

Code of Conduct for Elected Members - Managing Complaints (Procedure)

January, 2023



Mackenzie
DISTRICT COUNCIL

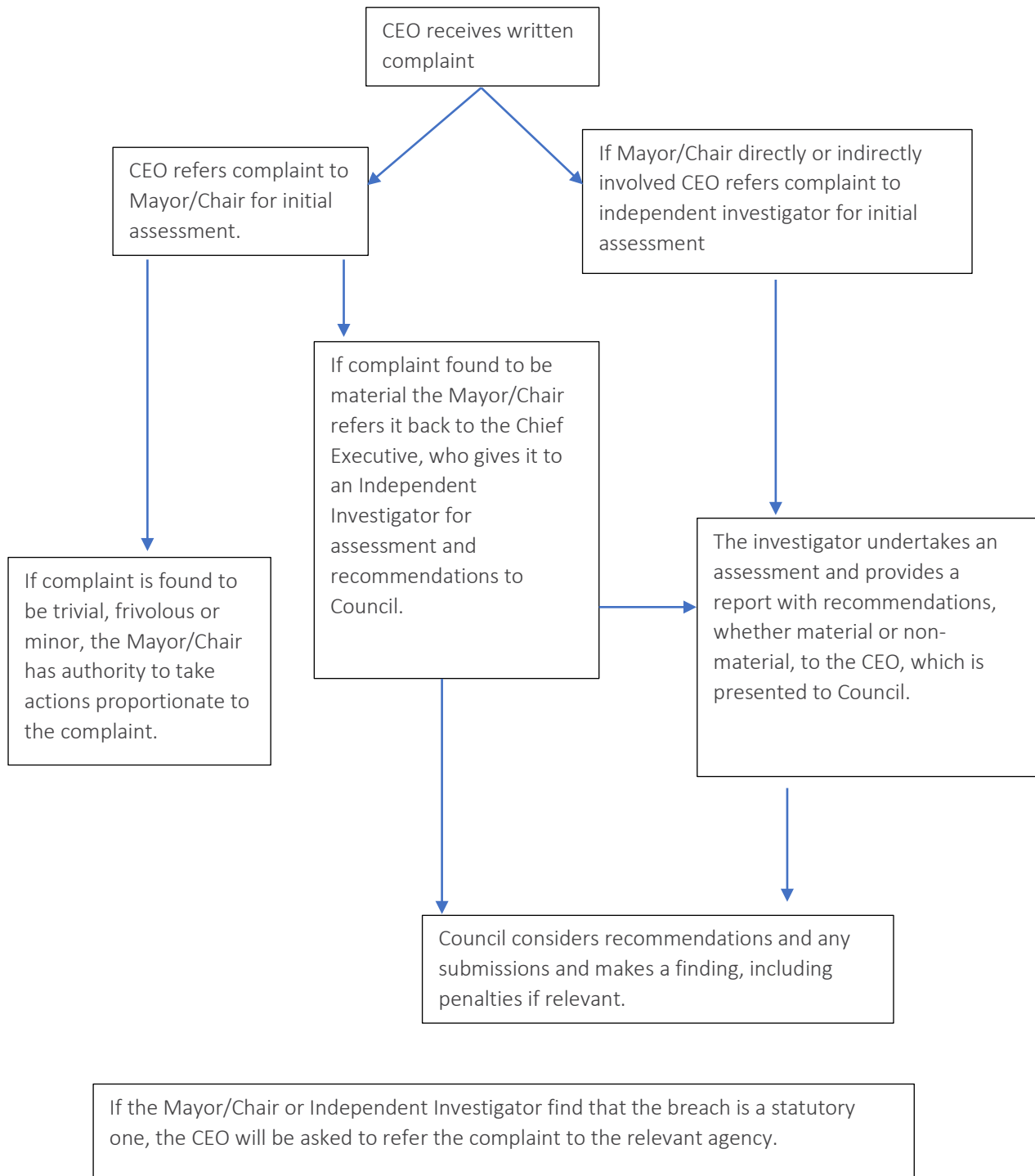
REVISION HISTORY

Date Created:	January, 2023
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Department:	Governance
Responsible Officer:	Governance Advisor
Sponsor:	GM, Information, Engagement and Community
Adopted by Council:	January 31, 2023
New Review Date:	At the start of each triennium, or as required

1. Introduction

This document outlines a procedure for investigating, assessing and making decisions about alleged breaches of the Elected Member Code of Conduct.

