Environment Southland

Code of Conduct

Adopted on 30 April 2025

Southland Regional Council trading as
Environment Southland

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1. Introduction

Environment Southland ("Council") elected members have an important and privileged role of representing the people of the Southland region. This Code of Conduct ("the Code") represents a commitment from all elected members to maintain high standards of behavior, which is important for their credibility as regional leaders and for the reputation of Southland. The Code sets out standards of behavior expected from elected members in the exercise of their duties.

The Purpose of this Code is to:

- enhance the effectiveness of the local authority and the provision of good local government of the community, city, district or region;
- 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 members of the local authority and between the members and management.

This purpose is given effect through the values, roles, responsibilities and specific behaviours agreed in the code.

2. Scope

The Code has been adopted in accordance with clause 15(1) of Schedule 7 of the Local Government Act 2002 (LGA 2002) and applies to all members, including appointed members. The Code is designed to deal with the behaviour of members towards:

- each other;
- the Chief Executive and staff;
- the media; and
- the general public.

It is also concerned with the disclosure of information that members receive in their capacity as elected members and information which impacts on the ability of the local authority to give effect to its statutory responsibilities.

The Code can only be amended (or substituted by a replacement Code) by a vote of at least 75 per cent of 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.

3. Values

The Code is designed to give effect to the following values:

1. **public interest**: members will serve the best interests of the people within their community, district or region and discharge their duties conscientiously, to the best of their ability.

2. **public trust:** members, in order to foster community confidence and trust in their Council, will work together constructively in an accountable and transparent manner.

3. **ethical behaviour**: members will act with honesty and integrity at all times and respect the impartiality and integrity of officials.

4. **objectivity:** members will make decisions on merit; including appointments, awarding contracts, and recommending individuals for rewards or benefits.

5. **respect for others**: will treat people, including other members, with respect and courtesy, regardless of their race, age, religion, gender, sexual orientation, or disability.

6. **duty to uphold the law:** members will comply with all legislative requirements applying to their role, abide by the Code of Conduct and act in accordance with the trust placed in them by the public.

7. **equitable contribution:** members will take all reasonable steps to fulfil the duties and responsibilities of office, including attending meetings and workshops, preparing for meetings, attending civic or other Council initiated events, and participating in relevant training seminars.

8. **leadership:** members will actively promote and support these principles and ensure they are reflected in the way in which the Council operates, including a regular review and assessment of the Council's collective performance.

These values complement, and work in conjunction with, the principles of s14 of the Local Government Act 2002 and the governance principles of s39 of the Local Government Act 2002.

4. Role and responsibilities

The Code of Conduct is designed to strengthen the good governance of the region. Good governance requires that the complementary roles of the governing body and the administration are understood and respected. These roles involve:

4.1 Members

The role of the governing body includes:

- representing the interests of the people of the region;
- developing and adopting plans, policies and budgets;
- monitoring the performance of the Council against stated goals and objectives set out in its Long-term plan;
- providing prudent stewardship of the Council's resources;
- employing and monitoring the performance of the Chief Executive; and
- ensuring the Council fulfils its responsibilities to be a 'good employer' and meets the requirements of the Health and Safety at Work Act 2015.

4.2 Chief Executive

The role of the Chief Executive includes:

- implementing the decisions of the Council;
- ensuring that all responsibilities delegated to the Chief Executive are properly performed or exercised;
- ensuring the effective and efficient management of the activities of the local authority;
- maintaining systems to enable effective planning and accurate reporting of the financial and service performance of the local authority;
- providing leadership for the staff of the Council; and
- employing, on behalf of the Council, the staff of the local authority, (including negotiation of the terms of employment for those staff).

The Chief Executive is the only person *directly* employed by the Council itself (s.42 Local Government Act 2002). All concerns about the performance of an individual member of staff must, in the first instance, be referred to the Chief Executive.

5. Relationships

This section of the Code sets out agreed standards of behaviour between members; members and staff; and members and the public. Any failure by a member to comply with the provisions of this section can represent a breach of the Code.

5.1 Relationships between members

Given the importance of relationships to the effective performance of the Council, members will conduct their dealings with each other in a manner that:

- maintains public confidence;
- is open, honest and courteous;
- is focused on issues rather than personalities;
- avoids abuse of meeting procedures, such as a pattern of unnecessary notices of motion and/or repetitious points of order;
- complies with any Councillor communication protocols developed and agreed between Councillors; and
- avoids conduct which is aggressive, bullying or offensive conduct, including the use of disrespectful or malicious language.

Please note, nothing in this section of the Code is intended to limit robust debate.

