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**Code of Conduct for Elected
Members
Of the Waitakere Licensing
Trust 2019**

Adopted 24 September 2019

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PART 1 AND 2

Scope and Application

The Waitakere Licensing Trust Elected Members ("Elected Members") have an important role in making decisions and conduct the business of the Waitakere Licensing Trust under the Sale and Supply Act 2012. This Code of Conduct ("the Code") represents a commitment from all Elected Members to maintain high standards of ethical behaviour as elected leaders and to comply with the Sale and Supply of Alcohol Act 2012 as a statutory monopoly for tavern-style and off-licence premises.

As well as articulating agreed professional and ethical behaviours, encouraging teamwork and facilitating effective social responsibility, the Code is of value to the Waitakere Licensing Trust ("the Trust") as a resource and information guide for existing Elected Members and an aid to the public, enabling the public to evaluate behaviour.

1. Scope

The Trust is not required to adopt a code of conduct by the Sale and Supply of Alcohol Act 2012 or any other legislation. However, as a body with elected members in a position requiring the maintenance of public confidence, the Trust consider that a Code of Conduct will enable the transparent measurement of their conduct as elected members in a transparent manner.

The Code is designed to deal with the behaviour of Elected Members towards:

- the public;
- each other;
- West Auckland Trust Services ("WATS"); and
- the media.

The Code is also concerned with the disclosure of information that Elected Members receive in their capacity as members and information which impacts on the ability of the Trust to give effect to its statutory responsibilities.

2. Application

The Code applies to Elected Members at all times.

The Trust requires Elected Members to comply with the provisions of this Code. Members are bound by the Sale and Supply of Alcohol Act 2012, the Gambling Act 2003, Local Government Official Information and Meetings Act 1987, the Crimes Act 1961, the Health and Safety at Work Act 2015, the Protected Disclosures Act 2000, the Privacy Act 1993, the Human Rights Act 1993, the Bill of Rights Act 1990, the Resource Management Act 1991 and the Building Act 2004. These are the key statutes that govern the conduct of the business of the Trust.

WATS will appoint a chief executive who will lead an operational team to ensure compliance with all legislative and operational requirements of the Trust. The Elected Members will be advised of their obligations under all key and other statutes. An explanation of the key legislation and other relevant legislation, along with the Code of Conduct is to be provided at the first meeting after each triennial election and that copies of the above key statutes are freely available to Elected Members.

Short explanations of the obligations that each of these Acts has with respect to the conduct of Elected Members are set out in Schedule 1 of this Code.

PART 3

Principles of Governance

The Code gives effect to the following general principles of good governance with which Elected Members have agreed to comply:

3.1 Integrity and Honesty

Elected Members will be honest and act with integrity. This includes:

- behaving in accordance with the trust that the public places in them.
- being fair and consistent in dealings with others and following through on commitments.
- not making statements or doing anything that will, or is likely to, mislead or deceive, or bring the Trust into disrepute.
- not placing themselves in situations where their honesty and integrity may be questioned.
- being open to constructive feedback.
- complying with relevant legislation and policies and procedures.
- making decisions on merit; including appointments, awarding contracts, and recommending individuals for rewards or benefits.

3.2 Accountability

Elected 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 to be responsible for their decisions and actions, and be prepared to justify these.
- act in an open and transparent manner.
- ensure Trust resources are used prudently.

3.3 Respect

Elected Members must at all times conduct themselves with respect. Disagreement shall be expressed in a manner that does not disrespect any other member, either privately or in public, including on social media. Elected Members will treat everyone with respect and respect other individuals' points of view and opinions, beliefs, and rights. This includes:

- treating people, including other members, with respect and courtesy, regardless of their race, age, religion, gender, sexual orientation, or disability.
- recognising and encouraging ideas and contributions from others.
- being courteous and approachable.
- not engaging in aggressive, offensive, abusive or bullying behaviour.
- not making personal attacks.
- respecting the impartiality and integrity of staff.
- not interrupting when others are expressing their point of view.
- Not taking confidential debate in a closed meeting beyond the meeting, including specifying the position of other members in public or through social media.

3.4 Good Faith

Elected Members will faithfully and impartially perform their statutory and community role, authorities and duties in the best interest of the community of Waitakere Licensing Trust.

A breach of this Code could indicate a lack of good faith. This is relevant to assessment of any breach of the Code.

