



## **Professional Standards Consultation**

**Employee code of conduct, disciplinary processes, and  
procedures Policy**

Board Approved July 2022

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## Policy

1. This Employee Code of Conduct, Disciplinary Processes, and procedures (the Code or Employee Code of Conduct) is a Policy of the UFBA formally adopted by the Board for:
  - 1.1. Establishing a code of conduct for employees, including the Chief Executive; and
  - 1.2. Establishing the policies, processes, and procedures to deal with any complaint that some conduct, incident, event, or issue has involved misconduct, serious misconduct, or poor performance on the part of an employee of the UFBA.
2. This policy must be implemented by the Chief Executive as part of the delegated responsibilities of that role to manage all the staff of the UFBA.

## Interpretation

3. All terms used within this policy, unless the context otherwise requires, have the meanings attributed to them within the United Fire Brigades' Association Incorporated's Constitution and Rules (the Constitution) except:
  - 3.1. that this policy uses the term UFBA to refer to the employer organisation whereas the Constitution uses the term Association; and
  - 3.2. the Constitution is referred to as the Rules whereas in this Code it is referred to as the Constitution.
4. The term "Employee" within this policy means any person who operates under any individual employment agreement as that term is defined in the Employment Relations Act 2000 and where that agreement has the UFBA as the employer party and the agreement is extant.
5. The definition of Misconduct is behaviour that breaches the standards of conduct or the law but is unlikely to justify dismissal on the first occasion. The definition of Serious Misconduct is behaviour that breaches the standards of conduct or the law, and which may justify instant dismissal. It must be sufficiently serious to undermine the trust and confidence in the employee so that dismissal is what a fair and reasonable employer could do in the circumstances. Some examples of Serious Misconduct are Dishonesty, e.g., bribery, corruption, theft, falsification of records or claims made against a person; deliberate destruction of property; Fighting at work or on duty; Sexual or other assault; Harassment of co-workers or the public; Being under the influence of drugs or alcohol at work or on duty; Conduct that brings FENZ or the UFBA into disrepute.

## Chief Executive

6. Should there be any complaint that some conduct, incident, event, or issue has involved misconduct, serious misconduct or poor performance on the part of the Chief Executive, all references to the manager or Chief Executive within this policy shall be read as if they were a reference to the Board Chairperson (who shall be charged with implementing all this policy's provisions concerning that complaint) and references to the employee in that context shall be read as if they were a reference to the Chief Executive.

## Part 1 – Employment Relationship Context

### The employment relationship

7. There is an employment relationship, as defined in the Employment Relations Act 2000, between the UFBA as the employer and each of its employees. This establishes a requirement for both the UFBA and its employees to deal with each other in good faith as defined within the Act. Important aspects of the good faith obligations are for the two parties to not do anything to mislead or deceive each other and to be active and constructive in establishing and maintaining a productive employment relationship in which the parties are, among other things, responsive and communicative.

8. Other responsibilities flow to all parties within employment relationships. An important one of these is that common law imposes an implied mutual obligation of trust and confidence on both parties which is also noted in the Employment Relations Act 2000. This requires that the UFBA must act in a manner that obtains and maintains the trust and confidence of its employees and in turn employees must act in a manner that obtains and maintains the trust and confidence of the UFBA.

### **Implementation**

9. As the employer, the UFBA wishes to fully implement these important obligations and will act in good faith as the employer and take cognisance of the need to maintain the trust and confidence of its employees.
10. The UFBA expects employees to also take cognisance of these important obligations and has set out within this policy the principles, standards, and ideals with which it expects its employees to operate so there is clarity of expectations.

## **Part 2 – Code of Conduct**

### **Behavioural principles, standards, and ideals**

11. Whenever employees are in any way identifiable as an employee of the UFBA, whether at work or not, they must operate according to the following principles, standards, and ideals.
  - 11.1. Employees must obey all the laws of New Zealand that apply to the situations within which they find themselves and encourage similar compliance by all colleagues; in particular (but not exclusively) compliance with legislation relating to:
    - 11.1.1. the privacy of personal information that comes into their possession.
    - 11.1.2. the prohibition of discrimination against, or bullying or harassment of, other people.
    - 11.1.3. the misuse of drugs or other controlled substances.
    - 11.1.4. the promotion of the safety and health of themselves and others.
  - 11.2. Employees must be cognisant of the good faith obligations and the need to maintain trust and confidence as outlined in paragraphs 7, 8, and 10 of this policy whenever they are interacting with management, the Board, other employees, or members. Employees must recognise that they have vested in them significant trust and respect as an employee of the UFBA and they must:
    - 11.2.1. conduct themselves with the utmost professional integrity.
    - 11.2.2. invoke the principles of fairness and honesty and exercise good judgement, including being tolerant of the views of others, in all decisions made.
    - 11.2.3. behave to the highest ethical standards.
    - 11.2.4. not do, nor cause, nor permit to be done, anything which is likely to create undue stress, anxiety, or other emotional harm to others; and
    - 11.2.5. accept full responsibility and accountability for their actions.
  - 11.3. Employees must actively investigate and understand all rules, agreements, policies, regulations, or processes relevant to their activities and exercise the highest degree of skill, care, and diligence in complying with those requirements.
  - 11.4. Employees must act with respect, honour, and dignity when interacting with other people, whether those people be managers, direct reports, other employees, members (including elected Board Members or members of UFBA committees), appointed Board Members, suppliers, customers, staff of partner agencies or members of the public. In this regard –

