



Dispute Resolution Scheme Submission

The United Fire Brigades' Association (UFBA)

February 2020

SUBMITTED BY THE UNITED FIRE BRIGADES'
ASSOCIATION (UFBA) ON BEHALF OF OUR MEMBERS

1. Introduction

This is a submission from the United Fire Brigades' Association (UFBA) for and on behalf of UFBA members on the proposed Rules of Fire and Emergency New Zealand's (Statutory) Dispute Resolution Scheme.

The UFBA has a role to put forward a position on issues relevant to its sector and its members. As such, this submission is focussed on the proposed volunteer scheme, not the parallel public scheme. The UFBA has no direct relationship with the public and cannot submit on their behalf. In saying that, the UFBA would expect no provisions, remedies or entitlements offered to the public under that scheme that are not also offered to volunteer personnel. Also that any provision to volunteers would offer no less than career brigade members.

The UFBA was pleased to note that some of the issues raised in our previous submission on the draft Rules were noted and incorporated. Others, which we continue to stand by, have not been and are therefore again reflected in this submission.

With two exceptions, the UFBA supports the Rules of the Dispute Resolution Scheme as presented. The exceptions are:

- a) Timeframes for resolution; and
- b) Lack of appeal process

The UFBA is in favour of a robust, fair and transparent Dispute Resolution Scheme which is clearly and widely communicated to all volunteers, and easy for volunteers to understand and use. We do however make the following recommendations as part of improving the experience for those using the scheme. The context for the recommendations is explained further throughout this submission.

UFBA Recommendations:

- Improve the Complaints Process to make it more accessible, easier to understand and user-friendly, so that personnel are more likely to engage with it as a pre-requisite to the Dispute Resolution Scheme.
- Provide thorough training for all managers on the complaints and DRS processes.
- Include agreed time periods for communication and resolution in order to make the process clear, transparent and timely.
- A clear systematic approach needs to be communicated for easy access to DRS. Consider differentiation of message for different learner types and PC literacy levels.
- Make provision to allow parties to a dispute to challenge the appointment of a dispute resolution practitioner.
- Include a peer review mechanism to support transparency over conclusions.
- Amend the wording of clause 19(3) to be clearer as to the confidentiality of the information obtained by the Chief Executive and clarify that this information will not be passed to other parties, save as necessary to fulfil resolution outcomes.
- Specific reference to tikanga or marae-based processes be included to ensure flexibility for these is covered.
- A process whereby adjudicators' recommendations be published and acted upon be built in to the Rules to give some accountability towards a continuous improvement process.
- A formal appeal process be included as an integral part of this scheme, with appeal to District Court to be a last resort.
- Section 16(1)(f) be deleted.

2. Methodology

The UFBA advised its membership about a consultation on the Dispute Resolution Scheme by email to all brigade leaders and subscribers and Facebook post on 9 January 2020. We provided members with all documents as provided to us by Fire & Emergency NZ; the full proposed Rules document, the Flow Chart document, the "Easy Read" document, and the FAQ document. Members were encouraged to respond to us directly with their feedback, or submit via the Fire & Emergency consultation process, or both.

Engagement with the document was initially extremely low. We have put this down to:

1. A consultation period covering late December and January which is when most volunteer Brigades do not meet, train or muster; and
2. Even the simplified documents being too lengthy and complicated for volunteers to engage with.
3. Lack of any clear 'ask' or differentiation between what existed before and what was being proposed

Because of the initial low engagement, we instead invited our members to answer a simple “Yes” or “No” survey, with 8 questions, and then invited comment on each question for elaboration. Within a little over a week we had received over 300 responses – leading us to conclude that for meaningful engagement of volunteers simpler and quicker is better, with clarity through salient points.

This submission is taken from the responses received, with commentary populated either from the UFBA, the survey responders, the initial consultation response, or a combination thereof. We will group the details using the same questions we included in our survey for transparency.

4. Details

Section 8: Obligation to attempt to resolve dispute before applying to Scheme

The Rules specify that disputes must go through the FENZ Complaint Process before they will be accepted under the Scheme (with exceptions).