3.5 Proper Use of Position

Elected Members must not abuse their position. Under this Code, Elected Members agree not to:

- solicit, demand or request any gift or benefit because of their position.
- claim expenses which are not legitimate.
- fail to declare gifts valued at over \$25 or any gift given to them because of their position
- influence, or attempt to influence, any employee, or another member, in order to benefit their own, or family's, personal or business interests.
- use information and/or Trust resources for any purpose which is not directly related to Trust business, including use of Trust resources to promote personal or business interests.
- Use, directly or indirectly, any Trust resources and/or branding for the purpose of seeking reelection.

Note: Refer to the OAG Guidelines for any further guidance.

3.6 Leadership

Elected Members agree to be bound by this Code and demonstrate adherence to these principles through their leadership of the Trust. They should always endeavour to act individually and collectively in a way that maintains public confidence in the good governance of the Trust.

These principles complement, and work in conjunction with good governance principles promoted by the Office of the Auditor-General.

PART 4

Roles and Responsibilities

Good governance requires clarity of roles and respect between those charged with responsibility for the leadership of the Trust.

4.1 Elected Members

Elected Members, acting as the Waitakere Licensing Trust, are responsible for governance, including:

- the development and approval of strategies, plans, and policies and budgets;
- monitoring the performance of the Trust against its stated objectives and policies; and
- the prudent stewardship of resources.

Unless otherwise provided in the law or in the Standing Orders of the Trust, the Trust can only act by majority decisions at meetings. Any individual member has no authority to act on behalf of the Trust unless provided for by statute or the Trust has expressly delegated such authority.

Elected Members are committed to achieving the highest standards of conduct and behaviour at all times and will carry out their role to the best of their skill and judgment. To achieve this, Elected Members should:

- take responsibility for ensuring that they understand their roles and responsibilities and the Code;
- attend all meetings (including for external organisations to which they are appointed or involved with on behalf of the Trust), and any appropriate training opportunities provided internally or externally;
- come to meetings prepared, including having read relevant material;

- be 'present' and actively contribute
- seek personal and skill development opportunities to effectively contribute to the good governance of Waitakere Licensing Trust;
- maintain an appropriate standard of dress at public meetings, events or functions that does not discredit the Trust or bring the Trust into disrepute. Generally, the more formal the occasion, the more formal the standard of dress required.

4.2 Committee Chairpersons

- A committee chairperson presides over all meetings of the committee, ensuring that the committee acts within the powers delegated by the Trust and the orderly conduct of business during committee meetings (as determined by Standing Orders).
- Committee chairpersons may be called on to act as official spokespersons on issues within the terms of reference for their committees.
- Chairpersons may be removed from their position by resolution of the Trust.
- The Trust may also appoint deputy chairpersons of committees, who shall fulfil the functions of the chair when the chairperson is absent.

PART 5

Relationships and Behaviours

This section of the Code sets out the Trust's agreed standards of behaviour between members; members and staff; and members and the public. Any failure by members to meet the standards set out in this section represents a breach of this Code. For clarity, sections 5.1 to 5.3 include, but is not limited to, any written communication between Elected Members, or from an Elected Members, including through social media platforms.

5.1 Relationship with Other Members

Successful teamwork is a critical element in the success of any organisation. No team will be effective unless mutual respect exists between members. Members must conduct their dealings with each other in ways that:

- maintain public confidence in the office held by the Elected Members on the Trust
- are open and honest;
- focus 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 conduct which is aggressive, offensive or abusive or which may constitute unlawful or inappropriate behavior toward other members.

5.2 Relationship with WATS Chief Executive (CE) and Staff

Elected Members should be aware that failure to observe the standards in section 5.2 of the Code may compromise the Trust's obligations to act in good faith and may expose the Trust to civil litigation and/or audit sanctions.

Effective performance of the business of the Trust requires a high level of cooperation and mutual respect between Elected Members and WATS. Members will:

- recognise the WATS appointed CE;
 - Through the appointed directors of WATS and its CE raise staff matters with the WATS CE who oversees operational and staffing requirements of the Trust
 - make themselves aware of the organizational strategies, policies and procedure made available to Elected Members and observe those requirements at all times;
 - treat all staff with courtesy and respect, including the avoidance of aggressive, offensive or abusive conduct towards employees;
 - observe any guidelines that the CE puts in place regarding contact with employees;
 - not do anything which compromises, or could be seen as compromising, the impartiality of an employee;
 - avoid publicly criticising any employee, including any employee or director of WATS in any way, but especially in ways that reflect on the competence and integrity of the employee or director;
 - raise concerns about employees only with the CE, and concerns about the CE only with the Chair of WATS or the CE Review Committee;
 - not seek to improperly influence staff in the normal undertaking of their duties.
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5.3 Relationships with the Public

Effective Trust decision-making depends on productive relationships between Elected Members and the community at large. Elected 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 regarding the operation of Trust premises;
- 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 Trust and values community involvement in local democracy.