- 11.4.1. Respect requires treating the other as a fellow human being who deserve to be treated with fairness and tolerance of their intentions and motivations, and being collegial, collaborative, and cooperative in all interactions.
- 11.4.2. Honour requires accepting and understanding the differences the other brings to the relationship (in this regard honour is the antonym of denigrating) and making judgements about people solely on the merits of the situation.
- 11.4.3. Dignity requires treating the other as the employee would wish to be treated themselves in the same circumstances and maintaining their own and those other people's professional and personal reputations.
- 11.5. Employees must fully utilise the complete extent of their expertise including, where applicable, applying independent thought and an enquiring mind, to ensure that every other person with whom they interact obtains the fullest benefit of their knowledge, experience, and wisdom.
- 11.6. Employees must consistently demonstrate comradeship and, where appropriate, leadership (up to the level expected of the position that they have attained) in all facets of their employment, ensuring that all managers, colleagues, and direct reports are provided the opportunity to benefit from their knowledge, experience, and wisdom.
- 11.7. Employees must not do, nor cause, nor permit to be done, anything which is likely to bring themselves or the UFBA into disrepute or is otherwise inconsistent with any of the principles, standards, and ideals set out in this Code.
- 11.8. Employees must actively discourage any bullying<sup>1</sup> or discriminatory practices in every activity within which they are involved.
- 11.9. Employees must, by their consistent actions, demonstrate good character, being cognisant of the principles, standards and ideals set out in this Code and the objects of the UFBA, considering their role and the prominence of their position within the UFBA and within the community.
- 11.10. Employees must consider all other matters in which they have an interest, whether that interest is financial or otherwise, and ensure that those interests do not conflict in any way with the interests of the UFBA; and where a potential conflict is discovered they must take the appropriate advice and actively resolve the conflict.

### **Part 3 –Disciplinary processes general principles**

12. The UFBA is a reasonably small employer. All employees know each other and interact regularly. As a general rule, the UFBA will seek to prevent, or at least minimise, the imposition of formal disciplinary processes involving its employees.

#### **Behaviour**

13. The UFBA requires all managers and supervisors to actively manage their employees' behaviour following the principles, standards and ideals set out in Part 2 of this policy. That requires active management and, where appropriate, respectful, and responsive verbal behavioural correction to maintain the standards. Managers and supervisors must only consider the implementation of formal disciplinary processes when the trust and confidence of the UFBA in that employee has been called into question such as:
  - 13.1. when the behaviour is so serious that verbal correction and active management are no longer the appropriate tools to maintain the behavioural standards; or

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<sup>1</sup> The regularly utilised definition of what constitutes bullying is found on the WorkSafe website <https://www.worksafe.govt.nz/topic-and-industry/bullying/bullying-at-work-advice-for-workers#lf-doc-51618>

- 13.2. when the behaviour has continued over an unacceptably long period and active behaviour management techniques have been implemented without appropriate employee behavioural changes being demonstrated; or
- 13.3. when the behaviour has occurred off UFBA premises and out of the manager's or supervisor's control, but where the individual has been identifiable as a UFBA employee, and that behaviour has resulted in a complaint to the UFBA that the behaviour has involved some conduct, incident, event, or issue which can be construed as misconduct or serious misconduct.

## **Performance**

14. Managers and supervisors must fully analyse and understand the needs of their employees concerning any developmental assistance they need to become fully competent and fully effective in performing the duties required of their role.
  - 14.1. Managers and supervisors must then support those employees to obtain the required development assistance after which they must actively manage the employee to ensure that performance continues at the desired levels.

## **Confidentiality and Privacy**

15. The Privacy Act 2010 applies to all aspects related to the implementation of this Code and the people involved. Everyone associated with the consideration of a complaint or grievance submitted under this Code must maintain complete confidentiality and privacy concerning all personal information (as defined in section 7(1) of the Privacy Act 2020) that comes into their possession as part of the consideration of that complaint or grievance. Persons to whom this requirement applies are (but not exclusively) the following:
  - 15.1. The Complainant and their representative when appointed; and
  - 15.2. The person who is the subject of the complaint or grievance and their representative when appointed; and
  - 15.3. Any person investigating a complaint or grievance under this code; and
  - 15.4. Any person who is interviewed as part of an investigation into a complaint or grievance; and
  - 15.5. Members of the Board; and
  - 15.6. Managers and staff involved in the processes; and
  - 15.7. Any specialist advisors or investigators assisting any investigation.
16. Should the circumstances be that there is a legitimate requirement for some other person or organisation to be notified about the complaint or grievance or the outcome of an investigation, then that person or organisation must be informed of these privacy requirements and be bound by them unless otherwise provided for in law.
17. The personal information that must remain private includes the identity of and any other information that could lead to the identification of, the Complainant, or the person who is the subject of the complaint or grievance or any witnesses or other people who participate in any investigation.