5.2 Relationships with staff

An important element of good governance involves the relationship between a Council, its Chief Executive and its staff. Members will respect arrangements put in place to facilitate this relationship, and:

- raise any concerns about employees, officers or contracted officials with the Chief Executive;
- raise any concerns about the performance or behaviour of the Chief Executive with the Chair or the chairperson of the Chief Executive's Review Subcommittee;
- make themselves aware of the obligations that the Council and the Chief Executive have as employers and observe these requirements at all times, such as the duty to be a good employer;
- treat all employees with courtesy and respect and not publicly criticise any employee; and
- observe any protocols put in place by the Chief Executive concerning contact between members and employees.
- members will interact with staff through the Chief Executive or General Managers.

Please note, elected members should be aware that failure to observe this portion of the Code may compromise the Council's obligations to be a good employer and consequently expose the Council to civil litigation or affect the risk assessment of Council's management and governance control processes undertaken as part of the Council's annual audit.

5.3 Relationship with the public

Given the vital role that democratic local government plays in our communities it is important that councils have the respect and trust of their citizens. To facilitate trust and respect in their Council members will:

- ensure their interactions with the public are fair, honest and respectful;
- be available to listen and respond openly and honestly to community concerns;
- represent the views of the public and organisations accurately, regardless of the member's own opinions of the matters raised;
- treat members of the public in a courteous manner; and
- ensure their interactions with the public and communities uphold the reputation of the local authority.

6. Media and social media

The media play an important role in the operation and efficacy of our local democracy. In order to fulfil this role the media needs access to accurate and timely information about the affairs of Council. Any failure by member to comply with the provisions of this section can represent a breach of the Code.

1. In dealing with the media elected members must clarify whether they are communicating a view endorsed by their Council, committee or community board, or are expressing a personal view.

2. Members are free to express a personal view to the media or social media at any time, provided the following rules are observed:
   - comments shall be consistent with the Code;
   - comments must not purposefully misrepresent the views of the Council or the views of other members;
   - social media pages controlled by members and used for making observations relevant to their role as an elected members should be open and transparent, except where abusive or inflammatory content is being posted; and
   - social media posts about other members, council staff or the public must be consistent with section five of this Code. (See **Appendix A** for guidelines on the personal use of social media).

3. Council also has in place the ES Elected member Councillor Media Protocol, which Elected members are expected to adhere to.

7. Information

Access to information is critical to the trust in which a local authority is held and its overall performance. Any failure to comply with the provisions below can represent a breach of the Code.

7.1 Confidential information

Access to information is important for Elected Members to effectively and properly discharge their duties. Therefore, elected members are entitled to receive a broad range of publicly accessible information as well as information that is classified as confidential. This includes information received at public excluded meetings and workshops as well as information that is identified as confidential.

Elected Members must not use or disclose confidential information for any purpose other than the purpose for which the information was supplied to them.

Elected Members must be aware that failure to observe these provisions relating to confidential information will impede the performance of Council by inhibiting information flows and undermining public confidence in Council.

It may also expose Council to prosecution under the Privacy Act 2020 and/or civil litigation.

7.2 Information received in capacity as an elected member

Elected Members will disclose to other Elected Members and, where appropriate the Chief Executive, any information received in their capacity as an Elected member that concerns the Councils ability to give effect to its responsibilities.

Members who are offered information on the condition that it remains confidential will inform the provider of the information that it is their duty to disclose the information and will decline the offer if that duty is likely to be compromised.

7.3 Official Information held by elected members personally

Elected Members are accountable to the public. All official information held by them personally, whether on equipment provided by Council or their own personal equipment, is subject to LGOIMA (Local Government Official Information and Meetings Act).

Official information, if sought as part of a request, must be made available immediately to the Chief Executive or nominee of the Chief Executive. Therefore, it can be assessed in terms of the requirements of the LGOIMA.

8. 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). Ultimately,

it is up to each Elected member's own judgement as to whether they have an interest that needs to be disclosed or declared, and what action they take (if any) as a consequence. Members therefore must familiarise themselves with the provisions of the Local Authorities (Members' Interests) Act 1968 (LAMIA).

8.1 Pecuniary Interest (financial interest)

Pecuniary interest is one where a decision or act of the governing body could reasonably give rise to an expectation of financial gain or loss to an Elected member. Therefore, Elected Members should not participate in any Council decision or vote on any matter in which they have a pecuniary interest other than an interest in common with the public. This also applies where an Elected member, spouse/partner contracted with Council or has a pecuniary interest. Members should 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*. 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.