5.4 Contact with the Media

The media plays an important part in local democracy.

The media needs access to accurate and timely information about the affairs of the Trust. From time to time, individual members may be approached to comment on a particular issue either on behalf of the Trust, or as an Elected Member in their own right.

The following rules apply for media contact on behalf of the Trust:

- the CE of WATS or the President is the first point of contact for the official view on any issue, unless delegations state otherwise. Where relevant and agreed the President of each Trust is able to comment subject to appropriate delegations being in place.
- No other member may comment officially on behalf of the Trust without having first obtained the approval of the President or where delegated, the relevant Committee chairperson.
- 'Media' includes social media such as Facebook, Twitter, LinkedIn or similar platforms.
- Elected Members are free to express a personal view in the media, at any time, provided the following rules are observed:
 - i. media comments must not state or imply that they represent the views of the Trust;
 - ii. where an Elected Member is making a statement that is contrary to a Trust decision, resolution or policy, the member must not state or imply that his or her statements represent a majority view or the view of the Trust or discussions that were held in a confidential session. The Member must clearly state that the matter is their own personal view;
 - iii. media comments must observe the other requirements of the Code: *not to disclose confidential information; compromise the impartiality or integrity of staff; or avoids aggressive, offensive or abusive comments which reflects adversely on the member or the Trust;* and
 - iv. media comments must not be misleading and should be accurate within the bounds of reasonableness.
 - v. Any statement must treat people, including other members, with respect and courtesy, regardless of their race, age, religion, gender, sexual orientation, or disability

5.5 Information available to Elected Members

Any failure by members to act in the manner described in this section 5.5 will be treated seriously and may immediately referred by the President to an independent investigator for assessment under section 6.2 and Schedule 3 of this Code.

Confidentiality

To enable Elected Members to properly discharge their duties, members are entitled to, and receive, a broad range of information which is publicly accessible. In the course of their duties, Elected Members will also receive information that may be classified as confidential. This includes information received at meetings which are closed to the public or information that is identified as confidential in a workshop or similar setting.

Elected Members may also be provided with, or have the ability to access, confidential information held by the Trust from time to time.

Confidential information includes information that staff have determined there is good reason to withhold under sections 6 and 7 of the Local Government Official Information and Meetings Act 1987 ("LGOIMA"). This will often be information that is either commercially sensitive or is personal to a particular individual or is intended to be used as part of a free and frank conversation on a topic on which a decision is to be made. The CE of WATS is responsible for the release of information under LGOIMA and liaison with any member of the public on an information request and any subsequent complaint to the Ombudsman or related litigation.

Elected Members must not use or disclose confidential information to any person. Information to be disclosed must be provided to the President or the CE of WATS. Elected Members should be aware that failure to observe these provisions relating to confidential information will impede the performance of the Trust by inhibiting information flows and undermining public confidence in the Trust and the conduct of its affairs. Such breaches may also expose the Trust to prosecution under the Privacy Act 1993 and/or other civil litigation.

A breach of confidentiality could also indicate a lack of good faith which may be relevant to the assessment of personal liability of an Elected Member.

Information received by an Elected Member from external sources relating to a matter of operational or strategic position of the Trust must be disclosed to the President and the CE of WATS.

Members who are offered information on the condition that it remains confidential will inform the provider of the information that is the member's duty to disclose the information and will decline the offer if that duty is likely to be compromised. Elected Members are accountable to the public and the Auditor-General will assess their accountability.

"Official Information" is information provided to Elected Members in their capacity as members of the Trust and includes:

- All official information held by elected members personally, whether on Trust equipment or their own personal equipment is subject to the LGOIMA.
- If official information is sought as part of a request, it must be made available immediately to the CE, or nominee, so that it can be assessed in terms of the requirements of the LGOIMA.

5.6 Gifts and Hospitality

A person in a position of trust, such as an Elected Member, should not make a profit through his or her office. The Crimes Act 1961 and the Secret Commissions Act 1910 deals with corruption and the obtaining of gifts as an inducement or reward for acts in relation to the Trust's affairs.

Gifts can include discounts, commissions, bonus or deductions.

Acceptance of gifts, services or hospitality may be considered as a bribe or perceived as undue influence. Elected Members must notify the President or the WATS CE or Chair or any other delegated person if any gifts have been accepted for inclusion in the Gifts Register maintained by the Trust. Where a gift to the value of \$25 or more is offered to a member, it will also be included in the Register of Members Interests maintained by the Trust.