## **Part 4 –Disciplinary Processes - Behaviour**

18. Any formal complaints made against an employee relating to behaviour must be dealt with under this section of this policy.

## **Complaints**

19. Any person who has a complaint about an employee's behaviour may submit that complaint to the employee's manager or supervisor.

- 19.1. The person receiving the complaint must not be anyone who is in any way conflicted by having been involved in any capacity whatsoever in the conduct, incident, event, or issue that led to the complaint.
  - 19.2. Should the manager or supervisor be conflicted as outlined in paragraph 19.1 of this policy, the complaint must be passed directly to the Chief Executive to deal with.
  - 19.3. Should the Chief Executive be conflicted as outlined in paragraph 19.1 of this policy, the complaint must be passed directly to the next most senior UFBA manager who is not so conflicted.
  - 19.4. Should the complaint be about the Chief Executive's behaviour, the complaint must be directed to the Board Chair who shall be charged with implementing all this policy's provisions concerning that complaint (see paragraph 6 of this Code).
  - 19.5. Any complaint about the behaviour of an employee who is also a member of Fire and Emergency New Zealand personnel, and which alleges conduct which, if substantiated, could amount to a breach of one or more Fire and Emergency New Zealand policies (including, for the avoidance of doubt, Fire and Emergency's policy to address bullying harassment, and victimisation), must be referred to the Chief Executive of Fire and Emergency New Zealand, by the Chief Executive within five working days of receipt.
  - 19.6. Any complaint referred to Fire and Emergency New Zealand under paragraph 19.5 of this policy will be considered by Fire and Emergency New Zealand, in accordance with its complaints processes.
  - 19.7. The referral of a complaint under clause 19.5 does not prevent the UFBA from dealing with the complaint in accordance with this policy.
20. Any complaint to provide as full as possible details of the conduct, incident, event, or issue that led to the complaint, insofar as it is known to the complainant. The minimum details required are:
- 20.1. the name and contact details of the Complainant - anonymous complaints will not be considered.
  - 20.2. the name of the employee who is the subject of the complaint.
  - 20.3. the time, date, and place of the behaviour leading to the complaint.
  - 20.4. the details of what is perceived to have happened.
  - 20.5. the names and, if possible, contact details of any witnesses.

### **Possible suspension**

21. If the complaint is about behaviour that is so serious (particularly where the complaint alleges behaviour that could be classified as serious misconduct) that the person receiving the complaint believes that the employee could be a danger to themselves or others, or where their presence at work during the investigation could be detrimental to the investigation or the UFBA, they must immediately take the matter to the Chief Executive who will make a draft decision about suspension and, if the suspension is to be considered, the terms according to the law (including pay) that could apply during that suspension.
- 21.1. If the allegations in the complaint allege serious misconduct, suspension must be considered and in other cases where suspension is being considered for other reasons, the employee (and their representative if appointed) must be informed of the draft decision and be provided with the opportunity to urgently submit to the Chief Executive as to why the suspension should not be imposed.
  - 21.2. After receiving and seriously considering the employee's submission (if any) the Chief Executive must decide the issue and the Chief Executive's decision must be implemented as specified within that decision.

## **Possible summary dismissal**

22. Where the complaint alleges serious misconduct of such a scale that the UFBA could no longer have trust and confidence in the employee and the evidence produced with the complaint is conclusive or a brief immediate investigation produces conclusive evidence, summary dismissal may be imposed by the Chief Executive.
  - 22.1. Before imposing summary dismissal, the Chief Executive must provide the employee concerned (and their representative if appointed) an urgent opportunity to submit about the complaint, the evidence, and the possibility of summary dismissal.
  - 22.2. The Chief Executive must provide the employee (and their representative if appointed) access to all the information relating to the complaint.
  - 22.3. In these circumstances, the employee must be suspended for the duration of the consultation (which should not be more than four working days in most situations).
  - 22.4. The Chief Executive must seriously consider any submission received from the employee or their representative before making a final decision on the matter of summary dismissal.
    - 22.4.1. If summary dismissal is imposed, that will be the end of the matter unless the employee initiates action as referred to in paragraph 40 of this policy.
    - 22.4.2. If the Chief Executive decides not to impose summary dismissal, the complaint is to be dealt with as outlined below.

