



# CODE OF CONDUCT



Responsibility: Strategy and Risk

**Adopted: August 2018**

DocsetID: 404391

## Contents

1. Introduction .....	4
2. Scope.....	4
3. Vision Statement.....	4
4. Values.....	4
5. Role and responsibilities.....	5
5.1 Members.....	5
5.2 Mayor.....	6
5.3 Chief Executive.....	6
6. Relationships .....	6
6.1 Relationships between Members.....	6
6.2 Relationships with staff.....	7
6.3 Relationship with the public .....	7
7. Contact with the media .....	7
7.1 Media contact on behalf of the Council.....	8
7.2 Media comment on a Member's own behalf.....	8
8. Information.....	8
8.1 Confidential information .....	8
8.2 Information received in capacity as an Elected Member .....	8
9. Conflicts of Interest.....	9
10. Register of Interests.....	9
11. Ethical behaviour .....	10
11.1 Undischarged bankrupt.....	10
12. Creating a supportive and inclusive environment.....	10
13. Breaches of the Code .....	11
13.1 Principles: .....	11
13.2 Complaints.....	11
13.3 Investigation, advice and decision .....	11
13.4 List of Investigators.....	12
13.5 Materiality.....	12
14. Penalties and actions.....	12
14.1 Material breaches .....	12
14.2 Statutory breaches.....	12
15. Review .....	13

Appendix A: Legislation bearing on the role and conduct of Elected Members ..... 14

The Local Authorities (Members' Interests) Act 1968 ..... 14

Local Government Official Information and Meetings Act 1987 ..... 15

Secret Commissions Act 1910 ..... 16

Crimes Act 1961 ..... 16

Financial Markets Conduct Act 2013 ..... 16

The Local Government Act 2002 ..... 16

Appendix B: Process for the determination and investigation of complaints ..... 18

## Code of Conduct (for Elected members)



Record number:	DocSet ID number - 404391	
Version:	v11	
Approval/Resolution Date/Number:	23/08/18	RES 18/256
Responsibility:	Community and Corporate Group	
Next review date:	As soon as practicable after the beginning of each triennium	

### 1. Introduction

This Code of Conduct (the Code) sets out the standards of behaviour expected from Elected Members in the exercise of their duties. Its purpose is to:

- enhance the effectiveness of the South Waikato District Council and the provision of good local government of the community and district;
- promote effective decision-making and community engagement;
- enhance the credibility and accountability of the South Waikato District Council to its communities; and
- develop a culture of mutual trust, respect and tolerance between the Members of the South Waikato District Council and between the Members and management.

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

### 2. Scope

The Code has been adopted in accordance with clause 16 of Schedule 7 of the Local Government Act 2002 (LGA 2002) and applies to all Members, including the Members of any local boards as well as the Members of any community boards that have agreed to adopt it. 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 South Waikato District Council to give effect to its statutory responsibilities.

This 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. Vision Statement

Healthy people thriving in a safe and sustainable community.

### 4. 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 and uphold the values of honesty, integrity, accountability and transparency.
3. **Ethical behaviour:** Members will not place themselves in situations where their honesty and integrity may be questioned, will not behave improperly and will avoid the appearance of any such behaviour.
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. Members will respect the impartiality and integrity of officials.
6. **Duty to uphold the law:** Members will comply with all legislative requirements applying to their role, abide by this 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 ensure they fulfil the duties and responsibilities of office, including attending meetings and workshops, preparing for meetings, attending civic 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.
9. **Council's Corporate Values:** Members will comply with Council's Corporate Values including:
  - We will accept responsibility for our actions.
  - We will be fair and equitable, being sensitive to the needs of all.
  - We will encourage and enable people to be involved in decision-making that affects them.
  - We will work together to achieve our common goals.
  - We will consistently act with integrity and honesty.
  - We will encourage innovation and creativity.

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.

## 5. Role and responsibilities

Good governance requires clarity of roles and respect between those charged with responsibility for the leadership of the Council and those responsible for advice and the implementation of Council decisions. The key roles are:

### 5.1 Members

The role of the governing body includes:

- representing the interests of the people of the South Waikato District 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 South Waikato District Council fulfils its responsibilities to be a 'good employer' and meets the requirements of the Health and Safety at Work Act 2015.