8.2 Non-pecuniary interest (non-financial interest)

Non-pecuniary interest does not have a personal financial component. It may arise, for example, from a personal relationship, involvement, role, or duty with an individual or an organisation or from conduct that indicates prejudice or predetermination**.**

8.3 Test for conflict of interest

If an Elected Member has a pecuniary or non-pecuniary interest in a decision before Council, the Elected Member must apply the test for a conflict of interest at clause 8.3.1 of the Code to determine whether they may participate in decision-making on the matter.

8.3.1 Once a pecuniary or non-pecuniary interest is defined, the test for whether that interest may constitute a conflict of interest is:

Would a fair-minded observer reasonably think that a member of the decision-making body might not bring an impartial mind to the decision, in the sense that they might unfairly regard with favour (or disfavour) a particular position due to their financial or non-financial interest?

8.3.2 This test is not just limited to actual bias, but also the appearance or possibility of bias. This is because even the appearance of bias may undermine public trust and confidence in council decision-making.

8.3.3 Where an Elected Member has a direct financial interest, a fair-minded observer will be quick to assume that they might not bring an impartial mind to the decision.

8.3.4 An Elected Member has a conflict and cannot take part on decision making where they submit on a matter.

Please note: Failure to observe the requirements of LAMIA could potentially invalidate a decision made, or the action taken, by the Council. Failure to observe these requirements could also leave the elected member open to prosecution (see **Appendix B**). In the event of a conviction elected members can be ousted from office.

9. Register of Interests

Members shall, at least annually, make a declaration of interest. These declarations are recorded in a public Register of Interests maintained by the Council. The declaration must include information on the nature and extent of any interest, including:

a) any employment, trade or profession carried on by the member or the members' spouse/partner for profit or gain;

b) any company, trust, partnership etc for which the member or their spouse/partner is a director, business partner or trustee;

c) a description of any land in which the member has a beneficial interest within the jurisdiction of the local authority; and

d) a description of any land owned by the local authority in which the member or their spouse/partner is:

- a tenant; or
- the land is tenanted by a firm in which the member or spouse/partner is a business partner; a company of which the member or spouse/partner is a director; or a trust of which the member or spouse/partner is a trustee;

e) any other matters which the public might reasonably regard as likely to influence the member's actions during the course of their duties as a member (if the member is in any doubt on this, the member should seek guidance from the Chief Executive).

Please note, where a member's circumstances change they must ensure that the Register of Interests is updated as soon as practicable.

10. Ethical behaviour

Members will seek to promote the highest standards of ethical conduct. Accordingly, 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's 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 $50 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 members to comply with the provisions set out in this section represents a breach of the code.

10.1 Undischarged Bankruptcy

In accordance with clause 15(5) of Schedule 7 of the LGA (Local Government Act), any Elected Member who is an "undischarged bankrupt" will notify the Chief Executive prior to the inaugural meeting or as soon as practicable after being declared bankrupt. The Elected member will also provide the Chief Executive with a brief explanatory statement of the circumstances surrounding the Elected Member's adjudication and the likely outcome of bankruptcy. This must be recorded in the Register of Interests.

11. Creating a supportive and inclusive environment

In accordance with the purpose of the Code, 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 members will work.
- taking part in any assessment or evaluation of the Council's performance and operating style during the triennium.
- taking all reasonable steps to acquire the required skills and knowledge to effectively fulfill their Declaration of Office (the Oath) and contribute to the good governance of the city, district or region.

12. Breaches of the Code

Members must comply with the provisions of the code (LGA 2002, schedule 7, clause 15(4)). Any member, or the Chief Executive, who believes that the Code has been breached by the behaviour of a member may make a complaint to that effect. All complaints made under the Code must be made in writing and forwarded to the Chair in the first instance, who will then pass them on to the Chief Executive. (If the complaint is about the Chair, Elected Members may forward their written complaint directly to the Chief Executive). All complaints will be considered in a manner that is consistent with the following principles.

12.1 Objectives

When there is an alleged breach of the code, the objective of Council will be that the:

- complaint process will be dealt with independently, including being politically independent;
- process should be designed to provide a least cost approach;
- process should place a preference on early intervention to resolve a complaint;
- importance of fairness to all parties – administratively, procedurally and including in costs imposed on the subject of a complaint (defending a complaint);
- approach adopted should disincentivise the Code being "weaponised".

12.1 Principles

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

- that the approach for investigating and assessing a complaint will be proportionate to the apparent seriousness of the alleged breach;
- that the processes 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 the Code. This includes, conditional on the nature of an alleged breach, directly 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 confidence that any hearing will be impartial;
    - have a right to seek appropriate advice and be represented; and
    - have their privacy respected.