## **Determining whether the complaint should be investigated**

23. On receipt of a complaint under paragraph 19 of this policy, the person receiving the complaint must complete a preliminary fact-finding exercise, within five working days of receipt, to determine:
  - 23.1. is the complaint being sufficiently detailed.
  - 23.2. if the behaviour identified in the complaint has already been investigated and dealt with by or on behalf of the UFBA by another suitable authority (including but not limited to Fire and Emergency New Zealand), and if 'yes', would further investigation by the UFBA amount to double jeopardy.
  - 23.3. if an investigation is warranted; and
  - 23.4. if the complaint relates to a minor incident, or something that is better dealt with informally or locally, and who is best placed to manage it and make suggestions as to how they should do so.
24. The person receiving the complaint must discuss the preliminary findings with the Chief Executive. Where the Chief Executive is the person receiving the complaint, the Chief Executive must discuss the preliminary findings obtained from following paragraphs 23.1 to 23.4 of this policy with the Chair.
  - 24.1. If the Chair agrees with the advice in answer to paragraph 23.2, the Chief Executive must take legal advice verifying that decision after which the Complainant is to be informed by the Chief Executive (or another senior manager as the case may be), in writing, of this ruling and the reasons for it, and the matter shall end there.
  - 24.2. If the Chair agrees that the findings obtained in answer to paragraphs 23.1 to 23.4 of this policy is 'yes', the matter must proceed to investigation following the procedures set out below.

## **Investigation**

25. If the investigation is to proceed, the manager, Chief Executive, or another senior manager, must then decide the form of the investigation and become the Decision-maker on the complaint.



- 25.1. Note that the investigator of a complaint and the Decision-maker must never be the same person and there must always be the greatest degree of separation between the two roles to provide the greatest possible minimisation of potential biases.
26. One of two forms of investigation may be initiated:
  - 26.1. If the complaint is not particularly complex or serious in nature, (including situations where few people need to be interviewed and/or few facts that need to be verified, and where it is not necessary to make any findings on credibility), the Decision-maker may instruct a (non-conflicted) manager or another suitable staff member to conduct the brief investigation required and provide a report to the Decision-maker.
  - 26.2. If the Decision-maker determines that the complaint is complex, or where the allegations within the complaint could amount to serious misconduct, or where there are potentially many people required to be interviewed and/or many facts that need to be verified, the Decision-maker must contract an appropriate independent investigator, external to the UFBA staff, to conduct the investigation and provide a report to the Decision-maker.
    - 26.2.1. Any person appointed as an independent investigator under this policy must be qualified per (or exempt from the provisions of) the Private Security Personnel and Private Investigators Act 2010.
    - 26.2.2. The Decision-maker must consult with the Chief Executive (where the Chief Executive is not the Decision-maker) concerning budget provision to meet the costs incurred by contracting the independent investigator.

### **Terms of Reference for Investigation**

27. The Decision-maker must provide the Investigator with written terms of reference for any investigation which must, at a minimum, require the Investigator to:
  - 27.1. Conduct all investigation activities fully following the principles of natural justice; and
  - 27.2. Recognise the imbalance of power that may exist when there are disagreements, conflicts or disputes between employees who have different ranks or status within the organisation (reference Employment Relations Act section 3(a)(ii)).
  - 27.3. Consider all the information provided by the Complainant; and
  - 27.4. Interview the Complainant (in the presence of their representative if they choose to appoint such a person); and
  - 27.5. Interview the employee to whom the complaint relates (in the presence of their representative if they choose to appoint such a person); and
  - 27.6. Interview any witnesses; and
  - 27.7. View any relevant physical evidence; and
  - 27.8. Fully document all testimony or physical evidence that either substantiates or disproves the substance of the complaint; and
  - 27.9. Provide a draft of the report to the employee (and their representative where appointed) who is the subject of the complaint and fully consider the submission (if any) from that person or their representative before finalising the report.
  - 27.10. Provide a full detailed report of the investigation findings to the Decision-maker.

### **Investigator's report limitations**

28. Regardless of which option the Decision-maker chooses for the investigation (see paragraphs 26.1 And 26.2 of this policy), the report of the Investigator must only cover the facts and evidence that was found.
  - 28.1. The report must not comment whether or not the complaint should or should not be upheld, nor whether the complaint amounts to misconduct or serious misconduct, nor comment about what actions could be taken from that point nor comment upon the penalties that could be imposed.

- 28.2. The decision on whether or not the complaint is upheld or not and whether the allegations, if upheld, amount to serious misconduct or misconduct and what penalty, if any, should be imposed on the employee, are decisions that are solely the responsibility of the Decision-maker after receiving final submissions from the employee who is the subject of the complaint (or their representative).

