



Fire Protection Association (New Zealand) Incorporated

Complaints and Disciplinary Procedure

(Revised January 2019)

1.0 PURPOSE AND CIRCUMSTANCES

- 1.1** The Fire Protection Association (New Zealand) Incorporated (“Association”) will receive and consider a complaint from affected parties and deal with it through the Association’s Board (“Board”) when these matters relate to issues of competence or conduct.
- 1.2** Except as provided in 2.7, the parties to the complaint shall bear their own costs in relation to the complaint. Regardless of whether the complaint is upheld or rejected, the Association shall not be liable to recompense the complainant (“Complainant”) or the Association Member (“Member”) against whom the complaint is made for any costs they incur in relation to the complaint.
- 1.3** The Association will consider only complaints that specify the part or parts of the Association’s Code of Ethical Conduct that have allegedly been violated, or where the conduct of a Member is considered, in the opinion of the Board, to bring the industry or the Association into disrepute.
- 1.4** These Complaints and Disciplinary procedures are in place to deal with substantive issues of conduct and behaviour. The Association will not become involved in matters of commercial management, accounting claims, charges for services, or any individual Member’s office procedures, except as they relate to ethical behaviour under the Association’s Code of Ethical Conduct.
- 1.5** The Association will not consider any complaint relating to the contractual performance of a Member, which should be lodged through the Small Claims Tribunal, District Court, or High Court, or before any other New Zealand Arbitral Tribunal, nor will the Association arbitrate or mediate in any commercial dispute.
- 1.6** Notwithstanding the above, where a dispute is referred to the Small Claims Tribunal, District Court, or High Court, or before any other New Zealand Arbitral Tribunal, or the Association becomes aware that the Member is involved in a criminal investigation, the Association may, without receiving a complaint, undertake an investigation as to whether the Member has breached the Association’s Code of Ethical Conduct.

2.0 PROCEDURE

This procedure describes the steps that will be taken when complaints against Members' conduct are presented. By publishing this procedure the Association does not invite, solicit, or encourage such complaints. The use of these procedures is for the sole purpose of protecting the reputation of the industry and the Association and safeguarding the public's trust and interest.

The rules of natural justice shall be paramount in all processes, including the right of the respondent to know the details of a complaint and the supporting evidence; the right to provide evidence or argument in defence; and the right for an unbiased determination to be made by those who hear all the evidence.

2.1 Lodging the Complaint

- a) A complaint may be made by any individual or entity concerning any Member or employee of a Member.
- b) The complaint shall be in writing and be signed by the Complainant.
- c) The complaint shall be addressed in the first instance to the Chief Executive Officer of the Association.
- d) The complaint shall set out particulars of the alleged conduct or behaviour and detail the specific sections of the Association's Code of Ethical Conduct allegedly breached. It shall include any documentation or other relevant supporting evidence of the act or omission about which the Complainant alleges breaches the Code of Ethical Conduct.

2.2 Receiving the Complaint

- a) The Chief Executive Officer shall acknowledge receipt of the complaint in writing within five (5) working days of receipt.
- b) The Chief Executive Officer shall promptly notify the Board that a complaint has been received.
- c) The Chief Executive Officer shall review the complaint and supporting documents to determine whether, in his/her opinion, the action or omission being complained of may be contrary to the acceptable conduct specified in the Association's Code of Ethical Conduct, and whether it warrants further investigation or consideration.
- d) The Chief Executive Officer shall prepare a report to the Board summarising the facts of the complaint, whether in his/her opinion the complaint is justified, and outlining a recommended course of action, which may include convening a panel or appointing an independent person to investigate the complaint further.

2.3 Investigating the Complaint

- a) Where, in the opinion of the Board, it is determined that there may be a breach of any part of the Association's Code of Ethical Conduct, the Chief Executive Officer shall forward the complaint and supporting documents to the Member and invite them to respond in writing within fifteen (15) working days.
- b) On receipt of the Member's written response to the complaint, the Chief Executive Officer shall prepare a report to the Board summarising the facts of the complaint, the Member's response, and recommended course of action.

- c) Where the Member fails to respond to the complaint in writing, or admits the breach, the Chief Executive Officer shall prepare a report to the Board summarising the facts of the complaint, the results of the investigation, the communication with the Member, and a recommended course of action.
- d) If the investigation uncovers evidence of significant criminal or civil wrongdoing the Board may opt to refer the matter to the New Zealand Police or other law enforcement agency by way of a formal complaint or commence other legal proceedings as it sees fit.

