



The Behaviour & Conduct Office

Consultation on permanent scope and functions

The United Fire Brigades' Association (UFBA)

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

Overview

The United Fire Brigades' Association has been involved in numerous Positive Workplace Culture discussions with Fire and Emergency New Zealand since the release of the review report by Judge Coral Shaw (retired) of Fire and Emergency New Zealand's workplace policies, procedures and practices to address bullying and harassment. The UFBA has long indicated its support for the establishment of a Behaviour and Conduct Office (BCO) and undertaken to facilitate the engagement of its members with the proposed framework. The UFBA encouraged its individual members to make submissions via the *Consider This* platform. This submission is made by the UFBA on behalf of the sector which the UFBA represents.

The same format and numbering is followed as in *Consider This* for your ease of reference.

1. Introduction

To obtain the best possible input for volunteers, we recommend further consideration be given to the optimum timing of consultation on matters of high interest to them. Volunteers in particular are less likely to engage with FENZ administrative matters in the lead up to the holiday season and during the summer holiday break. This is often the busiest time in their non-fire paid jobs and along with family obligations and holidays most volunteer brigades do not muster during much of January.

We suggest the Introduction section is a good place to embed an undertaking that **all** levels of the organisation will be subject to the same behavioural standards, scrutiny and accountability as each other. There should be no doubt in the mind of the newest recruit that they will be held accountable in no more or no less a way than management, executive, NHQ and all branches and levels of the organisation.

It seems a wide jurisdiction is to be granted to the Behaviour and Conduct Office. Essentially the expectation is that personnel or public complain to FENZ about FENZ. FENZ control the whole process from investigation to decision-making, with no external oversight. To the public especially, and to a lesser extent volunteers, FENZ is a singular entity regardless of departmental divisions. The UFBA would feel more comfortable if there were external oversight to provide independent checks and balances.

2. Background

We suggest specifically committing to natural justice principles, with an undertaking that all action taken by the BCO will be subject to the principles of natural justice. We would also suggest in this Background section a link be drawn to relevant legislation and an explanation of how legislated mandates are aligned with this proposal. For example, Section 37 of the Fire and Emergency New Zealand Act 2017 provides that FENZ must ensure that advocacy and support services are available to FENZ volunteers at no cost to FENZ volunteers and on an ongoing basis. This can then link to a discussion at 3.2 (Managing Enquiries and Complaints) covering support services, which is currently not adequately covered – see 3.2 below.

3.1 Proposed functions

The proposal suggests the below functions all vest within the BCO:

- Set standards and behaviours
- Educate and engage (training and development)
- Manage enquiries and complaints
- Restoration and recovery
- Data and intelligence

While we agree all these functions are linked we come back to the perception of complete authority being granted to the BCO without clear external oversight. We do not clearly see a commitment to internal or external relationships and suggest the success of the BCO will possibly be compromised by not utilising existing capability in this space. We would like to see a more collaborative approach between the BCO, Human Resources, welfare advocates and support agencies (unions and associations) working together rather than risk the unintentional creation of silos.

Obviously, we all share a goal of achieving a more proactive approach but the reality is that in the early stages of operations it is likely to be more reactive. The UFBA would suggest a phased implementation approach provides confidence in the process for the BCO to move from reactive to proactive engagement.

We would like to see more detail on FENZ's commitment to a restorative programme. We all know how issues and disputes can destabilise a brigade and while issues can be resolved there is often a residual hurt or resentment which can take some time to heal. Restorative work is so important and we recommend it be a default action – even if it is in the guise of a feedback mechanism.

While directly outside of the scope of this consultation, we did want to query BCO capacity. We remind you that during the Interim Complaints Process in 2019, the UFBA fielded many more cases than did the external consultants managing this Process. As per previous offers of support, the UFBA is available to discuss with FENZ expectations of caseload, types and complexities (anonymised) of cases to help with the establishment of an effective BCO. We want to ensure our members can be confident any approach they make to the BCO will be handled in a timely and effective way, and with the support of their Advocate.