### **Rights of the employee complained about**

29. The employee about whom the complaint relates must be provided with all rights to which they are entitled under the employment agreement to which they are a party and be treated fully following the principles of natural justice. Without limiting those provisions, the treatment of the employee must include the following.
  - 29.1. The employee must be provided with all documentation and other information that sets out the details of the complaint including the identity of the person making the complaint. The UFBA reserves the right, under exceptional circumstances, to decide it will not be appropriate to disclose the complainant's name to the employee and/or to disclose details relevant to the complaint (e.g. where a complainant has made allegations relating to the employee's behaviour to a third party, but the third party does not want those allegations to be shared or investigated); or where a complainant has disclosed personal information about themselves in the context of their complaint and sharing that information with the employee would amount to an unwarranted disclosure of their affairs under section 53(b) of the Privacy Act 2020 (e.g. a complainant explaining how the employee's behaviour towards them has impacted on their mental health).
  - 29.2. The employee must be informed that they have the right to appoint a representative of their choosing who may represent and/or advocate for them in every activity related to the investigation and decision-making involved in the complaint process.
  - 29.3. The employee must be provided with the name of the Investigator (where one is appointed); and
  - 29.4. The employee must be informed of the name of the person who will be the decision-maker about the investigation.
  - 29.5. The employee must be provided with information about how to contact the UFBA's confidential EAP service.
30. The Investigator and the Decision-maker must:
  - 30.1. involve the employee's representative (when appointed) fully in all consultation processes within the investigation and the final decision process.
  - 30.2. consistently recognise the right of that representative to represent the employee, including the right to advocate on behalf of the employee.
31. The employee, and their representative (if appointed), must be given the fullest opportunity, within a reasonable time, to meet the Investigator and submit their views either in person or in writing or any other suitable format, along with any evidence they wish to present in attempted refutation of the allegations within the complaint.
32. Before the Investigator finalises their report to the Decision-maker, a draft of the report must be provided to the employee (and their representative if appointed) and a reasonable time provided for them to respond with submissions about the draft report.
  - 32.1. The Investigator must seriously consider the employee's (or their representative's) submissions and make any appropriate changes to the draft report before presenting that report to the Decision-maker as the outcome of the Investigation.
  - 32.2. Upon presenting the investigation report to the Decision-maker, the Investigator must provide the UFBA administration, in complete confidence, all documentation they have gathered during the investigation for secure filing. The Investigator's role in the process will be complete after the decision maker has considered the report and determined that they require no further information or assistance from the investigator.

## Decision-maker's role

33. The decision-maker, on receipt of the Investigator's report, must not make any decisions at this stage of the process. There are several steps in the process before the final decision may be considered.

## Employee's final opportunity to input

34. The Decision-maker must, as soon as is physically possible, provide an unedited copy of the Investigator's Final Report to the employee who is the subject of the complaint (and their representative if one is appointed). That report must be accompanied by a letter from the Decision-maker that informs that no decision has been made and that it will not be made until any submission from them, or their representative has been received and fully considered.
  - 34.1. Where the evidence set out in the report is such that there is a possibility that it could lead to a finding that the complaint is upheld, the employee and their representative must be informed of the likely consequences if that was to be the final decision once their submissions had been considered. The Decision-maker must stress that the decision has not been made but that this information is being provided solely to ensure they are fully informed so they can construct the most appropriate submission taking account of all relevant information.
  - 34.2. If one of the possible outcomes could be that a first warning, a warning, or a final warning could be placed on the employee's file, the draft wording of that possible warning must be specified. This is to ensure that, even if the employee or their representative intends to present a submission that does not completely deny but seeks to mitigate the outcome of the complaint, they are in full possession of the possible result to make that mitigating submission.
  - 34.3. Should the complaint, if it was eventually to be upheld, be able to be classified as serious misconduct, dismissal must be a possible outcome because the employer would have lost trust and confidence in the employee for having behaved in a manner that amounts to serious misconduct. In this case that must be made clear as a possible outcome so the employee and their representative (if appointed) may submit on that possibility.
  - 34.4. The Decision-maker must provide a reasonable time for the employee or their representative to compile and submit their submission. They must receive that submission in person or writing or any other suitable format of the employee's choice.

## Decision

35. Upon receipt of the employee's or their representative's submission, the Decision-maker must seriously consider every aspect of the employee's submission. The Decision-maker must then make the decision and write the Final Report about the complaint. Being a civil matter, the standard of proof required is the balance of probabilities. For the complaint or grievance to be upheld either in full or in part, the Decision-maker must decide that, given all the testimony and other evidence before them, on balance, it is more probable than not that the conduct, incident, event, or issue (or some of it in the case of a partially upheld decision) occurred as outlined by the complainant.
  - 35.1. Should the decision be that the complaint is upheld, either fully or in part, the Decision-maker must, within the Final Report, detail the penalty, if any, that is to be imposed. If the finding in upholding the complaint is one of misconduct, the available penalties are:
    - 35.1.1. A First Warning (using the words very closely aligned to the draft presented by paragraph 34.2 of this policy) to be placed on the employee's file for a maximum period of three months.
    - 35.1.2. A Warning (using the words very closely aligned to the draft presented by paragraph 34.2 of this policy) which will often follow from a First Warning but does not have to if the complaint that was upheld was serious enough, to be placed on the employee's file for a maximum period of six months.