### 5.2 Mayor

The role of the Mayor includes:

- responsibility for ensuring the orderly conduct of business during meetings;
- advocating on behalf of the community;
- performing duties as Ceremonial head of the South Waikato District Council;
- providing leadership and feedback to Members;
- performing duties as a Justice of the Peace (while in office).

### 5.3 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 South Waikato District Council;
- maintaining systems to enable effective planning and accurate reporting of the financial and service performance of the South Waikato District Council;
- providing leadership for the staff of the South Waikato District Council; and
- employing staff on behalf of the South Waikato District Council (including negotiation of the terms of employment for those staff).

Under s.42 of the LGA 2002 the Chief Executive is the only person *directly* employed by the Council itself. All concerns about the performance of an individual Member of staff must, in the first instance, be referred to the Chief Executive.

## 6. Relationships

This section of the Code sets out agreed standards of behaviour between Members; Members and staff; and Members and the public.

### 6.1 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 and honest;
- is 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; and
- avoids aggressive, offensive or abusive conduct, including the use of disrespectful or malicious language.

Any failure by Members to act in the manner described in s.6.1 represents a breach of this Code.

Please note that nothing in this section of the Code is intended to limit robust debate within the Council as long as it is conducted in a respectful and insightful manner.

### 6.2 Relationships with staff

An important element of good governance involves the relationship between the Council and its Chief Executive. 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 Mayor or the Chairperson of the Chief Executive performance review committee;
- make themselves aware of the obligations that the Council and the Chief Executive have as employers and observe those requirements at all times, such as the duty to be a good employer;
- treat all employees with courtesy and respect and avoid publicly criticising any employee;
- observe any protocols put in place by the Chief Executive concerning contact between Members and employees;
- avoid doing anything which might compromise, or could be seen as compromising, the impartiality of an employee.

Any failure by Members to act in the manner described above represents a breach of this Code.

**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 audit.

### 6.3 Relationship with the public

Given that the performance of the Council requires the trust and respect of individual citizens, Members will:



- interact with Members of the public in a fair, respectful, equitable and honest manner;
- be available to listen and respond openly and honestly to community concerns;
- consider all points of view or interests when participating in debate and making decisions;
- treat Members of the public in a courteous manner; and
- act in a way that upholds the reputation of the local authority.

Any failure by Members to act in the manner described above represents a breach of this Code.

## **7. Contact with the media**

The media play an important part in the operation and efficacy of local democracy. In order to fulfil this role the media needs access to accurate and timely information about the affairs of Council.

From time to time individual Members will be approached to comment on a particular issue either on behalf of the Council, or as an Elected Member in their own right. When responding to the media Members must be mindful that 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.

When speaking to the media more generally Members will abide by the following provisions:

### **7.1 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 committee chairperson;
- the Mayor may refer any matter to the relevant committee chairperson or to the Chief Executive for their comment; and
- no other Member may comment *on behalf of the Council* without having first obtained the approval of the Mayor.

### **7.2 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:

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

Any failure by Members to meet the standards set out above represents a breach of this Code.

## **8. Information**

Access to information is critical to the effective performance of the South Waikato District Council and the level of public trust felt by the public.

## 8.1 Confidential information

In the course of their duties Members will occasionally receive information that is confidential. This will generally be information that is either commercially sensitive or is personal to a particular individual or organisation. Accordingly, Members agree not to use or disclose confidential information for any purpose other than the purpose for which the information was supplied to the Member.

## 8.2 Information received in capacity as an Elected Member

Members will disclose to other Members and, where appropriate the Chief Executive, any information received in their capacity as an Elected Member that concerns the Council's 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.

Members will accept that they have collective responsibility for all decisions made.

Members will accept that they will not disclose the nature of confidential discussions and decisions.

Any failure by Members to act in the manner described above represents a breach of this Code.