3.2 Managing enquiries and complaints

The document is all but silent on the issue of support for parties to actions. We believe this is a significant oversight and we would like to understand the intentions of the BCO in the proactive provision of advice and support services or for that matter if it envisaged that BCO has any mandate of jurisdiction in this regard. Section 37 of the Act in subsection 1 provides for FENZ to enter into agreements with any organisation providing independent advocacy and support services to make those services available to FENZ volunteers. We assume these provisions will continue to be supported and these services proactively offered to volunteers when they approach the BCO.

We suggest there are a few vital principles which would be reassuring to personnel to embed in this proposed scope. They are:

- Confidentiality
- Timeliness
- Fairness
- Transparency

We believe that the BCO should be founded on these principles and hold them central to every action. For example: In 2019 a survey was conducted by FENZ as part of an introductory hui. One of the questions asked was around what stops people raising complaints. **36%** replied they thought it was pointless because nothing would get done. The second highest reason was because of the fear of retaliation. When asked what they wanted from a Dispute Resolution Process 34% rated timeliness as their most important attribute. Potentially, embedding and reinforcing these 4 principles in all documentation relating to the BCO may provide reassurance to all parties.

Related to fairness and provision of support is the current perception that FENZ only supports the managers. This is evidenced by HR managers often being support persons for managers in disputes. While that may be considered the role of HR, the *perception* this gives non-management personnel is that the outcome is stacked against them from the start; a perception which could lead to those personnel not engaging with the BCO because 'what would be the point'. We suggest further consideration is given to other practices, such as these, in the establishment and promotion of the BCO.

We suggest the inclusion of BCO accountability expectations in the outcomes and recommendations of this proposal. Without undertakings of learnings and monitoring of effective outcomes, the process may fall down.

3.3 Types of complaints managed by BCO

We agree that a Behaviour & Conduct Office should be involved in ALL unwanted behaviour, not just harmful. We do wonder about the subjectivity of whether behaviour is "above the line or below the line" as people will all draw the line at different levels, unless those behaviours form part of a published standard. Perhaps this needs to be considered along with low-level interventions. We would also like to see a commitment to training of managers in setting and communicating brigade expectations, as well as supporting and training managers to deal with low-level issues at brigade level.

Similarly, we do not see any coverage of frivolous or vexatious complaints. Such complaints are growing and it is a fine line as to whether the complaints are laid in retaliation for some disagreement or whether they are genuinely-held concerns. How will the BCO discourage frivolous or vexatious complaints; how will the BCO decline frivolous or vexatious complaints, and whose judgement will determine them as such? The UFBA would welcome an opportunity to discuss this aspect further with FENZ.

In reply to a submission on the *Consider This* platform, FENZ said: “The BCO would also provide access to support through the process for all parties”. As discussed above (section 3.2) this does not provide any details on support services. It makes it sound like the BCO will not only receive, investigate and decide on complaints but that they will also support all parties through the process. The UFBA would like to sit down with the BCO and discuss this to clarify our existing relationship in this area to avoid confusion for the parties.

In the first instance, we do not think the BCO has any legal or moral mandate in matters involving illegal behaviour. We understand there may be a secondary review of events where breaches of FENZ’s Code of Conduct may have occurred, but ALL illegal behaviour should be referred to NZ Police in the first instance. If this is the intention, we believe it would be helpful to specify this within the BCO framework so there is no misunderstanding.

We would like to see some consideration to guidelines around historical allegations. While such guidelines must allow for assessment of the case supporting the acceptance of historical allegations, we do not support historical allegations defaulting to full investigation in all cases. We suggest this be further considered. The UFBA welcomes an opportunity to discuss this aspect further with FENZ.

3.4 Split of work between BCO and HR

Experience has shown us that there can be a wide inconsistency in approach between HR staff in each Region. There is a danger similar inconsistencies could creep in between BCO offices. How will the BCO work to ensure consistency across Regions?