2. Flow Chart



3. Process

3.1 Who can make a Complaint?

The Code of Conduct is designed to be a self-regulatory instrument and as a result complaints can only be made by elected members themselves and the Chief Executive.

Members of the public and council staff cannot make complaints under the Code of Conduct; however the Chief Executive can make a complaint on behalf of a member of the public, or staff.

Complaints need to include which part of the Code of Conduct was allegedly breached by the elected member.

All complaints must be made in writing to the Chief Executive who is obliged to forward them to the Mayor/Chair or an independent investigator for a preliminary assessment.

Process on Receiving a Complaint

Having received a complaint in writing, the Chief Executive will:

- Notify the complainant and the respondent(s) that the complaint has been received and the name of any selected investigator (including information on the process that will be followed); and
- Provide ongoing updates to members on progress with the resolution of complaints received. (This could be through a Chief Executive's report).

3.2 Investigating Complaints

On receiving a complaint, the Chief Executive will either forward it to the Mayor/Chair for an initial assessment or, if the complaint involves the Mayor/Chair, forward it to an independent investigator.

a) Forwarding the complaint to the Mayor/Chair for an initial assessment.

On receipt of a complaint the Mayor/Chair will assess whether it is material or not. As the situation allows:

- Interview the complainant to assess the full extent of the complaint.
- Interview the member(s) subject to the complaint.

Where a complaint is assessed by the Mayor/Chair to be trivial, frivolous, or minor, they will either dismiss the complaint, require an apology or other course of action, or assist the relevant parties to find a mutually agreeable solution.

Where a complaint is found to be material, or no mutually agreed solution can be reached, the Mayor/Chair will refer the complaint back to the Chief Executive who will forward it, along with any recommendations made by the Mayor/Chair, to an independent investigator.

b) Forward the complaint to an Independent Investigator.

On receipt of a complaint that involves a Mayor/Chair, the Chief Executive will forward that complaint to an independent investigator for a preliminary assessment to determine whether the issue is sufficiently serious to be referred, with recommendations, if necessary, to Council for a ruling.

3.3 The role of Investigators

The investigator's role is to determine, without challenge, whether a complaint is material or not. The rationale for giving the investigator this degree of authority is to ensure the process is free of any suggestion of bias. It is also intended to reduce the cost of the complaints process, by reducing the time spent by members and officials. It also ensures that the Code process itself is less likely to be brought into disrepute.

In adopting the Code and this policy, members of the governing body agree to abide by an investigator's preliminary assessment. Members will be informed of the result of a preliminary assessment and, only if the finding is material, will members have any involvement (and then only if there is no conflict of interest).

In some cases, an investigator may choose to make non-binding recommendations, for example, where a pattern of non-material complaints has emerged that highlight a need for changes in council processes or an investment in capacity building.

3.4 Determining Materiality

The complaints procedure is underpinned by the principle that councils (or committees) should only be involved in ruling on possible breaches of the Code when they are material.

Consequently a level of clarity is required about how materiality should be determined. In the case of non-statutory breaches, a breach is material if:

*"...it would, if proven, bring the council into disrepute or reflect adversely on the local authority if not addressed."*¹

The notion of disrepute involves the local authority's reputation and the risk that specific behaviours will, in the mind of the public, undermine that reputation. Only if there is a real risk that reputation will be undermined should a breach be determined as material.

Other factors that might be considered when determining the level of materiality include whether complaints have resulted in:

1. Intimidating or harassing another member or employee;
2. Damage to another member's reputation;
3. Obtaining a political advantage;
4. Influencing the Council in the exercise of its functions or prevent or disrupt the exercise of those functions;
5. The avoidance of disciplinary action under this Code; or
6. Preventing or disrupting the effective administration of this code.

Other factors include whether complaints are vexatious and have not been made in good faith. The investigator may take whatever actions they need in order to determine the materiality of a complaint, although investigations will need to be within whatever budgetary constraints have been set in their contract for service or approved by the Chief Executive.

¹ LGNZ Guide to Codes of Conduct

4. When a Breach is Found

Process for Managing Non-Material Breaches

In the case of complaints that are non-material, an investigator can, if required, discuss the matter with the complainant and the respondent and may:

- Dismiss the complaint with no further action taken;
- Uphold the complaint but rule that, as it is minor and non-material, no action is required; or
- Uphold the complaint, noting its minor and non-material nature, and make a non-binding recommendation to the council, such as, that the respondent consider attending a relevant course or that a policy or practice is reviewed.

The investigator will present their findings to the Chief Executive, who will inform the complainant and the respondent at the earliest opportunity.