We asked our members:

If you have used FENZ’s complaint process, did you find it

- a) Accessible?*
- b) Easy to understand?*
- c) Fit for purpose?*
- d) A quick and fair process?*

51.92% said it was NOT accessible.

This represents a small majority however shows room for improvement.

57.73% said it was NOT easy to understand.

Again a small majority but suggests other factors could help such as plain English, infographics, diagrams and other visuals for a differentiated learning approach.

62.38% said it was NOT fit for purpose.

Here a majority would concur with the need to improve the process.

68.93% said it was NOT a quick and fair process.

Improving timeliness appears to be a critical part of the DRS development.

Some comments were pointed and fuelled by emotion, dissatisfaction and frustration which is to be expected by those who may have been in an uncomfortable position. Comments provided throughout the survey provides invaluable feedback, and from these we have drawn the following commonalities:

Need for training by FENZ Managers. Correct procedure is not consistently followed by regional/area staff. This suggests a need for training throughout FENZ management in the correct process, and the UFBA would support endeavours to roll this out.

Feeling of disconnection between brigades and management. There appears to be a disconnect between management and brigade level with references conveying a ‘them’ and ‘us’ attitude. While this submission does not aim to validate any particular view, we raise this with the suggestion there may be a need to build relationships between both hierarchies and local and national staff.

Timeliness is one of the most overarching themes. While the DRS process is intended to support both victims and accused with fair representation and natural justice, the emotional impact can become intensified when the process is drawn out.

“lack of time constraints caused unnecessary delays”

Communication is key and linked to timeliness. Some respondents did not always feel they knew the current status or situation with their case, nor who to communicate with or when to expect updates.

UFBA acknowledges that this consultation process relates solely to the Dispute Resolution Scheme, not the Complaints Process. However, since the Complaints Process is a prerequisite to enter the DRS, we believe this indicates work is still needed in this area.

If personnel lack confidence in the Complaints Process, they will not be encouraged to engage with the DRS.

We also asked:

If you haven't used FENZ's complaint process:

- a) Do you know where to get details of it?*
- b) Would you feel comfortable in accessing it?*

“I would ask an Officer, CFO, or DCFO for assistance”

51.22% said they DID know where to get details of it.

We appreciate the depth of information that needs to be made available to volunteers but there is room for improvement in accessibility.

71.54% said they WOULD feel comfortable in accessing it.

This majority is encouraging but the scheme needs to be accessible for all.

With a higher percentage of respondents who have not had to engage with the Complaints Process being positive than those who *have* engaged with it, that indicates a lack of positive experience in that engagement, and a dissatisfaction with the Complaints Process in general.

Again, the UFBA would advocate for the need for a strong, robust and effective process leading into the DRS. If such a process is not a positive one, the effectiveness of the DRS is compromised.

UFBA Recommendations:

Improve the Complaints Process to make it more accessible, easier to understand and user-friendly, so that personnel are more likely to engage with it as a pre-requisite to the Dispute Resolution Scheme.

Provide thorough training for all managers on the complaints and DRS processes.

Include agreed time periods for communication and resolution in order to make the process clear, transparent and timely.

A clear systematic approach needs to be communicated for easy access to DRS. Consider differentiation of message for different learner types and PC literacy levels.

Section 9: Time for application to Scheme

We asked:

*Unless you specifically request otherwise, you have to apply to the DRS to resolve a dispute with **90 days** from the date you were notified of the complaint process outcome. Is 90 days enough time?*

81.54% answered that 90 days IS enough time.

Some comments expressed distrust around the process being drawn out and whether this was at times used intentionally to discourage the complainant in continuing. Others raised points around the option to progress or fast-track a pre-existing complaint in the event of recurrence.

The UFBA believes that 90 days is sufficient time but is pleased to see some flexibility allowed for.

Section 15: Appointment of dispute resolution practitioner

We asked:

FENZ will appoint a “suitably qualified and independent dispute resolution practitioner” to deal with your dispute. These practitioners will be paid by FENZ. Does this give you enough reassurance that the process will be completely independent?

62.13% answered YES

36.54% answered NO

The UFBA is encouraged that with a majority comfortable with FENZ funding practitioners, we see that the ongoing arrangement with the UFBA as provider suits the needs of our members.