As guidance:

- The cumulative value of recurring gifts received each financial year from the same donor must be disclosed. For example, if someone provides a member with concert tickets at different times through the year, the total value of those tickets over the relevant financial year is to be disclosed.
- Working lunches and social occasions should be undertaken with a recognition of the public perception regarding undue influence on Elected Members.

5.7 Conflicts of Interest

Failure to observe the requirements of the Local Authorities (Members' Interests) Act 1968 ("LAMIA") could potentially invalidate a decision made, or action taken, by the Trust. Failure to observe these requirements could also leave the Elected Member open to prosecution. In the event of a conviction, Elected Members can be removed from office.

Schedule 1, Part 1 of the Local Authorities (Members' Interests) Act 1968 ("LAMIA") states that Licensing Trusts under the Sale and Supply of Alcohol Act 2012 (and its predecessor 1989 legislation) are subject to LAMIA. Schedule 1 this Code sets out the Code's conflict of interest requirements. Elected Members must fully acquaint themselves, and adhere strictly to, these requirements.

Ultimately, it is up to each 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.

The requirements cover two classes of conflict of interest:

1. A financial conflict of 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.

A financial conflict of interest need not involve cash changing hands directly. It could, for example, relate to an effect on the value of land or shares that the member owns, or an effect on the turnover of a business that the member is involved in. There are particularly strict provisions and penalties, relating to dealing with a financial conflict of interest.

2. A non-financial conflict of interest does not have a personal financial component. It may arise, for example, from a personal relationship, or involvement with a non-profit organisation, or from conduct that indicates prejudice or predetermination.

Elected Members are required to complete declarations of interest following their inauguration, and to update their declarations as and when required.

5.8 Bankruptcy

Elected Members who are declared an undischarged bankrupt shall notify the President and Chair of the WATS Board when elected or as soon as practicable after being so declared. The member will provide a brief explanatory statement of the circumstances surrounding the bankruptcy, including its likely outcome. This must be recorded in the Register of Interests.

5.9 Disqualification from Office

Disqualification of Elected Members from office may arise for example, if they:

- are convicted of a criminal offence punishable by two or more years' imprisonment;
- cease to be an elector or become disqualified for registration as an elector under the Local Electoral Act 2001;
- breach the LAMIA; or
- are absent without leave from the Trust for four consecutive ordinary meetings of the Trust.

PART 6

Breaches of the Code

Members must comply with the provisions of this Code. The exact nature of the action taken to resolve any allegations relating to misconduct of an Elected Member will depend on the nature of the alleged breach and whether there are statutory provisions dealing with the issue in question.

6.1 Principles

The following principles will guide any processes for investigating and determining whether 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 and are provided with an opportunity to be heard;
 - have a right to seek appropriate advice and be represented; and
 - have their privacy respected.

6.2 Complaints Process

Only an Elected Member, or the President, or Chair of WATS or CE appoint an independent person to review the complaint and determine what actions are available to the Trust to respond. A complaint may be made as a result of a single incident or as the culmination of a series of incidents.

If Members are to make a complaint about another member, before making a complaint, members are encouraged to resolve the matter by discussion with the member alleged to have committed the breach, or request for the President or Chair of WATS to call a meeting to mediate the complaint.

All complaints made under this Code must be made in writing and addressed to the President of the Trust setting out the alleged breach of the Code and providing corroborating evidence. On receipt of a complaint, the President, in consultation with the Chair and CE of WATS must follow the process set out in Schedule 3. For the purpose of the Code, an Elected Member(s) who is/are the subject of a complaint under the Code is/are 'the respondent' and shall be provided with a copy of the complaint upon receipt and verification of the complaint. However, that Elected Member may not directly contact the complainant.

Panel of Independent Investigators

On behalf of the Trust, the Chair and CE of WATS will, shortly after the start of a triennium, prepare, in consultation with the President, a list of investigators for the purpose of undertaking an assessment of complaints when required and making recommendations to the Trust. The CE may prepare a list of eligible persons, or contract an agency capable of providing appropriate investigators with experience in the relevant areas of law.

The Panel of Independent Investigators is not a committee of the either Trust.

Materiality

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

An alleged breach of section 5.5 of the Code, Information available to Elected Members, will automatically be considered material and referred to an independent investigator for assessment.

6.3 Penalties and Actions

Where a complaint is determined to be a material breach of the Code and referred to the independent investigator for determination, the nature of any penalty or action will depend on the seriousness of the breach.