- 35.1.3. A Final Warning (using the words very closely aligned to the draft presented by paragraph 34.2 of this policy) which will often follow from a Warning but does not have to if the complaint that was upheld was serious enough, to be placed on the employee's file for a maximum period of twelve months.
- 35.2. If the finding in upholding the complaint is one of serious misconduct, dismissal from employment is an available outcome because serious misconduct implies a complete loss of the UFBA's trust and confidence in that employee. If the Decision-maker is not the Chief Executive, it must be specified that this penalty is only being recommended to the Chief Executive for decision because only the Chief Executive has the authority to dismiss an employee.

### **Dismissal**

36. Should the Decision-maker have recommended to the Chief Executive that dismissal be considered, the Chief Executive must review all the information from:
- 36.1. The investigation; and
- 36.2. The outcomes of all processes where the employee or their representative had been able to make submissions, including the actual submissions received (or the notes kept of verbal submissions).
37. The Chief Executive may, but does not have to, decide to request a further submission from the employee or their representative specifically on the subject of dismissal; and if the Chief Executive does so, the Chief Executive must provide sufficient time for that submission to be produced and seriously consider any submission received before making the final decision (which does not have to be dismissal – the Chief Executive could decide to impose a lesser penalty).

### **Publication of the outcome**

38. Paragraphs 15, 16, and 17 of this Code apply to the publication of the outcome of an investigation into a complaint or grievance.
- 38.1. Regardless of whether the complaint was upheld or not, the Decision-maker must publicise the full outcome only to the employee against whom the complaint was made (and their representative if appointed) and to the Chief Executive (if the Chief Executive was not the Decision-maker).
- 38.2. The Decision-maker may only provide the Complainant with information relating to whether or not the complaint has been upheld or upheld in part. No information relating to penalties, if any, that are to be imposed is to be passed to the Complainant. Should it be deemed appropriate that the Complainant should receive a copy of the final report, that report must be heavily redacted to protect the privacy of the person complained about and any witnesses or other people involved.
39. The terms of the final decision are then to be implemented as specified within that decision.

### **Further processes**

40. The processes that are available to the employee, if they disagree with the implementation of the decision of the Decision-maker, are those set out in Part 9 of the Employment Relations Act 2000.

## **Part 5 –Disciplinary Processes - Performance**

41. Any formal complaints made against an employee relating to performance must be dealt with under this section of this policy.

### **Performance complaints**

42. Only managers or supervisors who have direct responsibility for the employee concerned may initiate a formal complaint about that employee's performance.

- 42.1. Any other person who has a complaint about an employee's performance must take that matter up with the employee's immediate manager/supervisor who must then act as outlined below.
  - 42.2. The direct manager or supervisor of the employee who is the subject of the complaint must immediately pass that complaint to the next manager up the chain of command to action (this manager then becomes the "person receiving the complaint"). This is because the employee's immediate manager can be implicated in a poor performance complaint.
  - 42.3. Should the Chief Executive be the manager of the employee who is the subject of the complaint, the Chief Executive must inform the Board Chairperson and act on that person's instructions.
43. Any complaint must be in writing providing as full as possible details of the area of allegedly poor performance that led to the complaint. The minimum details required are:
- 43.1. the name and contact details of the Complainant - anonymous complaints will not be considered.
  - 43.2. the name of the employee whose performance is the subject of the complaint.
  - 43.3. the details of where and when (which may be over a specified time) the allegedly poor performance occurred.
  - 43.4. the details of what the poor performance is perceived to have involved.
  - 43.5. any evidence relating to the alleged poor performance including details of any other person who may have additional evidence or information or opinions relevant to the complaint.
  - 43.6. the clause or clauses of the UFBA's policies or employment agreement or job description that is, or are, alleged to have been breached by the poor performance.

### **Determining whether the complaint should be investigated**

44. On receipt of a complaint under paragraphs 42.1 or 42.3 of this policy, the person receiving the complaint must review the information and determine the answers to the following questions:
- 44.1. Is the complaint trivial, insufficiently detailed, or without foundation?
  - 44.2. Has the performance of the employee already been investigated and dealt with by the UFBA, and if 'yes', would further investigation by the UFBA amount to double jeopardy?
45. The person receiving the complaint must discuss the information obtained in answer to paragraphs 44.1 and 44.2 with the Chief Executive to verify, or not, those answers. Where the Chief Executive is the person receiving the complaint, the Chief Executive must discuss the information obtained with the Chair to verify, or not, the information.
- 45.1. If the two managers concerned agree that the answer to one or more of the questions in paragraphs 44.1 to 44.2 of this policy is 'yes', the two managers must take legal advice verifying that decision after which the Complainant is to be informed by the person receiving the complaint, in writing, of this ruling and the reasons for it, and the matter shall end there.
  - 45.2. If the two managers concerned agree that the answer to all of the questions in paragraphs 44.1 to 44.2 of this policy is 'no', the matter must proceed to investigation following the procedures set out below.

### **Investigation**

46. If the investigation is to proceed, the investigation of a complaint about performance will always be an internal investigation. The person receiving the complaint must become the Decision-maker and appoint a manager or other employee to be the investigator (that person must not, in either case, be immediately involved in the chain of command of the employee who is the subject of the complaint).