12.2 Appointment of an Independent Person to oversee complaint and a panel of Independent Investigators

At the commencement of the triennium, Council[1] will appoint an Independent Person (or a panel if it wishes to have more than one) to oversee any complaint. A panel of Independent Investigators will also be appointed, should such an investigation be required under this Code.

The Independent Person cannot be an Independent Investigator. They will be a person Council assesses has relevant knowledge and experience of the public sector local bodies and governance.

The Independent Person can be an independent member of Council's Risk and Assurance Committee.

12.3 The Independent Person is to oversee the complaint process

Any complaint will be overseen by the Independent Person.

12.4 Who may make a complaint under the code?

Please note, only members (elected and appointed) and the Chief Executive may make a complaint under this code.

12.5 Investigation, advice and decision

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

[1] On behalf of the council the Chief Executive will, shortly after the start of a triennium, prepare, in consultation with the Chair, a list of investigators for this purpose of undertaking a preliminary assessment. The Chief Executive may prepare a list specifically for his or her council or prepare a list jointly with neighbouring councils. Similarly, the Chief Executive will consult the Chair on appointment of an Independent Person. A Panel is not required unless it is considered good to establish a list of such people.

12.3 Materiality

An alleged breach under the Code is material if, in the opinion of the Chair, Independent Person or Independent Investigator, it would bring the Council into disrepute or, if not addressed, adversely affect the reputation of a member.

An alleged breach under this Code is non-material if, in the opinion of the Chair, or Independent Person, any adverse effects are minor and no investigation or referral is warranted.

13. Penalties and actions

Where a complaint is determined to be material and referred to the Council, or any adjudicative body established by Council to consider complaints, the nature of any penalty or action will depend on the seriousness of the breach.

13.1 Material breaches

In the case of material breaches of the Code, the Council, or the adjudicative body with delegated authority, may require one of the following:

1. a letter of censure to the member;
2. a request (made either privately or publicly) for an apology;
3. removal of certain Council-funded privileges (such as attendance at conferences);
4. removal of responsibilities, such as committee chair, deputy committee chair or portfolio holder;
5. restricted entry to Council offices, such as no access to staff areas (where restrictions may not previously have existed);
6. limitation on any dealings with Council staff other than the Chief Executive or identified senior manager;
7. a vote of no confidence in the member;
8. suspension from committees or other bodies to which the member has been appointed; or
9. invitation to the member to consider resigning from the Council.

The Council or adjudicative body with delegated authority may decide that instead of a penalty, one or more of the following may be required:

- attend a relevant training course; and/or
- work with a mentor for a period of time; and/or
- participate in voluntary mediation (if the complaint involves a conflict between two members); and/or
- tender an apology.

The process is based on the presumption 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.

13.2 Statutory breaches

In cases where a breach of the Code is found to involve regulatory or legislative requirements, the complaint will be referred 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 s.44 LGA 2002 which may result in the member having to make good the loss or damage); or
- 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).

14. Review

Once adopted, the Code 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. Amendments to the Code require a resolution supported by 75 per cent of the members of the Council present at the Council meeting at which the amendment is considered.

Council will formally review this Code and either amend or re-adopt it as soon as practicable after the beginning of each triennium in order to ensure that all members have the opportunity to provide their views on the Code's provisions.

Appendix A: Guidelines on the personal use of social media

There's a big difference in speaking "on behalf of Council" and speaking "about" the Council. While your rights to free speech are respected, please remember that citizens and colleagues have access to what you post. The following principles are designed to help you when engaging in **personal or unofficial online** communications that may also refer to your Council.

1. **Adhere to the Code of Conduct and other applicable policies.** Council policies and legislation, such as LGOIMA and the Privacy Act 1993, apply in any public setting where you may be making reference to the Council or its activities, including the disclosure of any information online.

2. **You are responsible for your actions.** Anything you post that can potentially damage the Council's image will ultimately be your responsibility. You are encouraged to participate in the social media but in so doing you must exercise sound judgment and common sense.

3. **Be an "advocate" for compliments and criticism.** Even if you are not an official online spokesperson for the Council, you are one of its most important advocates for monitoring the social media landscape. If you come across positive or negative remarks about the Council or its activities online that you believe are important you are encouraged to share them with the governing body.

4. **Let the subject matter experts respond to negative posts.** Should you come across negative or critical posts about the Council or its activities you should consider referring the posts to the Council's authorised spokesperson, unless that is a role you hold, in which case consider liaising with your communications staff before responding.

