

The Fundraising Institute of New Zealand (FINZ) formal complaints process

Introduction

The complaints process outlined below is a formal part of the Constitutional Rules of the Fundraising Institute of New Zealand.

Complaints process and procedures

A. The complaints process and procedures in overview

- A.1 The authority of the Institute to receive, investigate and make determination on behaviour arising from complaints is stated in Clause 23 of these Constitutional Rules with potential consequences described in Clause 9.2.
- A.2 The Institute shall be responsible for receiving and processing any complaint that alleges a breach of the Institute's Code of Ethics and/or Code of Professional Conduct by a Member of the Institute.
- A.3 The Institute has no statutory powers in relation to the application of the Code of Ethics and Code of Professional Conduct; nor in addressing breaches upheld through these complaints process and procedures.
- A.4 Where a member of the Ethics Committee, the CEO or delegated representative has an interest, whether business, financial or personal, that will make it difficult for him/her to discharge his/her duties under the complaints process or may bring the complaints process into disrepute, (s)he may not act as a decision maker in regard to a complaint, and is required to declare that interest and stand aside from the complaints process.
- A.5 The fundamental goals of the complaints process are to:
 - A.5.1 provide an avenue to investigate and make a determination on reported concerns and complaints concerning the behaviour of Members of the Fundraising Institute of New Zealand (FINZ);
 - A.5.2 positively influence the behaviour of other individuals and organisations engaged in fundraising.

A.6 The complaints process takes into account the following principles:

- Accessibility** - details of the process should be available to members and the public, in plain language, at no cost.
- Accountability** - outcomes of reviews and reasons for decisions should be appropriately reported.
- Effectiveness** - the process should provide sanctions appropriate to the offence committed and provide an opportunity to monitor any sanctions.
- Efficiency** - the process should be conducted in a timely manner without undue delay in commencement or conclusion with adequate resource given to managing the process
- Evidence** - the process should provide for the collection and analysis of data pertaining to the complaint, including material from both the complainant and the defendant.
- Fairness** - the process should be fair to all parties.
- Professionalism** - the process shall maintain respect for all parties.
- Regular review** - the process should be reviewed periodically to ensure that complaints are handled efficiently and to bring forward any recommendations for change that might arise.

B. Making a complaint

- B.1 A formal complaint can only be investigated against a Member of the Fundraising Institute of New Zealand. However, any person may lodge a formal complaint, whether or not they hold FINZ membership.
- B.2 Any person may contact FINZ with a query in relation to a Member's behaviour or practice without engaging in the formal complaints process. In some cases, an inquiry may be satisfactorily answered e.g. with brief information or clarification. Should an inquirer wish to explore making a formal complaint, information as to how to go about this must be supplied.
- B.3 A FINZ Member is encouraged to self- report possible breaches of the Codes and seek assistance from the CEO in relation to remedying the breach.
- B.4 The complaints process neither replaces nor overrides any rights available to a person by law.
- B.5 FINZ Members acknowledge that:
 - B.5.1 they have no right of action in any court; they may, however, appeal the decision arising from this complaints process as outlined in Clause F. Appeal Process of this document.
 - B.5.2 they have no right to damages or any form of compensation or indemnity; as against FINZ or any officer of FINZ or members of the Ethics Committee as a consequence of the complaints process.

- B.5.3 costs of any nature which may be incurred (including, but not limited to, legal costs) in answering a complaint cannot be reimbursed.
- B.5.4 they have no right to any losses or damages of any nature which have been incurred directly or indirectly due to the Ethics Committee making a finding of Unsatisfactory Conduct or Professional Misconduct.

C. Establishing a complaint

- C.1 The CEO will respond to any enquiry in the nature of a complaint within five (5) working days, without making judgement as to whether the complaint may or may not constitute a breach of the Institute's Code of Ethics and/or Code of Professional Conduct. The CEO will explore with the complainant whether or not a formal complaint process is appropriate or whether, in the opinion of the complainant their concerns can be satisfactorily addressed, e.g. with the provision of information or through clarification, and the enquiry process concluded.
- C.2 If, however, a complainant wishes to make a formal complaint about behaviour/activity which they allege violates the FINZ Code of Ethics or Code of Professional Conduct, the process below will apply.
- C.3 A formal complaint must be made in writing on a FINZ Complaints Form and contain sufficient detail to enable FINZ to identify the complainant, the Member against whom the complaint is being laid and the nature of the complaint. The complainant shall complete and sign the Complaints Form and, where possible and reasonable to do so, indicate on the Form, the part/s of the FINZ Code of Ethics and/or the FINZ Code of Professional Conduct they believe have been breached.
 - C.3.1 In lodging a complaint, the complainant accepts that (s)he may be required to
 - C.3.1.1 explain and answer questions in relation to the complaint and possibly
 - C.3.1.2 explain and answer questions in the presence of the defendant or representative of the defendant. (The purpose of this requirement is to discourage frivolous or vexatious complaints and enable the defendant an opportunity to be heard in relation to the allegations made against him/her and shall only be exercised if it is deemed appropriate to do so in order to achieve natural justice).
 - C.3.2 If the complaint concerns suspected Unsatisfactory Conduct, it must be lodged within three (3) years of the alleged breach.
 - C.3.3 If the complaint concerns suspected Professional Misconduct, it may be lodged at any time after an alleged breach.
- C.4 The complaint will be directed to the CEO who:
 - C.4.1 must acknowledge receipt of the completed and signed formal complaint to the complainant within ten (10) working days of receiving the complaint;
 - C.4.2 may, if appropriate and without judgement, ask the complainant whether the disputing parties have considered a mediation process;