Material breaches

In the case of material breaches of this Code the Trust may require one or more of the following:

- a letter of censure to the member;
 - a request, made either privately or publicly, for an apology to the complainant;
 - a vote of no confidence in the member at a meeting of the Trust;
 - removal of certain Trust-funded privileges or Trust appointments, including committee or board appointments where that member is a representative of the Trust;
 - restricted entry to Trust offices or stores, such as no access to staff areas, where restrictions may not previously have existed;
 - limitation on any dealings with Trust staff so that they are confined to the CE of WATS only;
 - suspension or removal from Committees, including joint committees, task forces or other Trust related bodies; or
 - an invitation for the member to consider resigning from the Trust.
- Where a crime or other statutory breach has been determined to have been committed, the matter may be referred to the Police or other relevant agency.

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

- attend a relevant training course; and/or
- work with a mentor for a period; 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 LGOIMA, for not doing so.

Breaches of Legislation

If there are statutory provisions dealing with the issue in question, the issue will not be dealt with as a breach of the Code but may be addressed in accordance with the relevant statutory provisions:

- Issues relating to members' interests may render members liable for prosecution by the Auditor General under LAMIA, and, if convicted, the Member can be removed from office;
- Issues which result in the Trust suffering financial loss or damage may be reported to the Auditor General which may result in the member having to make good the loss or damage;
- Issues relating to the commission of a criminal offence may leave the Elected Member liable for criminal prosecution.

The Trust may refer an issue to the relevant body. Any member of the public may make a complaint to that body, or the Auditor-General or the Police may take action of their own initiative

Breaches of the Code during meetings

It is expected that compliance with the provisions of this Code during a meeting shall be dealt with by the Chairperson of that meeting, within Standing Orders, at the time the breach arises.

Elected Members should raise alleged breaches of the Code with the Chairperson at the time. If an Elected Member believes that an alleged breach of the Code has not been dealt with adequately by the Chairperson at a meeting, that Elected Member may initiate the procedures set out in Section 6.2 and Schedule 3 in the Code.

PART 7

Review or Changes to the Code

The Trust may by resolution of 75 percent or more, change the Code at any time.

The Trust will formally review the Code as soon as practicable after the beginning of each triennium to ensure it remains relevant to the issue it faces and must manage. The results of that review will be presented to a full meeting of the Trust for its consideration and vote.

The Code should be read in conjunction with the Trust's Standing Orders.

Schedule 1

Summary of Legislation

This Schedule is a summary of the legislative requirements that have some bearing on the duties and conduct of Elected Members. Copies of the legislation can be found on www.legislation.govt.nz or requested from the Governance team.

Sale and Supply of Alcohol Act 2012

The Sale and Supply of Alcohol Act 2012 governs the appointment of Elected Members to form the Trust. It provides that the Trust will hold a monopoly for the sale and supply of alcohol to be consumed off site (“off-licenses”) and to operate tavern style premises (“on-licenses”). Other operators in the Trust area may operate non-tavern style on-licence premises.

The Trust must obtain liquor licenses and duty manager licenses for the operation of its stores and venues. As such, it is subject to the suitability tests contained in the Sale and Supply of Alcohol Act 2012.

The Trust must also at all times comply with the Object of the Sale and Supply of Alcohol Act 2012, which is to sell alcohol in a socially responsible manner.

Local Authorities (Members’ Interests) Act 1968 (‘LAMIA’)

LAMIA regulates situations where an Elected Member’s personal interests impinge, or could be seen as impinging on their duties as an Elected Member.

Members may contact the office of the Auditor General (“OAG”) for guidance as to whether that member has a pecuniary interest, and if so, may seek {through an application from the Trust} 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 vote¹. The CE must also seek approval from the OAG for contractual payments to members, their spouses or their companies that exceed the \$25,000 annual limit.

Failure to observe these requirements could also leave the Elected Member open to prosecution under the LAMIA. In the event of a conviction Elected Members can be removed from office. Further guidance is detailed under Schedule 2 of the Code.

Local Government Official Information and Meetings Act 1987 (‘LGOIMA’)

The purpose of LGOIMA is to provide for the availability to the public of official information held by agencies subject to LGOIMA, and to promote the open and public transaction of business in meetings of local authorities. The Trust is subject to LGOIMA (see Schedule 1, Part 1 of LGOIMA and Section 10 of LGOIMA).

The general principle is that information held by an agency subject to LGOIMA is to be made available unless there is good reason for withholding it. The principal grounds for withholding information are set out in sections 6 and 7 of LGOIMA.

LGOIMA sets out a number of statutory procedures and requirements for agency meetings. Meetings are to be publicly notified, and open to the public unless there is good reason for withholding information and excluding the public.