5. **Take care mixing your political (Council) and personal lives.** Elected members need to take extra care when participating in social media. The public may find it difficult to separate personal and Council personas. Commenting online in any forum, particularly if your opinion is at odds with what Council is doing, can bring you into conflict with the Code should it not be clear that they are your personal views.

6. **Never post sensitive and confidential information** provided by the Council, such as confidential items, public excluded reports and/or commercially sensitive information. Such disclosure will contravene the requirements of the Code.

7. **Elected Members' social media pages should be open and transparent.** When commenting on matters related to the local authority no members should represent themselves falsely via aliases or differing account names or block. Neither should they block any post on any form of social media that they have control over unless there is clear evidence that the posts are actively abusive. Blocking constructive debate or feedback can be seen as bringing the whole Council into disrepute.

[2] Based on the Ruapehu District Council Code of Conduct.

Appendix B: Legislation bearing on the role and conduct of elected members

This is a summary of the legislative requirements that have some bearing on the duties and conduct of elected members. The full statutes can be found at www.legislation.govt.nz.

The Local Authorities (Members' Interests) Act 1968

The Local Authorities (Members' Interests) Act 1968 (LAMIA) provides rules about members discussing and voting on matters in which they have a pecuniary interest and about contracts between members and the Council.

A pecuniary interest is likely to exist if a matter under consideration could reasonably give rise to an expectation of a gain or loss of money for a member personally (or for their spouse/partner or a company in which they have an interest). In relation to pecuniary interests the LAMIA applies to both contracting and participating in decision-making processes.
With regard to pecuniary or financial interests, a person is deemed to be "concerned or interested" in a contract or interested "directly or indirectly" in a decision when:

- a person, or spouse/partner, is "concerned or interested" in the contract or where they have a pecuniary interest in the decision; or
- a person, or their spouse/partner, is involved in a company that is "concerned or interested" in the contract or where the company has a pecuniary interest in the decision.

There can also be additional situations where a person is potentially "concerned or interested" in a contract or have a pecuniary interest in a decision, such as where a contract is between an elected members' family trust and the Council.

Determining whether a pecuniary interest exists

Elected members are often faced with the question of whether or not they have a pecuniary interest in a decision and if so whether they should participate in discussion on that decision and vote. When determining if this is the case or not the following test is applied:

> *"…whether, if the matter were dealt with in a particular way, discussing or voting on that matter could reasonably give rise to an expectation of a gain or loss of money for the member concerned."* (OAG, 2001)

In deciding whether you have a pecuniary interest, members should consider the following factors:

- What is the nature of the decision being made?
- Do I have a financial interest in that decision - do I have a reasonable expectation of gain or loss of money by making that decision?
- Is my financial interest one that is in common with the public?
- Do any of the exceptions in the LAMIA apply to me?
- Could I apply to the Auditor-General for approval to participate?

Members may seek assistance from the Chair or other person, to determine if they should discuss or vote on an issue, but ultimately it is their own judgment as to whether or not they have pecuniary interest in the decision. Any member who is uncertain as to whether they have a pecuniary interest is advised to

seek legal advice. Where uncertainty exists members may adopt a least-risk approach which is to not participate in discussions or vote on any decisions.

Members who do have a pecuniary interest will declare the pecuniary interest to the meeting and not participate in the discussion or voting. The declaration and abstention needs to be recorded in the meeting minutes. (Further requirements are set out in the Council's Standing Orders.)

The contracting rule

A member is disqualified from office if he or she is "concerned or interested" in contracts with their Council if the total payments made, or to be made, by or on behalf of the Council exceed $25,000 in any financial year. The $25,000 limit includes GST. The limit relates to the value of all payments made for all contracts in which you are interested during the financial year. It does not apply separately to each contract, nor is it just the amount of the profit the contractor expects to make or the portion of the payments to be personally received by you.

The Auditor-General can give prior approval, and in limited cases, retrospective approval for contracts that would otherwise disqualify you under the Act. It is an offence under the Act for a person to act as a member of the Council (or committee of the Council) while disqualified.

Non-pecuniary conflicts of interest

In addition to the issue of pecuniary interests, rules and common law govern conflicts of interest more generally. These rules apply to non-pecuniary conflicts of interest, including common law rules about bias. In order to determine if bias exists or not members need to ask:

> *"Is there a real danger of bias on the part of the 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 reflecting the principle that justice should not only be done, but should be seen to be done. Whether or not members believe they are not biased is irrelevant.