“So long as they are audited or decisions peer reviewed.”

The UFBA is comfortable that there is a desire to make the Scheme transparent and independent. We suggest consideration be given to allowing parties to challenge with justification the appointment of a dispute resolution practitioner without it impacting adversely on their case.

UFBA Recommendation:

- Make provision to allow parties to a dispute to challenge the appointment of a dispute resolution practitioner.
- Include a peer review mechanism to support transparency over conclusions.

Section 19: Administrator to notify Chief Executive of certain matters

We asked:

If you apply to the DRS, your name, and the names of any other party, will be given to the Chief Executive of FENZ, or their delegate. Would this prevent you from lodging a dispute?

30.79% answered it WOULD prevent them from lodging a dispute
67.88% answered it would NOT prevent them

The UFBA would like to see protections included in the Rules to make clear an expectation that the information will not be passed on to any other party (including the parties' managers) nor will it be used in any way to disadvantage the parties with anybody else. There are some ambiguities around what is deemed 'the delegate' that could be clarified, in order to offer assurance on the level of access to confidential information.

“If you are honest, what’s the problem”

UFBA Recommendation:

Amend the wording of clause 19(3) to be clearer as to the confidentiality of the information obtained by the Chief Executive and clarify that this information will not be passed to other parties, save as necessary to fulfil resolution outcomes.

Section 22: Party entitled to have support people present

We asked:

“Any party to a dispute may be supported at meetings or hearings by up to 2 support people unless they get approval for more. Is 2 support people sufficient?”

“Yes and no, it depends on the situation and the person”

In this question we were also interested in whether marae-based resolution would be raised, which it was.

95.71% said that 2 support people WAS sufficient
3.96% said that 2 support people was NOT sufficient

Our membership suggest that two persons would suffice and we are satisfied that there is flexibility under clause 22(2) for additional support people to be present in some circumstances. However, we would recommend there be specified flexibility on numbers for marae-based processes, where parties agree, to ensure FENZ obligations are met to tangata whenua and support commitment to Te Tiriti O Waitangi.

UFBA Recommendation:

Specific reference to tikanga or marae-based processes be included to ensure flexibility for these is covered.

Section 37: Recommendations to FENZ

A respondent expressed concern that FENZ is not bound to act on recommendations by an adjudicator, even in cases where FENZ workplace conduct or practices have significantly contributed to a dispute and an adjudicator makes recommendations to prevent similar problems occurring in the future.

The UFBA concurs and expresses its concern that this removes any accountability on the part of Fire & Emergency NZ to provide a safe environment for its personnel. We believe it is important that learnings from disputes are accepted and acted upon, otherwise there is no improvement.

UFBA Recommendation:

A process whereby adjudicators' recommendations be published and acted upon be built in to the Rules to give some accountability towards a continuous improvement process.

Section 41: Appeals

We asked:

The Rules state that a party who disagrees with a decision under the DRS can appeal to the District Court. The UFBA believes a formal appeals process should instead be an integral part of the Scheme and that District Court should be a last resort. Do you agree with the UFBA's stance?

94.65% of respondents agree with the UFBA on the need for an appeals process.
5.69% do not agree.

The UFBA has advocated since the first draft of this Scheme for an appeals process to be provided for within the Rules. We believe that expecting volunteers to pursue an issue through the District Court would be unfair, intimidating and expensive and effectively would ensure they will not appeal.

The principles of natural justice as described by the State Services Commission include “offer right of appeal or review”. We are disappointed that subsequent iterations of these Rules have not listened to us and incorporated a formal appeals process outside of the District Court (which we believe should be a last resort).

We note also that Section 16(1)(f) specifically excludes disputes that have been dealt with under the Scheme, which implies there is no provision for appeal through the Scheme. This lack of an ability to appeal is unfair and prejudicial to volunteers and we ask, again, that this be explored.

