

Guideline 7: Procedural Fairness in Deciding Code of Conduct Complaints

- 6.2 It is recommended a copy of this Guideline is provided to complainant and respondent as early as possible in the complaint handling process, to enhance their understanding of the process.

7 Council or council panel decides complaint

- 7.1 A council or council panel, in deciding a complaint under section 123 of the Act, must ensure that the principles of procedural fairness are observed in deciding the complaint. For example, the council or council panel should provide the complainant and respondent with opportunity to make representations to the council or council panel before deciding the complaint. This could involve the complainant or respondent presenting their side of the story in writing or in person.
- 7.2 Conflict of interest is an individual responsibility. In deciding a complaint, the members of the council or council panel are expected to observe the rule against bias.
- 7.3 A person with a conflict of interest should not be part of the decision-making process as the decision could be perceived to be affected by bias.
- 7.4 A council or council panel should consider the accessibility of the process to the parties to a complaint. For example, asking a party to the complaint to provide information in person may not be fair if the person lives a long distance away.

8 Information the council or council panel may consider

- 8.1 It is important to note that the council or council panel do not have information gathering powers. For example, a council cannot force a party to the complaint or another person to answer written questions or appear in person.
- 8.2 Despite clause 8.1, a council or council panel can ask for information knowing that it is the choice of the person being asked as to what, if any, information the person will give to the council or council panel.
- 8.3 The council or council panel may seek relevant information to ensure issues raised in a complaint are sufficiently addressed. This may include asking the respondent or the complainant questions, asking another person questions, or finding out information by examining a document relevant to a complaint (e.g. council meeting agenda papers). When asking a person questions, it is not mandatory for the person to answer the questions.

9 Reasons for decision

- 9.1 A council or council panel must set out the reasons for its decision in the decision notice, which is provided to the parties to the complaint.

Note for clause 9.1

A decision notice is required under section 126(2) of the Act. See section 7 of the Act for the definition of a decision notice, which sets the matters required to be included in the notice.

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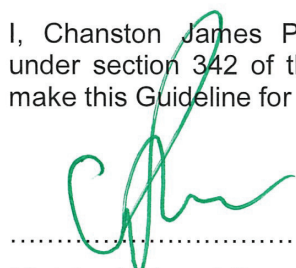
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LOCAL GOVERNMENT GUIDELINE NO. 7

Local Government Act 2019

Making of Guideline

I, Chanston James Paech, Minister for Local Government, under section 342 of the *Local Government Act 2019*, hereby make this Guideline for the purposes of the Act.



Minister for Local Government

8 / 12 / 2022

Guideline 7: Procedural Fairness in Deciding Code of Conduct Complaints

1 Title

- 1.1 This Guideline is titled *Guideline 7: Procedural Fairness in Deciding Code of Conduct Complaints*.

2 Commencement

- 2.1 This Guideline commences on the day after the day it is made by the Minister.

3 Definitions

For the purposes of this Guideline:

Act means the *Local Government Act 2019*.

complainant means the person who lodges a complaint believing a council member has contravened the Code of Conduct.

respondent means the council member alleged to have committed the contravention of the Code of Conduct.

4 Purpose of the Code of Conduct

- 4.1 The Code of Conduct is principles-based rather than a set of specific rules.
- 4.2 It is intended to set standards and provide guidance to council members, council staff and the public about how a council will carry out its responsibilities.

5 Objectives

- 5.1 This Guideline provides guidance to help councils ensure that Code of Conduct complaints are handled in accordance with the principles of procedural fairness (natural justice).

6 General principles

- 6.1 Procedural fairness is a requirement for those exercising power to do so in a fair manner. It is concerned with the fairness of how a decision is made, rather than the outcome of the decision. To ensure that a decision-making process is fair, the council or council panel should:
- (a) Ensure a person against whom a complaint has been lodged (the respondent) is made aware of the complaint and any substantiating details in order to be able to participate meaningfully in the complaint handling process.
 - (b) Ensure that a person whose rights and interests are to be affected by a decision be given an opportunity to be heard before the decision is made. Examples of rights and interests include a person's status and reputation.
 - (c) Observe the rule against bias. This can be actual or perceived bias. For example, if a member of a council considering a complaint is a close personal friend of the complainant, that member should consider declaring a conflict of interest as they could be perceived as being biased in favour of the complainant.
 - (d) Consider only relevant information before making the decision. For example, something the respondent is believed to have done or said before being elected as a member of the council may be irrelevant information in relation the complaint.
 - (e) Provide reasons for the decision.

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