Members focus should be on the nature of the conflicting interest or relationship and the risk it could pose for the decision-making process. The most common risks of non-pecuniary bias are where:

- Members' statements or conduct indicate that they have predetermined the decision before hearing all relevant information (that is, members have a "closed mind"); and
- Members have a close relationship or involvement with an individual or organisation affected by the decision.

In determining whether or not they might be perceived as biased, members must also take into account the context and circumstance of the issue or question under consideration. For example, if a member has stood on a platform and been voted into office on the promise of implementing that platform, then voters would have every expectation that the member would give effect to that promise, however he/she must still be seen to be open to considering new information (this may not apply to decisions made in quasi-judicial settings, such as an RMA hearing).

The Local Government (Pecuniary Interests Register) Amendment Act 2002

This new legislation, which passed on 20 May 2022 and came into force on 20 November 2022, inserted a new set of requirements and obligations into the Local Government Act 2002, all of which relate to members' pecuniary interests.

It is noted, however, that this new regime applies only to elected members, and not to appointed members. The key obligations for members are to:

(a) make annual returns that contain information on certain pecuniary interests to the Registrar, within the statutory timeframe;
(b) ensure that the information contained in their returns is accurate; and
(c) in the event of becoming aware of an error or omission in their returns, advise the Registrar of that as soon as practicable.

If a member does not comply with these obligations, they will commit an offence, which is punishable by a fine of up to $5,000.

Staff will provide information around the due dates for returns (which are specified in the legislation), but it is noted that the obligation is explicitly on each member to ensure that they fulfil their obligations, and the Registrar is not required to obtain returns from members, or to notify members about any failure to make a return by the due date, or of any error or omission in a return.

Local Government Official Information and Meetings Act 1987

The Local Government Official Information and Meetings Act 1987 sets out a list of meetings procedures and requirements that apply to local authorities and local/community boards. Of particular importance for the roles and conduct of elected members is the fact that the chairperson has the responsibility to maintain order at meetings, but all elected members should accept a personal responsibility to maintain acceptable standards of address and debate. No elected member should:

- create a disturbance or a distraction while another Councillor is speaking;
- be disrespectful when they refer to each other or other people; or
- use offensive language about the Council, other members, any employee of the Council or any member of the public.

See Standing Orders for more detail.

Secret Commissions Act 1910

Under this Act it is unlawful for an elected member (or officer) to advise anyone to enter into a contract with a third person and receive a gift or reward from that third person as a result, or to present false receipts to Council.

If convicted of any offence under this Act a person can be imprisoned for up to two years, and/or fines up to $1000. A conviction would therefore trigger the ouster provisions of the LGA 2002 and result in the removal of the member from office.

Crimes Act 1961

Under this Act it is unlawful for an elected member (or officer) to:

- accept or solicit for themselves (or anyone else) any gift or reward for acting or not acting in relation to the business of Council; and
- use information gained in the course of their duties for their, or another person's, monetary gain or advantage.

Elected members convicted of these offences will automatically cease to be members.

Financial Markets Conduct Act 2013

Financial Markets Conduct Act 2013 (previously the Securities Act 1978) essentially places elected members in the same position as company directors whenever Council offers stock to the public. Elected members may be personally liable if investment documents such as a prospectus contain untrue statements and may be liable for criminal prosecution if the requirements of the Act are not met.

The Local Government Act 2002

The Local Government Act 2002 (LGA 2002) sets out the general powers of local government, its purpose and operating principles, and details the personal liability of members.

Although having qualified privilege, elected members can be held personally accountable for losses incurred by a local authority where, following a report from the Auditor General under s44 LGA 2002, it is found that one of the following applies:

a) money belonging to, or administered by, a local authority has been unlawfully expended; or
b) an asset has been unlawfully sold or otherwise disposed of by the local authority; or
c) a liability has been unlawfully incurred by the local authority; or
d) a local authority has intentionally or negligently failed to enforce the collection of money it is lawfully entitled to receive.

Members will not be personally liable where they can prove that the act or failure to act resulting in the loss occurred as a result of one of the following:

a) without the member's knowledge;
b) with the member's knowledge but against the member's protest made at or before the time when the loss occurred;
c) contrary to the manner in which the member voted on the issue; and
d) in circumstances where, although being a party to the act or failure to act, the member acted in good faith and relied on reports, statements, financial data, or other information from professional or expert advisers, namely staff or external experts on the matters.

In certain situation members will also be responsible for paying the costs of proceedings (s47 LGA 2002).