- 46.1. Note that the Investigator of a complaint and the Decision-maker must never be the same person and there must always be the greatest degree of separation between the two roles to provide the greatest possible minimisation of potential biases.

### **Terms of Reference for Investigation**

47. The Decision-maker must provide the Investigator with written terms of reference for any investigation which must, at a minimum, require the Investigator to:
  - 47.1. Conduct all investigation activities fully following the principles of natural justice; and
  - 47.2. Recognise the imbalance of power that exists when there are disagreements, conflicts or disputes between employees who have different ranks or status within the organisation (reference Employment Relations Act section 3(a)(ii)).
  - 47.3. Consider all the information provided by the Complainant; and
  - 47.4. Interview the Complainant (in the presence of their representative if they choose to appoint such a person); and
  - 47.5. Interview the employee to whom the complaint relates (in the presence of their representative if they choose to appoint such a person); and
  - 47.6. Interview any other people who have relevant information about the complaint or the performance; and
  - 47.7. View any relevant physical evidence; and
  - 47.8. Fully document all testimony or physical evidence that either substantiates or disproves the substance of the complaint; and
  - 47.9. Provide a draft of the report to the employee (and their representative where appointed) who is the subject of the complaint and fully consider the submission (if any) from that person or their representative before finalising the report.
  - 47.10. Provide a full detailed final report of the investigation findings to the Decision-maker.
48. The Investigator must require the manager or supervisor of the employee who is the subject of the complaint to provide the Investigator, in writing, with the following:
  - 48.1. Evidence that the manager or supervisor undertook a full assessment of the employee's development needs (and consulted the employee about that assessment including the outcomes) which showed:
    - 48.1.1. where the employee was fully competent and fully effective in completing the job as required by the employment agreement and job description; and separately,
    - 48.1.2. the areas where the employee was below that level of effectiveness and competence detailing what developmental assistance and support where required.
  - 48.2. Evidence that shows that appropriate developmental assistance was provided as identified in the Development Needs Assessment, in whatever form was most suitable to effect performance improvement up to the fully effective and fully competent levels, whether that assistance was, or was a combination of, education, training, coaching, or mentoring.
  - 48.3. Evidence that shows that regular appropriate assessments were conducted to test the effectiveness of the developmental assistance provided and adjustments made where appropriate.
  - 48.4. Evidence that details the employee's level of competence and effectiveness within the role following that developmental process.
  - 48.5. Evidence of the employee's active and enthusiastic involvement, or otherwise, in the assistance provided.

### **Investigator's report limitations**

49. The report of the Investigator must only cover the facts and evidence that was found.

- 49.1. The report must not comment whether the complaint should or should not be upheld, nor comment about what actions could be taken from that point nor comment upon any penalty that could be imposed.
- 49.2. The decision on whether or not the complaint is upheld or not, and what other processes including penalties, if any, might be imposed on the employee if the complaint is upheld, are decisions that are solely the responsibility of the Decision-maker after receiving final submissions from the employee who is the subject of the complaint (or their representative).

### **Rights of the employee complained about**

50. The employee about whom the complaint relates must be provided with all rights to which they are entitled under any employment agreement to which they are a party and be treated fully following the principles of natural justice. Without limiting those provisions, the treatment of the employee must include the following.
  - 50.1. The employee must be provided with all the written documentation that sets out the details of the complaint including the identity of the person making the complaint. No details of any sort relevant to the complaint shall be withheld.
  - 50.2. The employee must be informed that they have the right to appoint a representative of their choosing who may represent and/or advocate for them in every activity related to the investigation and decision-making involved in the complaint process.
  - 50.3. The employee must be provided with the name of the Investigator (where one is appointed); and
  - 50.4. The employee must be informed of the name of the person who will be the decision-maker concerning the investigation.
  - 50.5. The employee must be provided with information about how to contact the UFBA's confidential EAP service.
51. The Investigator and the Decision-maker must:
  - 51.1. involve the employee's representative (when appointed) fully in all consultation processes within the investigation and the final decision process.
  - 51.2. consistently recognise the right of that representative to represent the employee, including the right to advocate on behalf of the employee.
52. The employee, and their representative (if appointed), must be given the fullest opportunity, within a reasonable time, to meet the Investigator and submit their views either in person or in writing or any other suitable format, along with any evidence, in attempted refutation of the allegations within the complaint.
  - 52.1. Before the Investigator finalises their report to the Decision-maker, a draft of the report must be provided to the employee (and their representative if appointed) and a reasonable time provided for them to respond with submissions about the draft report.
  - 52.2. The Investigator must seriously consider the employee's (or their representative's) submissions and make any appropriate changes to the draft report before presenting that report to the Decision-maker as the outcome of the Investigation.
  - 52.3. Upon presenting the final investigation report to the Decision-maker, the Investigator must provide the UFBA administration, in complete confidence, with all documentation for secure filing, and then the Investigator's role in the process is complete.

### **Decision-maker's role**

53. The decision-maker, on receipt of the Investigator's report, must not make any decisions at this stage of the process. There are several steps in the process before the final decision may be considered.

