complaints

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 to refer the matter to the Mayor or 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. 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 Mayor for their advice and guidance.
3. 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.
4. 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 Council. 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 a Council meeting 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 is as follows:

- 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 section 1.3.

1.2: Selecting the initial assessor and independent investigator

Selecting an initial assessor

The Chief Executive is responsible for this. In selecting the initial assessor, the Chief Executive will consult with the Council.

The initial assessor should be a person, or a position, that is independent of the Council'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 investigator

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, provided on their own behalf or by the Council. The Chief Executive also needs to ensure that investigations are undertaken within budgetary limits negotiated in advance.

1.3: Actions that may be applied when a breach has been confirmed

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 Council 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 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, 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(s).
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 1-7 will typically not be reported to a Council meeting. Actions 8-15, 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).