Appendix C: Process where a complaint is referred to an independent investigator

Step 1: Chief Executive receives complaint

On receipt of a complaint under the Code, whether from a member (because the complaint involves the Chair) or from the Chair, the Chief Executive will refer the complaint to the Independent Person appointed under section 12.3. The Chief Executive will also:

- inform the complainant that the complaint has been referred to an Independent Person and the name of the Independent Person, and refer them to the process for dealing with complaints as set out in the Code; and
- inform the respondent that a complaint has been made against them, the name of the Independent Person and remind them of the process for dealing with complaints as set out in the Code.

After the initial assessment by the Independent Person, if directed, the Chief Executive will refer the complaint to an Independent Investigator selected from a list agreed at the start of the triennium (section 12.3).

Step 2: Independent Person makes preliminary assessment

On receipt of a complaint the Independent Person will assess whether:

1. the complaint is trivial or frivolous and should be dismissed;
2. the complaint is outside the scope of the Code and should be re-directed to another agency or institutional process;
3. the complaint is minor or non-material; or
4. the complaint is material and a full assessment is required.

In making the assessment the Independent Person may make whatever initial inquiry is necessary to determine their recommendations, including interviewing relevant parties, which are then forwarded to the Council's Chief Executive. On receiving the independent person's preliminary assessment the Chief Executive will:

1. where the Independent Person determines that a complaint is trivial or frivolous, inform the complainant, respondent and other members (if there are no grounds for confidentiality) of the Independent Person's decision.

2. in cases where the Independent Person finds that the complaint involves a potential legislative breach and outside the scope of the Code, forward the complaint to the relevant agency and inform the Chief Executive who will then inform the complainant, the respondent and members.

Step 3: Actions where a breach is found to be non-material

If the subject of a complaint is found to be non-material, but more than trivial or frivolous, the Independent Person will inform the Chief Executive and, if they choose, recommend a course of action appropriate to the breach, such as:

- that the respondent is referred to the Chair for guidance; and/or
- that the respondent attend appropriate courses or programmes to increase their knowledge and

understanding of the matters resulting in the complaint.

The Chief Executive will advise both the complainant and the respondent of the Independent Person's decision and any recommendations, neither of which are open to challenge. Any recommendations made in response to a non-material breach are binding on the respondent and the Council.

Step 4: Actions where a breach is found to be material

If the subject of a complaint is found to be material, the Independent Person will inform the Chief Executive, who will inform the complainant and respondent. The Independent Person will then prepare a report for the Council on the seriousness of the breach. In preparing that report, the Independent Person may:

- consult with the complainant, respondent and any directly affected parties; and/or
- undertake a hearing with relevant parties; and/or
- require the Chief Executive to appoint an Independent Investigator (section 12.3 of this Code) to investigate further;
- refer to any relevant documents or information.

Note: Any independent investigations conducted by an Independent Investigator will be reported to the Independent Person for them to prepare their report and recommendations.

On receipt of the Independent Person's report, the Chief Executive will prepare a report for the Council, which will meet to consider the findings and determine whether or not a penalty, or some other form of action, will be imposed. The Chief Executive's report will include the Independent Person's full report.