2.4 Hearing the Complaint

- a) Where the Board deems it appropriate, it shall convene a panel (the “Panel”) to hear the complaint. The Panel shall act as a formal sub-committee of the Board with all the powers of a Board Committee. The Panel shall be chaired by the President or his/her substitute and shall consist of a minimum of three (3) individuals co-opted for the purpose of hearing the complaint, plus the Chief Executive Officer.
- b) The Chief Executive Officer shall forward a copy of the complaint and all supporting information to the members of the Panel and arrange a hearing, which shall ordinarily be between six (6) and eight (8) weeks from the date the complaint is referred. The Chair of the Panel may authorise a hearing time outside this timeframe if it is necessary to ensure a fair hearing. However, the hearing must be conducted in a timely fashion.
- c) The quorum for the hearing shall be four (4) members of the Panel and/or appropriately qualified designates. The hearing may be held by Telephone conference, Video conference, or in person, or any combination provided that all attendees can both hear and contribute to the discussions.
- d) Hearings are confidential and the evidence provided during a hearing is not published, other than as required to support a published decision (see below).
- e) The Complainant will have the option, at their cost, of addressing the hearing in person (where the hearing is held in person) or by Telephone conference or Video conference for the purpose of providing further oral evidence. If they choose to address the hearing, they may only be present for the portion of the hearing set aside for that purpose. The Complainant may also choose to provide written evidence in advance of the hearing by signed affidavit. The Complainant may equally opt not to do either.
- f) The Panel may call on any witnesses or other persons to provide oral evidence and/or specialist advice to the hearing, but it has no authority to compel. Any witness or person may opt to provide evidence by way of a signed statement. Any witness or person providing oral evidence may only be present for the portion of the hearing set aside for that purpose.
- g) In keeping with the principles of natural justice, the Member alleged to have committed the breach will have the option, at their cost, of being present during all oral evidence, but may not address the Complainant, witnesses, or the Panel at that time.

- h) The Member alleged to have committed the breach will have the option, at their cost, of addressing the hearing in person (where the hearing is held in person) or by Telephone conference or Video conference for the purpose of providing oral evidence. The Member may also choose to provide written evidence in advance of the hearing by signed affidavit. The Member may equally opt not to do either and this shall not be construed as evidence of acceptance of the allegation.
- i) The Member alleged to have committed the breach may choose to be represented.

2.5 Outcome of Hearing

- a) After hearing and receiving all evidence, the Panel shall deliberate in private until such time that:
 - i. It rules by a three-quarters majority that a significant breach has occurred. In this case a breach shall be found proved and the finding, along with a detailed justification for the finding, shall be referred to the Board;
 - ii. It rules by a three-quarters majority that a technical breach has occurred, but finds that the breach is trivial or trifling and the matter is dismissed;
 - iii. It rules by a three-quarters majority that no breach has occurred, and the matter is dismissed;
 - iv. It cannot agree by a three-quarters majority that a breach has occurred, and the Chair determines that further deliberation would be fruitless. The matter is therefore found to be unproved and is dismissed.
- b) The Complainant and the Member shall be informed without delay by the Chief Executive Officer of the outcome of the hearing and their right to appeal the determination.
- c) If the hearing uncovers evidence of significant criminal or civil wrongdoing the Board may opt to refer the matter to the New Zealand Police or other law enforcement agency by way of a formal complaint or commence other legal proceedings as it sees fit. The Board may also opt to put the complaint proceedings on hold pending the outcome of the same.

2.6 Appealing the Determination of the Hearing

- a) An Appeal against any finding may be made by either the Complainant or Member concerned for any of the following reasons:
 - i. If further evidence that was not previously available becomes available that is materially different to any considered during the hearing and which, on balance, could change the outcome;
 - ii. If the procedure outlined in this document was not adhered to, and the breach is more than trivial and may have materially changed the outcome of the hearing;
 - iii. A member of the Panel had a significant undeclared Conflict of Interest, which may have affected his or her impartiality.
- b) Simply not agreeing with the determination shall not be grounds for appeal.

- c) Any appeal must be made to the Chief Executive Officer within twenty-one (21) working days of advice of the determination of the Panel. The Chief Executive Officer will initially determine whether, on the balance of probability, the appeal meets the criteria outlined above and, if so, shall formally forward the appeal to the Board.
- d) The Board shall consider the matters raised in the appeal and determine whether the appeal is allowed. If so, the Board may hold a supplementary hearing and/or modify the original determination and/or penalty as it sees fit.

2.7 Penalty Imposed

- a) Subject to the outcome of any appeal relating to the determination of the hearing, in the case of a breach, the Panel shall recommend to the Board a penalty consistent with both the gravity of the breach and any previous penalties for similar breaches.
- b) If the complaint is upheld and a breach has been proven, the Board may impose one or more of the following penalties:
 - i. Formal apology to Complainant
 - ii. Publication of name and other details in FPANZ newsletter
 - iii. Payment of disciplinary hearing costs
 - iv. Suspension of membership of the Association
 - v. Expulsion from the Association
- c) In the case of a breach, the Board shall solely decide the penalty, if any. The penalty is not subject to appeal.
- d) The Board shall solely determine whether the existence, details, finding, Complainant identity, and/or penalty shall be released publicly, and no other Member or participant shall release in part or in full any determination or detail related to the hearing or complaint, other than that which the Board chooses to release.