**Please note:** failure to observe these provisions may impede the performance of the Council by inhibiting information flows and undermining public confidence. It may also expose the Council to prosecution under the Privacy Act and/or civil litigation.

## 9. Conflicts of Interest

A conflict of interest arises where a Member has a specific and material business or personal interest which; conflicts with or might conflict with or might be perceived to conflict with the interests of Council itself.

### 9.1 Conflicts of Interest context

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). Members therefore must familiarise themselves with the provisions of the Local Authorities (Members' Interests) Act 1968 (LAMIA).

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 contracts with the South Waikato District Council or has a pecuniary interest. 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*. 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.

**Please note:** Failure to observe the requirements of the LAMIA could potentially invalidate the 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 A). In the event of a conviction, Elected Members can be ousted from office.

## 10. Register of Interests

Members shall bi-annually make a declaration of interest. These declarations are recorded in a 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 for profit or gain;
- b) any company, trust, partnership etc for which the Member or their spouse is a director, partner or trustee;
- c) the address of any land in which the Member has a beneficial interest within the jurisdiction of the South Waikato District Council; and
- d) the address of any land owned by the South Waikato District Council in which the Member or their spouse is:
  - a tenant; or
  - the land is tenanted by a firm in which the Member or spouse is a partner, a company of which the Member or spouse is a director, or a trust of which the Member or spouse 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.

## 11. 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 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 \$100 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 this Code.

### 11.1 Undischarged bankrupt

In accordance with clause 15(5) of Schedule 7 (LGA 2002) any 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 Member will also provide the Chief Executive with a brief explanatory statement of the circumstances surrounding the Member's adjudication and the likely outcome of the bankruptcy.

## **11.2 Disqualification of Member from office**

In accordance with clause 1(1a, 1b) of Schedule 7 (LGA 2002) any Member will be automatically disqualified from holding office on the South Waikato District Council

- if they are convicted of an offence punishable by a term of imprisonment of two years or more; and
- the Member ceases to be an elector of the South Waikato District Council.

## **12. 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 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 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 city, district or region.
- Restricting cell phone use during Council meetings by setting voicemail mode prior to meeting commencing. Responding to messages and texting to be undertaken during meeting breaks where possible and no cell phone use during community presentations.

## **13. Breaches of the Code**

Members must comply with the provisions of this Code (LGA 2002, schedule 5, s. 14(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 will be considered in a manner that is consistent with the following principles.

### **13.1 Principles:**

The following principles will guide any processes for investigating and determining whether or not a breach under this 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, a copy of the complaint and are provided with an opportunity to be heard;
  - have a right to seek appropriate advice and be represented; and
  - have their privacy respected.

- Prior to complaint being laid, Members are encouraged to resolve the matter with assistance from an independent third party. Members will have access to mediation if required.

### **13.2 Complaints**

All complaints made under this Code must be made in writing and forwarded to the Chief Executive. Only Members and the Chief Executive may make a complaint under this Code.

### **13.3 Investigation, advice and decision**

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

### **13.4 List of Investigators**

The Chief Executive will prepare a list of investigators to be ratified by Council for the purpose of undertaking an assessment of complaints (when required) and make recommendations to the Council.

### **13.5 Materiality**

An alleged breach under this Code is material if, in the opinion of the independent investigator, it would, if proven, bring a Member or the Council into disrepute or, if not addressed, reflect adversely on another Member of the Council.

## **14. Penalties and actions**

Where a complaint is determined to be material and referred to the Council the nature of any penalty or action will depend on the seriousness of the breach.

### **14.1 Material breaches**

In the case of material breaches of this Code the Council, will 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. a vote of no confidence in the Member;
4. removal of certain Council-funded privileges (such as attendance at conferences);
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 so that they are confined to the Chief Executive only;
7. suspension from committees or other bodies; or
8. an invitation for the Member to consider resigning from the Council.

The Council may decide that a penalty will not be imposed where a respondent agrees to one or more of the following:

- 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.

#### **14.2 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 the 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.30 of the 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).