Process for Managing Material Breaches

Where an investigator finds that a breach is material, the following steps will apply:

- The investigator will inform the Chief Executive, who will in turn inform both the complainant and the respondent that the breach has been determined as material and outline the process to be followed.
- The 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/or appropriate penalties.
- On receipt of a report, the Chief Executive will send a copy of the investigator's findings to the complainant and the respondent(s) inviting them to reply in writing as to whether or not they agree to the findings and whether they wish to make a written submission for consideration by the Council or Committee.
- The Chief Executive will then prepare a paper, including the investigator's report and any submissions from affected parties, for a forthcoming meeting of the Council to consider complaints and determine penalties.

5. Hearing by Council

In situations where a breach of the code of conduct is considered by the investigator to be material, a decision on this, and any penalties, will be decided by full Council.

No member of the Council with an interest in the complaint may take part in the hearing or decision-making process, unless invited by the Council to speak to their submission.

Decisions to apply a non-statutory penalty for material breaches should be made in meetings that are open to the public, unless some aspect of the matter necessitates treating the matter in public excluded.

At the hearing/meeting, the Council will:

- If necessary, ask the investigator to provide a briefing on his or her findings and invite the complainant and/or respondent to speak to any submissions that might have been made.
- Decide whether a material breach of the Code has occurred and what, if any, penalty or action should occur in response to the breach.
- Inform the respondent and complainant of its decision in writing.

Note: No appeal right is included as all members are able to make use of the processes set out in Standing Orders for revoking council decisions. In addition, a council decision can be subject to a judicial review.

6. Possible Penalties

Non-Statutory Penalties

The Code reflects an agreement between elected members about the behaviours they expect from each other and themselves. It is therefore heavily reliant on individual good will and the ability of the Council, as a collective body, to exert moral suasion to either prevent breaches of the Code or promote a positive and constructive culture.

However, where a material breach of the Code has been confirmed, a local authority might consider the following penalties and actions:

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. Removal of responsibilities, such as Committee Chair, Deputy Committee Chair or portfolio holder;
6. Restricted entry to council offices, such as no access to staff areas (where restrictions may not previously have existed);
7. Limitation on any dealings with council staff other than the Chief Executive or identified senior manager;
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.

A council or committee 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.

Statutory Penalties

Where an investigator finds that a member has breached provisions set in statute, such as a breach of the Members' Interests Act 1968, the Local Government Official Information and Meetings Act 1987 or the Local Government Act 2002; they will immediately provide their findings to the Chief Executive who will inform the relevant agency, as well as the complainant and the respondent.

Although the local authority and its community will play a role in monitoring compliance with these provisions, outside agencies also have a role in monitoring compliance and more particularly in dealing with breaches of law. Penalties that may apply, depending on the type of breach, are:

- Criminal prosecution, conviction, and the resulting consequences (for breaches of the Crimes Act, the Secret Commissions Act or the Securities Act); or
- Prosecution by the Audit Office under the Member's Interests Act which on conviction leads to the member's ouster from office (where a member votes or discusses a matter in which they are deemed to have an interest); or
- Inviting the Auditor-General to prepare a report on any financial loss or damage suffered by a local authority as the result of a breach (which could potentially lead to the member having to personally make good the loss or damage); or
- Sanctions made under the Privacy Act.

Appendix 1: Code of Conduct Adopted by Council November 8, 2022, and adopted by community boards in November, 2022.

Wāhanga Tuatahi: Anga Tikanga Whanonga

The Mackenzie District Council Code of Conduct has been adopted in accordance with the requirements of the Clause 15, Schedule 7 of the LGA 2002, which requires every local authority to adopt a code of conduct for members of the local authority.

Members' commitment Ngā herenga a ngā mema

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

1. treat all people fairly,
2. treat all other members, staff, and members of the public, with respect,
3. share with the local authority any information received that is pertinent to the ability of the local authority to properly perform its statutory duties,
4. operate in a manner that recognises and respects the significance of the principles of Te Tiriti o Waitangi,
5. make it clear, when speaking publicly, that statements reflect their personal view, unless otherwise authorised to speak on behalf of the local authority,
6. take all reasonable steps to equitably undertake the duties, responsibilities, and workload expected of a member,
7. not bully, harass, or discriminate unlawfully against any person,
8. not bring the local authority into disrepute,
9. not use their position to improperly advantage themselves or anyone else or disadvantage another person,
10. not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority,
11. not disclose information acquired, or given, in confidence, which they believe is of a confidential nature.

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



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