

# **Waitomo District Council**

## **Policy for dealing with alleged breaches of the Code**

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**Te kaupapahere hei whakahaere i ngā  
whakapae i takahia te Tikanga**

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<b>Responsibility:</b>	Manager – Governance Support
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## Introductory Note

This Policy will only be triggered if a complaint cannot be solved by the Mayor, or if the Mayor is the Subject, the Deputy Mayor.

## Principles

The following principles will guide the investigation into, and assessment of, complaints made against a member for breaching the Code of Conduct:

- The complaints process will be independent, impartial, and respect members' privacy.
- Members will be given due notice that an investigation is underway and will be provided with an opportunity to be heard.
- Members will have a right to seek independent advice, be represented, and, if they choose, be accompanied by a support person throughout the process.
- Complaints will be resolved at the lowest level of resolution as possible, with priority given to finding a mediated settlement.
- Complainants, and members subject to a complaint, will have access to advice and support for the time it takes to find a resolution<sup>1</sup>.

## Who can make a complaint?

- The Code of Conduct is designed to be a self-regulatory instrument and complaints regarding a breach of the Code can only be made by members themselves, or the chief executive, who can make a complaint on behalf of their staff. On receipt of a complaint, the chief executive must forward the complaint to an independent investigator for an assessment. If the complaint is made by the Chief Executive, the Mayor will assume this role. If both the Mayor and the Chief Executive are involved, the Chair of the Audit and Risk Committee will assume this role.

## Role of the independent investigator<sup>2</sup>

The independent investigator will:

- determine whether a breach has occurred,
- if so, determine the seriousness of the breach, and
- determine actions that a local authority should take in response to the breach.

Any recommended actions made in response to a complaint that has been upheld are binding on the local authority. This is to ensure the process for investigation is free of any suggestion of bias and reduces the cost of the complaints process, by reducing the time spent on it, by members and officials.

Determining the significance of an alleged breach

The independent investigator may take whatever actions they need to determine the significance of a complaint, within the budgetary constraints set down, including re-assessing the complaint.

The independent investigator will undertake an investigation appropriate to the scale of the breach, which may include interviews with other affected parties, and prepare a report for the chief executive which will set out the rationale for their findings and may include recommendations for resolving the breach and appropriate penalties.

When considering the issue of significance, the independent investigator will need to consider a range of factors before deciding, such as:

- Was the breach intentional or unintentional?

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<sup>1</sup> For example, by enabling both parties to access a council's Employee Assistance Programme (EAP) or elected members' equivalent.

<sup>2</sup> See Appendix 1 for advice on the appointment of an Independent Investigator.

- Did it occur once or is there a pattern of recurring behaviour?
- Does the breach have legal or financial ramifications for the kaunihera?
- What is the impact of the breach on other elected members, on kaimahi (officials) and on the community in general?

Independent investigator can make a binding rule.

On completing their investigation, an independent investigator may dismiss a complaint or make a binding ruling which the governing body will implement with regard to both the validity of the complaint and the remedies to be applied. The independent investigator's ruling will be contained in a report to the kaunihera chief executive which will form the basis of a consequent report to the governing body to inform them of the decision and the actions that they may be required to take.

**Please note:** All actions taken in the implementation of this policy must be consistent with the Bill of Rights Act 1990. No appeal right is included in the Code of Conduct. Members who are unhappy with an independent investigator's decision have access to judicial review and/or the Ombudsman's Office.

## Costs and support

Kaunihera must ensure that anyone who makes a complaint is not left to meet any costs created by doing so. Those who make a complaint, and those who are subject to a complaint, should be given appropriate and reasonable support. The Chief Executive will approve the costs incurred by members, so they remain appropriate.

The costs of assessment and investigatory services will be met by the relevant kaunihera.

## Note

This Policy has been prepared utilising the LGNZ Code of Conduct 2022 template which also includes supporting information prepared to assist members and officials implement both this Policy and the Code of Conduct. Hyperlink below

<https://www.lgnz.co.nz/assets/Induction/Code-Of-Conduct-.pdf>