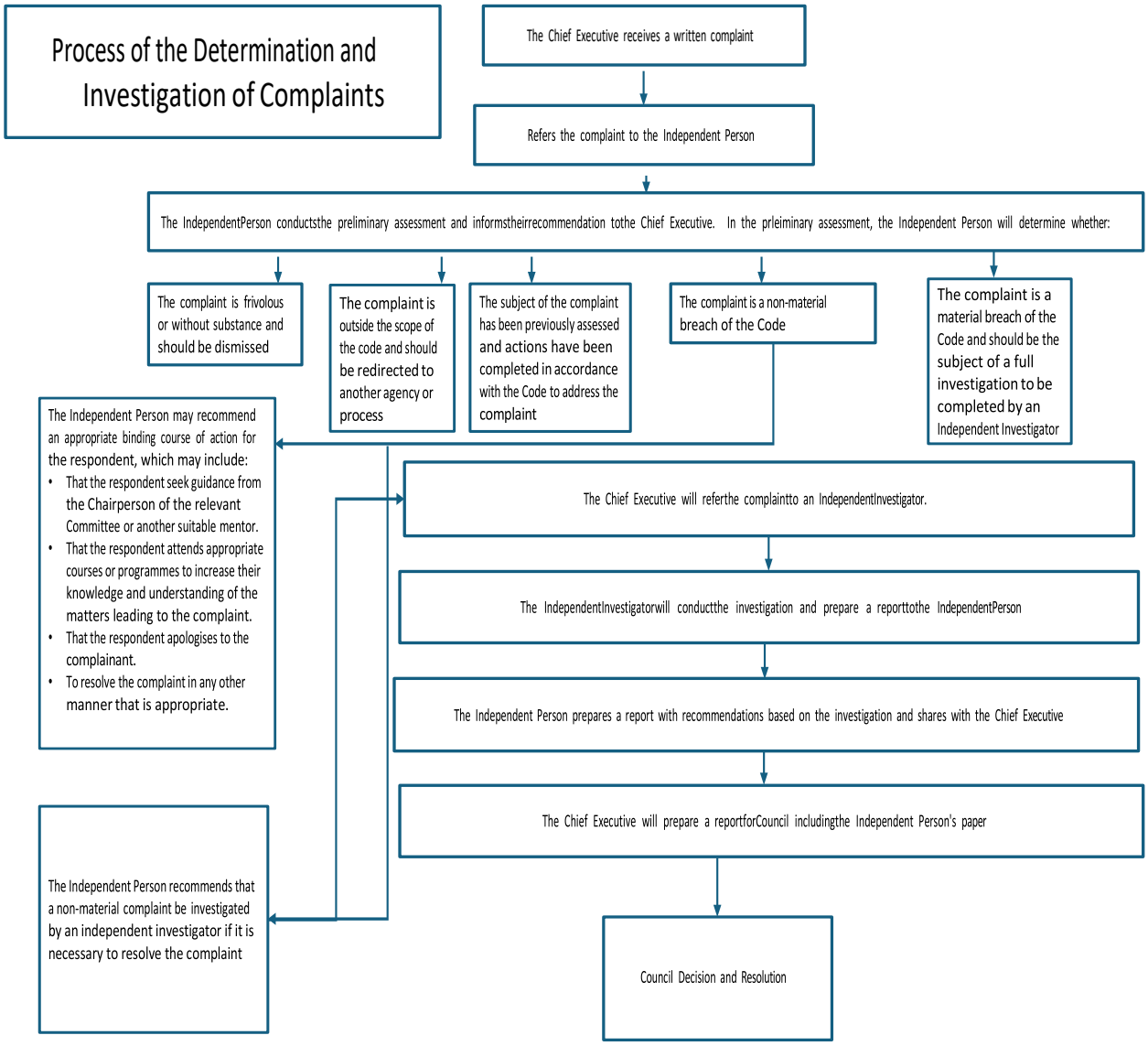
Step 5: Process for considering the Independent Person's report

The Independent Person's report will be considered by the Council, or any other body that the Council may resolve, noting that the process will meet the principles set out in section 12.1 of the Code.

The Council, or adjudicative body, will consider the Chief Executive's report in open meeting, except where the alleged breach concerns matters that justify, in accordance with LGOIMA, the exclusion of the public. Before making any decision on a specific complaint, the relevant body will give the respondent an opportunity to appear and speak in their own defense. Members with an interest in the proceedings, including the complainant and the respondent, should not take part in these proceedings in a decision-making capacity.

The form of penalty that might be applied will depend on the nature of the breach and may include actions set out in clause 13.1 of the Code.

The report, including recommendations from the adjudicative body, should that body have no formal delegations, will be heard and accepted by the Council in open session, unless grounds for excluding the public exist, without debate.


Process of the Determination and Investigation of Complaints
The Chief Executive receives a written complaint
Refers the complaint to the Independent Person
The IndependentPerson conductsthe preliminary assessment and informstheirrecommendation tothe Chief Executive. In the prleiminary assessment, the Independent Person will determine whether:
The complaint is frivolous or without substance and should be dismissed
The complaint is outside the scope of the code and should be redirected to another agency or process
The subject of the complaint has been previously assessed and actions have been completed in accordance with the Code to address the complaint
The complaint is a non-material breach of the Code
The complaint is a material breach of the Code and should be the subject of a full investigation to be completed by an Independent Investigator
The Independent Person may recommend an appropriate binding course of action for the respondent, which may include:
• That the respondent seek guidance from the Chairperson of the relevant Committee or another suitable mentor.
• That the respondent attends appropriate courses or programmes to increase their knowledge and understanding of the matters leading to the complaint.
• That the respondent apologises to the complainant.
• To resolve the complaint in any other manner that is appropriate.
The Chief Executive will referthe complaintto an IndependentInvestigator.
The IndependentInvestigatorwill conductthe investigation and prepare a reporttothe IndependentPerson
The Independent Person prepares a report with recommendations based on the investigation and shares with the Chief Executive
The Chief Executive will prepare a reportforCouncil includingthe Independent Person's paper
The Independent Person recommends that a non-material complaint be investigated by an independent investigator if it is necessary to resolve the complaint
Council Decision and Resolution