The Chair has the responsibility to maintain order at meetings, but all Elected Members should accept personal responsibility to maintain acceptable standards of address and debate in line with the principles detailed in section 3 of this Code.

Secret Commissions Act 1910 (‘SCA’)

It is unlawful for an Elected Member 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. It is also unlawful for an Elected Member to present false receipts to the local authority.

If convicted of any offence under the SCA, a person can be imprisoned for up to 7 years. Elected Members convicted of an offence will be removed from office.

1. The Auditor-General can provide retrospective approval for contracts that would otherwise disqualify a member under the Act, in limited circumstances.

Crimes Act 1961

It is a crime for any Elected Member to accept, or solicit for themselves (or anyone else), any gift or reward for acting or not acting in relation to the business of the local authority. It is also a crime for any Elected Member to use information acquired in his or her capacity for monetary gain or advantage.

These offences are punishable by a term of imprisonment of 7 years or more. Elected Members convicted of these offences will be removed from office.

Health & Safety at Work Act 2015 ('HSWA')

HSWA came into force on 4 April 2016. Its focus is the protection of workers and other people against harm to their health, safety and welfare by eliminating or minimising risks at workplaces.

The HSWA places obligations on four duty holders- a person conducting a business or undertaking ('PCBU'); officers of a PCBU; workers; and other people at a workplace. Each Trust as a PCBU holds the primary duty of care under HSWA i.e. to ensure so far as is reasonably practicable, the health and safety of its workers and of other workers whose activities the Trust influences or directs.

Each elected member is an officer (being a person occupying a position in a body corporate that is comparable with that of a director of a company), responsible under HSWA for exercising due diligence to ensure that the Trust is meeting its individual and collective health and safety responsibilities under HSWA. The CE and Senior Leadership of the WATS Team are also officers under HSWA.

The due diligence duty of officers supports the primary duty of care owed by a PCBU - placing duties on individuals whose decisions significantly influence the activities of a PCBU, therefore influencing whether the PCBU meets its statutory duties.

Unlike the Chief Executive and Senior Leadership Team, Elected Members are not required to be directly involved in the day-to-day management of health and safety. They are, however, still required to take reasonable steps to understand the Trust's operations and health and safety risks, and to ensure that they are managed so that the organisation meets its legal obligations under the HSWA.

Taking 'reasonable steps' requires each Elected Member to exercise the care, diligence and skill a reasonable officer would exercise in the same circumstances, taking into account matters including the nature of Trust's business, and the Elected Member's position and nature of his/her responsibilities.

Most officers can be convicted of an offence for failing to meet their due diligence obligations, whether or not a PCBU is convicted of an offence. Elected members, however, when acting in the capacity of an elected member of the Trust are expressly exempted from prosecution.

Protected Disclosures Act 2000 ('PDA')

Under the PDA, the definition of an employee of a public sector organisations (PSO) includes Elected Members of a local authority. Elected Members who disclose information about a serious wrongdoing by the Trust is protected from civil or criminal liability that might arise from such a disclosure and from retaliatory action against the Elected Member.

Serious wrongdoing under the Act includes unlawful or irregular use of funds or resources; conduct that risks public health and safety; conduct that risks the maintenance of law; conduct that constitutes an offence; oppressive, improper discriminatory conduct; and gross negligence or gross mismanagement by an employee of the Trust or other related entity.

Protection under the PDA applies where the employee has information about a serious wrongdoing; a reasonable belief that the information is true or likely to be true; the employee wishes to have the matter investigated; and that employee desires protection under the Act.

For Elected Members, the default position requires a disclosure to be made to the CE of WATS or the Chair of WATS or an "appropriate authority" if the concern relates to either of the two office holders. "Appropriate authorities" are defined in the PDA and include the Commissioner of Police, the Controller and Auditor-General and the Parliamentary Ombudsman.

Conflicts of Interest

General

Elected Members are expected to approach decision making with an open mind- 'faithfully and impartially' and in 'the best interests of constituents of the Trust. Elected Members must therefore be careful that they maintain a clear separation between their personal interests and their duties as a member of the Trust and any other private or public office which they hold. They must exercise care to avoid situations where they have, or appear to have, a conflict of interest.

Elected Members must carry out their duties free from bias (whether actual or perceived). Bias is the common factor in all conflict of interest situations. The rule about bias applies to both financial and non-financial conflicts of interest and is summed up in the saying 'no one may be judge in their own cause'.

In the context in which the Trust operates, financial conflicts of interest are governed primarily by the Local Authorities' (Members' Interests) Act 1968 ('LAMIA') and non-financial conflicts of interest are governed by the common law rule about bias.