#### **15. Review**

Once adopted, the Code of Conduct continues in force until amended by the South Waikato District Council. The Code can be amended at any time but cannot be revoked unless the Council replaces it with another Code. Once adopted, amendments to the Code require a resolution supported by 75 per cent of the Members of the Council present at a Council meeting where the amendment is considered.

Council will formally review the Code as soon as practicable after the beginning of each triennium.

**Note:** A breach of the code does not constitute a breach under the Local Government Act 2002.

## **Appendix A: 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](http://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 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 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.

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 Mayor 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 should focus 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).

### **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 Elected Member is speaking;
- be disrespectful when they refer to each other or other people; or



- use offensive language about the Council, other Members, and 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.

These offences are punishable by a term of imprisonment of seven years or more. 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) 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. Provisions directly relevant to this Code include:

#### **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 s.44 LGA 2002, it is found that one of the following applies:

- a) money belonging to, or administered by, South Waikato District Council has been unlawfully expended; or
- b) an asset has been unlawfully sold or otherwise disposed of by the South Waikato District Council; or
- c) a liability has been unlawfully incurred by the South Waikato District Council; or
- d) the South Waikato District Council 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 (s.47 LGA 2002).

## **Appendix B: Process for the determination and investigation of complaints**

### **Step 1: Chief Executive receives complaint**

On receipt of a complaint under this Code the chief executive will refer the complaint to an investigator selected from a panel selected by the chief executive. The chief executive will also:

- inform the complainant that the complaint has been referred to the independent investigator and the name of the investigator, and refer them to the process for dealing with complaints as set out in the Code; and
- forward a copy of the complaint to the respondent
- inform the respondent that a complaint has been made against them, the name of the investigator and refer them to the process for dealing with complaints as set out in the Code; and
- provide ongoing updates to Members on progress with the resolution of a complaint.

### **Step 2: Investigator makes preliminary assessment**

On receipt of a complaint the investigator will assess whether:

1. the complaint is frivolous or without substance and should be dismissed;
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; and
4. the complaint is material and a full investigation is required.

In making the assessment the investigator may make whatever initial inquiry is necessary to determine the appropriate course of action. The investigator has full discretion to dismiss any complaint which, in their view, fails to meet the test of materiality.

On receiving the investigator's preliminary assessment the Chief Executive will:

1. where an investigator determines that a complaint is frivolous or without substance, inform the complainant and respondent directly and inform other Members (if there are no grounds for confidentiality) of the investigator's decision;
2. in cases where the investigator 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 both the complainant and respondent of the action.

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

If the subject of a complaint is found to be non-material the investigator will inform the Chief Executive and, if they choose, recommend a course of action appropriate to the breach, such as;

- that the respondent seek guidance from the Chairperson or Mayor;
- that the respondent attend appropriate courses or programmes to increase their knowledge and understanding of the matters leading to the complaint.

The Chief Executive will advise both the complainant and the respondent of the investigator's decision and any recommendations, neither of which are open to challenge. Any recommendations made in response to a non-material breach are non-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 investigator will inform the Chief Executive, who will inform the complainant and respondent in writing. The investigator will then prepare a report for the Council on the seriousness of the breach.

In preparing that report the 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.

On receipt of the investigator's report the Chief Executive will forward a copy of the report to the complainant and respondent inviting them to reply in writing and whether they wish to make a written submission for consideration by the Council.

The Chief Executive will prepare a report for the first Council meeting scheduled at least ten working days from the date of receipt of the report. Council 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 full report prepared by the investigator.

#### **Step 5: Process for considering the investigator's report**

Depending upon the nature of the complaint and alleged breach the investigator's report will be considered by the full Council, excluding the complainant, respondent and any other 'interested' Members.

The Council will consider the Chief Executive's 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.

Before making any decision in respect of the investigator's report the Council will give the Member against whom the complaint has been made an opportunity to appear and speak in their own defence. Members with an interest in the proceedings, including the complainant and the respondent, may not take part in these proceedings.

The form of penalty that might be applied will depend on the nature of the breach and may include actions set out in section 14.1 of this Code.

The Council will inform the respondent and complainant of its decision in writing.

In accordance with the Code, Council will agree to implement the recommendation without debate.