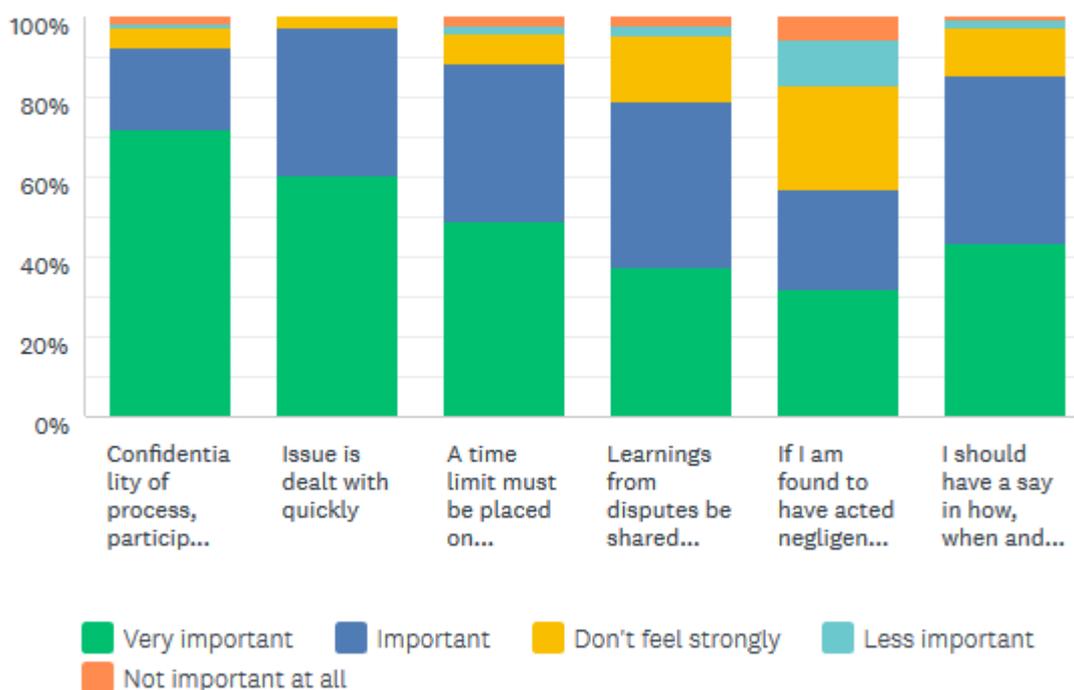
UFBA Recommendation:

- A formal appeal process be included as an integral part of this scheme, with appeal to District Court to be a last resort.
- Section 16(1)(f) be deleted.

Overall:

We asked respondents to tell us how important certain aspects of this Scheme are to them. The statements we sought indication of importance on were:

- Confidentiality of process, participants and outcome*
- Issue is dealt with quickly*
- A time limit must be placed on resolving issues*
- Learnings from disputes be shared widely through FENZ*
- If I am found to have acted negligently, I shouldn't be ordered to pay costs*
- I should have a say in how, when and by whom my issue is progressed*



It is evident that all these statements are very important or important to the majority of respondents, but that confidentiality and speed of resolution are particularly important. This is also borne out by empirical evidence from the work and experience in this area by the UFBA.

We would query whether there was scope in these Rules to place priority on these processes, with an expectation that the status of all cases within the Process be reviewed weekly (with feedback to all parties) and resolution within two months unless circumstances warrant an extension of this time period.

General Feedback and summary

One respondent was concerned about the process when a member of a volunteer Brigade is charged or convicted of a crime. They would like to see a clearer policy on this, in particular the expectation that these be disclosed, that the respondent be suspended and then discharged upon conviction with no right of access to a dispute process, in order to protect FENZ's trusted reputation.

Another has requested there be an automatic notification to FENZ executive if an issue remains unresolved at Area or Region level beyond 60 days. While this is outside of the DRS under consultation we believe this is worth considering within the Complaints policy.

Finally, we invited general comment on respondents' experiences of being involved in disputes. Many comments were highly critical and so we are glad to see Fire and Emergency committing to developing the scheme to one that works better for those involved. It is clear to the UFBA that communication, fairness, perception, and resolution needs to be improved. The UFBA is keen to offer its experience and communication networks to Fire & Emergency NZ to obtain a better experience in these processes for its members.