## Employee's final opportunity to input

54. The Decision-maker must, as soon as is possible, provide an unedited copy of the Investigator's Final Report to the employee who is the subject of the complaint (and their representative if one is appointed). That report must be accompanied by a letter from the Decision-maker that informs that no decision has been made and that it will not be made until any submission from them, or their representative has been received and fully considered.
  - 54.1. Where the evidence set out in the report is such that there is a possibility that it could lead to a finding that the complaint is upheld, the employee and their representative must be informed of the likely consequences if that was to be the final decision once their submissions had been considered. The Decision-maker must stress that the decision has not been made but that this information is being provided solely to ensure they are fully informed so they can construct the most appropriate submission taking account of all relevant information.
  - 54.2. If one of the possible outcomes could be that a Performance Improvement Programme (PIP) be implemented, the draft outline of that programme must be specified. This is to ensure that, even if the employee or their representative intends to present a submission that does not completely deny but seeks to mitigate the outcome of the complaint, they are in full possession of the possible result to make that mitigating submission.
  - 54.3. The Decision-maker must provide a reasonable time for the employee or their representative to compile and submit their submission. They must receive that submission in person or writing or any other suitable format at the employee's choice.

## Decision

55. Upon receipt of the employee's or their representative's submission, the Decision-maker must seriously consider every aspect of the employee's submission. The Decision-maker must then make the decision and write the Final Report about the complaint. Being a civil matter, the standard of proof required is the balance of probabilities. For the complaint of poor performance to be upheld either in full or in part, the Decision-maker must decide that, given all the testimony and other evidence before them, on balance, it is more probable than not that the employee's performance (or some of it in the case of a partially upheld decision) occurred as outlined by the complainant.
56. Should the final decision be that the complaint is upheld, either fully or in part, the Decision-maker must, within the Final Report, detail the action, if any, that is to be implemented or any penalty that is to be imposed. There are several possible actions or penalties available.
  - 56.1. Even when the decision is that the complaint is upheld there may be circumstances where no other action is taken. The employee may simply be informed that they need to be more vigilant in performing their role in the future.
  - 56.2. A Performance Improvement Plan (PIP) could be imposed where specified developmental assistance would be provided to bring the employee up to the fully effective and fully competent level of performance over a specified time. There is a warning inherent in a PIP that if the performance does not improve appropriately continued employment could be jeopardised.
  - 56.3. Dismissal from employment. If the Decision-maker is not the Chief Executive, it must be specified that this is being recommended to the Chief Executive for decision because only the Chief Executive has the authority to dismiss an employee. Dismissal would only be considered in the most serious circumstances where the UFBA is likely to have lost trust and confidence in that employee, for example:
    - 56.3.1. where the employee had belligerently failed to undertake their role regardless of active assistance and support of their manager; or
    - 56.3.2. the complaint of poor performance was after an earlier complaint, or complaints, that was, or were, upheld.



56.3.3. the employee refuses to participate in performance improvement.

57. A decision that a complaint of poor performance is upheld must always involve a subsequent discussion between the Decision-maker and the employee's immediate manager. The manager must be assisted to implement improved management practices to ensure employee performance at the required levels is continuously supported, developed, and managed. Appropriate developmental assistance must be provided to the manager to assist this transition.

### **Dismissal**

58. Should the Decision-maker have recommended to the Chief Executive that dismissal be considered, the Chief Executive must review all the information from:

58.1. The investigation; and

58.2. The outcomes of all processes where the employee or their representative had been able to make submissions, including the actual submissions received (or notes from verbal submissions).

59. The Chief Executive may, but does not have to, decide to request a further submission from the employee or their representative specifically on the subject of dismissal; and if the Chief Executive does so, they must provide sufficient time for that submission to be produced and seriously consider any submission received before making the final decision (which does not have to be dismissal – the Chief Executive could revert to the actions set out in paragraphs 56.1 or 56.2 of this policy).

### **Publication of the outcome**

60. Paragraphs 15, 16, and 17 of this Code apply to the publication of the outcome of an investigation into a complaint or grievance.

60.1. Regardless of whether the complaint was upheld or not, the Decision-maker must publicise the full outcome only to the employee against whom the complaint was made (and their representative if appointed), to the employee's direct manager, and to the Chief Executive (if the Chief Executive was not the Decision-maker).

60.2. The Decision-maker may only provide the Complainant with information relating to whether or not the complaint has been upheld or upheld in part. No information relating to penalties, if any, that are to be imposed is to be passed to the Complainant.

60.2.1. Should it be deemed appropriate that the Complainant should receive a copy of the final report, that report must be heavily redacted to protect the privacy of the person complained about and any witnesses or other people involved.

60.3. The terms of the decision are then to be implemented as specified within that decision.

### **Further processes**

61. The processes that are available to the employee, if they disagree with the implementation of the decision of the Decision-maker, are those set out in Part 9 of the Employment Relations Act 2000.