Similarly, we feel there is a real danger for outcomes in regions to be influenced by bias (whether conscious or unconscious). We also find outcomes can risk being unsafe due to undeclared conflicts of interest. The UFBA seeks assurance on how FENZ plans to prevent this within the BCO.

3.5 Use of external investigators

How will the BCO identify appropriate external investigators? Will there be a pre-determined panel of identified suitable people? Will there be a process available under which a party to a dispute can veto a particular investigator? What qualifications and experience will be required by the BCO in their external investigators?

We suggest a fixed level where the use of an external investigator is mandatory. For example, all complaints against Tier 3 or higher managers should be conducted externally.

External investigators are traditionally lawyers. That means each party feels the need to have lawyer support. This can result in undue cost and complexity. We suggest consideration be given to a suitable pool of external investigators who may not be lawyers but are qualified to undertake investigations – particularly those that could be resolved at a lower level.

We recommend that “external” means completely external; not neighbouring brigade chiefs, or retired Area Managers or even retired Firefighters. We would be concerned about the potential for unconscious or institutional bias.

3.6 Reporting line

You propose siting the BCO within the ELT for 18 months and then moving it to People and Capability branch. We do not support this. We support the BCO being sited within the People and Capability branch from the outset. If FENZ is committed to siting the BCO internally, it should sit with the Branch best qualified and experienced in dealing with sensitive and confidential personnel matters. In that way, the BCO will have access to support and resourcing reflecting both Human Resources perspectives and purest Legal perspectives (often very different but important perspectives to provide more grounded views and conclusions).

We propose the establishment of an independent external governance forum that amongst other things will monitor the integrity of the BCO and provide assurance.

3.7 Proposed design

We request that you avoid “Crew” terminology. Crew is primarily an urban paid shift-based term derived from early western fire services naval origins and an integral cultural element. While some urban volunteer brigades have crews (or watches - another naval term), we would not want any other sector of the organisation to feel excluded because of terminology. FENZ aspires to be a unified organisation. The language must change for that to occur.

We do not consider that restoration of brigades is given enough weight in the design. Specialist skills are required to give restoration the best chance of success and we, therefore, recommend it have a greater emphasis.

There is no mention in the document about provision for protected disclosures or whistleblowing. We recommend these areas are explicitly clear in the design operations of the BCO.

It is not clear what processes will be in place to review the operations of the BCO. Because the BCO will be a FENZ division it will be difficult to claim true independence. We suggest an external oversight, at an agreed interval, would be one way to allay those concerns.

3.8 Location

We suggest that flexibility and choice will be important in how personnel will engage with the BCO, for example, some may prefer dealing with locals they know while others may prefer the anonymity of centralised services.

3.9 Proposed interactions

This is the only section where unions and associations along with other people networks (WFENZ, Rainbow Network etc) are mentioned. We believe it would be a disservice to disregard the impact such organisations can add, not to mention the support they can provide.

We would also like to see relationships with unions, associations and other people networks legitimised in this document, facilitating assistance, sharing of information, statistics, learnings etc. Under the Act, FENZ has a duty to consult with such parties on matters of such importance to FENZ personnel.

4 Implementation

There is no mention of grandfathering existing cases to the BCO.
What are the intentions here?

Appendix 2

Appendix 2 is a useful diagrammatical representation of the process. Unfortunately, there is no mention of where to obtain support. We suggest this is such a fundamental requirement of the process that it must be included and we would like to see details of where to obtain support built into this diagram.

CONCLUSION

The UFBA renews its commitment to the launch of the Behaviour & Conduct Office and once again offers its networks and resources for this purpose. The UFBA would appreciate the opportunity to sit with the architects of the BCO and explore ways of formalising and legitimising the relationship between our organisations. The UFBA represents over 85% of FENZ personnel and shares a keen interest in the safety and wellbeing of all those members through ensuring adequate procedures are in place to resolve issues and conflicts.