Broadly speaking, a conflict of interest exists when an elected member could use, or uses, their position to further their own interests or those of their partner, or spouse. The various types of conflict of interest include:

- Direct financial interest- where a decision or act of the Trust could reasonably give rise to an expectation of financial gain or loss to an elected member.
- Indirect financial interest- where cash doesn't change hands directly but, for example, may influence the value of land or shares that the member owns, or an effect on the turnover of a business that the member is involved in;
- Non-financial interest- where an elected member's responsibilities as a member of the Trust could be affected by some other separate interest or duty that he/she may have in relation to a matter as a result of, for example, a personal relationship, or involvement with an external organisation, or from conduct that indicates prejudice or predetermination.

Conflicts of interest can be:

- Actual: where the conflict of interest already exists;
- Potential: where the conflict is about to happen, or reasonably could happen; or
- Perceived: where other people might reasonably think an Elected Member is not being objective or his/her position as an Elected Member has been compromised.

Financial conflicts of interest

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)

Members should consider the following factors in considering whether they have a financial interest.

- 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 President or the Chair of WATS or the Auditor-General or another 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 independent legal advice. Where uncertainty exists, members may adopt a least-risk approach which is to not participate in discussions or vote on any decisions.

The two specific rules in the LAMIA relate to:

1. Contracts

An Elected Member is disqualified from office, or from election to office, if that member is concerned or interested in contracts and subcontracts (either directly or indirectly) under which payments made by or on behalf of the Trust exceed an amount set by the WATS Board in any financial year, unless there is an exemption granted by the Controller and Auditor-General ("OAG").

The nominated limit includes GST. The limit relates to the value of all payments made for all contracts in which a member is 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 the member.

It is an offence under LAMIA for a person to act as a member of the Trust while disqualified.

2. Participation in decision-making

Elected Members must not participate in any Trust discussion or vote on any matter in which they have a financial interest {either directly or indirectly}, other than an interest in common with the public.

Both rules apply in the case of an interest or concern through an Elected Member's spouse or partner, or through a company or trust.

How is bias determined?

Bias is determined by asking the following question:

"Is there, to a reasonable, fair-minded and informed observer, a real danger of bias on the part of a 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?"

It is natural to expect that Elected Members will bring their own experience and knowledge to the decision-making process; that members may already have views - even strong or publicly stated views - about the matter; and that political considerations may play a part in the decision.

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 they might be perceived as biased, members must also consider 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.

Declarations of interest

To help identify possible conflicts of interest each Trust operates a Register of Members' Interests.

Elected Members must make full and complete declarations of interests following the Inaugural Meeting of the Trust {after local government elections or by-election, as appropriate}, and then every six months, using the Register of Members' Interests [Declaration Form](#). These declarations of interests are a key individual responsibility of all Elected Members. They must notify the Trust of the nature and extent of any interest as further detailed in the declaration form.

Declarations will be recorded in a Register of Members' Interests maintained by WATS' CE. The Register or a fair and accurate summary of its contents will be available upon request to the Auditor-General or the Ombudsman.

The Register does not remove the requirement to disclose conflicts of interest as they arise. Members must therefore advise the President of the relevant Trust and the WATS CE, as soon as practicable during the year, if any new interests arise; complete a declaration of interests form every six months and update the Register whenever a member's interest has changed. Members must also declare their interests at meetings where matters in which they have a conflict of interest arise. The Elected Member must:

- declare the existence of a conflict to the meeting (the member does not have to disclose the nature of the interest concerned, though he or she is required if the interest is a financial one);
- abstain from discussion and voting {take no part in the consideration of the matter}. Depending on the issue, the member may consider it best to leave the meeting room itself.

General awareness and support

There is no simple binding rule that covers all conflict of interest situations - each situation must be evaluated on its individual merits. If an Elected Member is in any doubt as to whether he/ she should declare an interest and stand aside from decision-making {including a decision to take no action}, then he/she should seek guidance from the President immediately; seek advice from the OAG {as to whether there is a financial interest} or from his/her own lawyer.

In some situations of pecuniary interest, a member may be able to obtain an exemption from the OAG to allow him/her to participate or vote on a particular issue. Any exemptions must be obtained before the discussion or vote takes place ².

In a case of doubt, a member should refrain from discussing or voting on the matter in question and preferably physically withdraw from the meeting. The minutes of the meeting will record the member's declaration of interest and absence from voting.

