



Fire Protection Association (New Zealand) Incorporated

Complaints and Disciplinary Procedure

1.0 PURPOSE AND CIRCUMSTANCES

- 1.1 The Association will receive and consider a complaint from affected parties and deal with it through the 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 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(s) of the Code of Ethical Conduct that has allegedly been violated, or where the conduct of a Member is considered, in the opinion of the Board, to bring the industry or Association into disrepute.
- 1.4 The complaints 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 procedure, 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, or arbitrate or mediate any commercial dispute.
- 1.6 Notwithstanding 1.4, 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 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 safeguarding the public's trust and interest.

The rules of natural justice will 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 made by those who hear all the evidence.

2.1 Lodging the Complaint

- A complaint may be made by any individual or entity concerning any Member or their employees.
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- The complaint shall be in writing and be signed by the Complainant.
- The complaint shall be addressed in the first instance to the Executive Director of the Association.
- The complaint shall set out particulars of the alleged breach 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

- The Executive Director must acknowledge receipt of the complaint in writing within five (5) working days of receipt.
- The Executive Director shall immediately notify the Board that a complaint has been received.
- The Executive Director shall review the complaint and supporting documents to determine whether, in his/her opinion, the action being complained of may be contrary to the acceptable conduct contained in this Code of Ethical Conduct, and whether it warrants further investigation or consideration.
- The Executive Director 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

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

- Where the Board deems it appropriate, it shall convene a panel (the "Panel") to hear the complaint. The Panel shall act as a sub-committee of the Board with all the powers of the Board. The Panel shall be chaired by the President or his or her substitute and shall consist of a minimum of three (3) individuals co-opted for the purpose of hearing the complaint, plus the Executive Director.

- The Executive Director 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 choose 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.
- The quorum for the hearing shall be four (4) members of the Board and/or appropriately qualified designates. The hearing may be held by Teleconference or in person.
- Hearings are confidential and the evidence provided during a hearing is not published, other than that required to support a published decision (see below).
- The Complainant will have the option, at their cost, of addressing the hearing in person (where the hearing is held in person) or by Teleconference for the purpose of providing further oral evidence. If they are 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 evidence in advance of the hearing by signed affidavit. The Complainant may equally opt not to do either.
- The Panel may call on any witnesses or other persons to provide oral evidence to the hearing, but has no authority to compel. Any witness may opt to provide evidence by way of a signed statement. Any witness providing oral evidence may only be present for the portion of the hearing set aside for that purpose.
- 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.
- 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 Teleconference for the purpose of providing oral evidence. The Member may also choose to provide evidence in writing in advance 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 of breach.
- The Member alleged to have committed the breach may choose to be represented.

2.5 Outcome of Hearing

- After hearing and receiving all evidence, the Panel shall deliberate in private until such time that:
 - 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 National Council;
 - It rules by a three quarters majority that a technical breach occurred, but finds that the breach is trivial or trifling and the matter is dismissed;
 - It rules by a three quarters majority that no breach has occurred and the matter is dismissed;
 - 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.
- The Complainant and the Member shall be informed of the outcome of the hearing and their right to appeal the determination, without delay.

- If the hearing uncovers significant criminal or civil wrongdoing the Board may opt to refer the matter to the NZ Police or other law enforcement agency by way of a formal complaint, or commence other legal proceedings as it sees fit.

2.6 Appealing the Determination of the Hearing

- An Appeal against any finding may be made by either the Complainant or Member concerned for any of the following reasons:
 - 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;
 - If the procedure outlined in this schedule was not adhered to, and the breach is more than trivial and may have materially changed the outcome of the hearing;
 - A member of the Panel had a significant undeclared Conflict of Interest, which may have affected his or her impartiality.
- Simply not agreeing with the determination shall not be grounds for appeal.
- Any appeal must be made to the Executive Director within twenty-one (21) days of the determination of the Panel. The Executive Director 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 National Council.
- The National Council shall consider the matters raised in the appeal and determine whether the appeal shall stand. If the appeal stands the National Council may modify the determination or penalty as it sees fit.

2.7 Penalty Imposed

- 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 National Council a penalty consistent with both the gravity of the breach and previous penalties for similar breaches.
- If the complaint is upheld and a breach has been proven, the National Council may impose one or more of the following penalties:
 - Formal apology to Complainant
 - Publication of name in FPANZ newsletter
 - Payment of disciplinary hearing costs
 - Suspension of membership of the Association
 - Expulsion from the Association
- In the case of a breach, the National Council shall solely decide the penalty, if any. The penalty is not subject to appeal.
- The National Council 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 full any determination or detail related to the hearing or complaint, other than that which the National Council chooses to release.