Relevant guidelines include:

- ['Guidance for Members of Local Authorities about the Local Authorities {Members' Interests} Act 1968'](#) - Office of the Auditor General 2010;
- ['Managing Conflicting Interests in Local Government: The Local Authorities {Members' Interests} Act 1968 and Associated Issues'](#) - Department of Internal Affairs August 2011;

2. The Auditor General can retrospectively approve contracts that would otherwise disqualify a member under the Act, in limited cases.

Consequences of bias and/or breach of the LAMIA

An Elected Member will be automatically disqualified from office if he/she is concerned or interested in contracts and subcontracts (either directly or indirectly) under which payments made by or on behalf of the Trust exceed a sum to be nominated by the WATS Board in any financial year.

If an Elected Member has a financial interest in a matter and participates in discussion and voting on it, he/she will have committed an offence under the LAMIA. In the event of a conviction, an Elected Member can be removed from office.

An Elected Member's bias {whether actual or perceived} has the potential to invalidate the particular decision made, or the action taken, by the Trust {if successfully challenged by way of judicial review}.

If an Elected Member's conduct has contributed to the Trust incurring a loss; that conduct could also result in personal financial liability under the Crimes Act 1961 (refer to Schedule 1).

Process for the investigation and determination of complaints

Summary

There is a five-stage process for dealing with complaints under the Code of Conduct:

Stage 1: Acknowledgement of the complaint and the respondent is informed.

Stage 2: Preliminary assessment of the complaint - led by either the Chair and CE of WATS or an independent investigator.

Stage 3: Informal resolution of complaint, where alleged breach is considered non-material.

Stage 4: Independent investigator assessment where:

- the alleged breach is considered material;
- the complaint has not been able to be resolved informally; or
- the complaint is otherwise referred to an independent investigator by the CE.

Stage 5: The Trust's consideration of the investigator's report in a confidential meeting.

Stage 1: Acknowledgment of complaint

1. Within two working days of receipt of a complaint, the CE of WATS will:

- acknowledge receipt and refer the complainant to the process for dealing with the complaint under this Code.
- inform the respondent that a complaint has been made against them and refer them to the process for dealing with the complaint under this Code.

Stage 2: Preliminary assessment of complaint

2. The Chair and CE of WATS, will assess 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 previously been assessed and actions have been completed in accordance with the Code to address the complaint;
- the complaint is not material and should progress to informal resolution, refer to Stage 3; or
- the complaint is material and a full investigation is required by an independent investigator, refer to Stage 4. An alleged breach of section 5.5 of the Code is deemed to be material.

3. The CE may request further information/evidence from the complainant in support of the complaint and, if considered appropriate, may also request a preliminary statement in response from the respondent.

4. Where the Chair and CE of WATS determines the complaint falls under paragraphs 2(a) or (c) above, they will inform the complainant and the respondent directly. The Chair or CE of WATS will also inform other Elected Members of the decision, unless there are grounds for the matter to remain confidential.

5. If it is determined that the complaint involves a potential legislative breach and is outside the scope of the Code, the Chair or CE of WATS will forward the complaint to the relevant agency and inform both the complainant and respondent of the action.

6. Where the Chair and CE of WATS determine the complaint is material, the matter must immediately be referred to an individual investigator for assessment in accordance with Stage 4.

7. The Chair and CE of WATS has full discretion to refer any complaint to an independent investigator at any stage, even if it is considered not material.

8. The preliminary assessment of a complaint under Stage 2 will be completed within seven working days of receipt of the complaint. If additional time is required to complete the assessment, the CE must notify the complainant and respondent with the date when the preliminary assessment is expected to be completed.

Stage 3: Informal Resolution

9. Where Chair and CE of WATS determine the complaint falls under paragraph 2 (d) (refer to Stage 2), they will endeavour to settle the matter informally between the parties within 10 working days from the completion of Stage 2. The process for informal resolution must be fair to, and include, the affected parties.

10. The outcome of this initial process may be that the parties reach an informal agreement to resolve the complaint, in which case no further action is required. A written record of the informal agreement must be kept by the Chair and CE of WATS.

11. If agreement is not possible between the parties under Stage 3, the CE will refer the complaint to an independent investigator for full investigation.

12. For clarity, Stage 3 is not available if the complaint has been assessed as material under Stage 2 or referred to an independent investigator under paragraph 7 above.

Stage 4: Independent Investigator Assessment

13. Where Chair and CE of WATS determines the complaint falls under paragraph 2(e) in Stage 2, or the complaint is not otherwise resolved, the Chair and CE of WATS will refer the complaint to an independent investigator selected from the approved Panel of Independent Investigators.

14. On receipt of a complaint the investigator will assess the complaint, and prepare a report setting out the options available in accordance with the Code, Standing Orders, and the law.