- C.4.3 may request further information from the complainant if the CEO considers it necessary for the Ethics Committee to be adequately able to investigate the complaint;
 - C.4.4 will reject the complaint following a discussion with the Chair of the Ethics Committee if there is insufficient information to warrant investigation, or the complaint is judged to be trivial or frivolous, or if the issue has already been investigated and dealt with by the Institute;
 - C.4.5 shall refer the complaint to the defendant within ten (10) working days of receiving the complaint if, in discussion between the CEO and Chair of the Ethics Committee, it is agreed there is sufficient information to warrant investigation.
- C.5 If further information is requested from the complainant under section C.4.3 and not received within ten (10) working days of the request being made, the complaints process will not proceed unless there is good reason to continue, e.g. a potential serious breach which FINZ has a duty of care to pursue.
- C.6 The CEO will provide the defendant with a copy of the Codes of Ethics and Professional Conduct, the signed formal complaint together with supplied supporting documentation, including any further information obtained pursuant to C.4.3.
- C.7 The defendant may respond to the complaint by writing to the CEO, and if (s)he chooses to do so, shall submit that response within twenty (20) working days of the signed formal complaint having been received by the CEO, or such other time as permitted by the CEO guided by the Chair of the Ethics Committee.

D. Investigating a complaint

- D.1 Within ten (10) working days of receiving the defendant's response to the complaint or expiry of the time permitted for the defendant to respond as described in C.7, the CEO shall
- D.1.1 forward all documentation received from the complainant and defendant to members of the Ethics Committee
 - D.1.2 inform the Chair of the Board that a formal complaints investigation is commencing.
- D.2 If a complaint concerns suspected Professional Misconduct, the Ethics Committee must initiate an investigation without delay.
- D.3 If a complaint concerns suspected Professional Misconduct, it can not be withdrawn by the complainant. FINZ will retain all documents provided to it by the complainant to facilitate the Ethics Committee's review and determination of the complaint.
- D.4 If a complaint concerns a potential criminal component (including but not limited to fraud, embezzlement, theft or illegal sexual activity), the Chair of the Ethics Committee in consultation with the CEO and Board Chair shall advise the complainant to refer the complaint to the NZ Police; or if the complainant does not choose to do so and it is agreed by the CEO and both Chairs, the matter will be referred directly to the Police.

- D.5 Failure by the defendant to co-operate with investigations by the Ethics Committee may constitute either Unsatisfactory Conduct or Professional Misconduct, depending on the Committee's assessment of the nature of the complaint.
- D.6 When a complaint is referred to the Ethics Committee, the CEO will provide the following information about the complaint to the Ethics Committee:
- D.6.1 the complaint;
 - D.6.2 the defendant's response to the complaint; and
 - D.6.3 any relevant additional documents.
- D.7 The Ethics Committee may:
- D.7.1 seek legal advice in relation to the handling of the complaint, in respect of either process or management of the outcome;
 - D.7.2 if the CEO (or complainant) has not already done so under Clause D.4, refer the complaint to the Police where appropriate;
 - D.7.3 defer the review of a complaint where legal proceedings have commenced pending the outcome of those proceedings.
- D.8 The Chair of the Ethics Committee shall convene a meeting of the members of the Ethics Committee within ten (10) working days of receiving the information referred to in D.6 above for the purpose of determining whether there is a case to answer in terms of potential breach of the Institute's Codes of Ethics and/or Professional Conduct, and either
- D.8.1 advise both the complainant and defendant if in the opinion of the Ethics Committee there is no case to answer or
 - D.8.2 advise both the complainant and the defendant if in the opinion of the Ethics Committee there is a case to answer.
- D.9 If it is deemed by the Ethics Committee that there is a case to answer, the Chair of the Ethics Committee shall notify the complainant and the defendant that the Ethics Committee has commenced its deliberations, and that, should either/both the disputing parties wish, an opportunity to be heard directly by the Committee can be made available. This notification shall state that the parties must indicate within five (5) working days of the date of this notification their wish to be heard directly, enabling a suitable time to be negotiated. Parties may be heard via telephone link or such other means as may be available and agreed (for example, by video link). They may participate themselves or through a delegated representative named at least two (2) working days prior to the hearing.
- D.10 The Ethics Committee must review the complaint as soon as practicable and may:
- D.10.1 adjudicate the complaint; or
 - D.10.2 adjourn the complaint to seek further relevant information or opinion; or
 - D.10.3 refer the complaint to a relevant third party to undertake or arrange further investigation.

- D.11 The Ethics Committee may adopt specific procedures for the review in order to provide a fair hearing.
- D.12 The Ethics Committee will have an opportunity to ask questions of the complainant. The Ethics Committee will also have an opportunity to ask questions of the defendant.
- D.13 The review is not subject to formal rules of evidence and a transcript will not be made of the review. Parties may have legal representation at the review on the condition that it is understood by all parties that the hearing is not a legal proceeding.

E. Findings and Disciplinary options

- E.1 In relation to a complaint, by majority vote, the Ethics Committee may:
 - E.1.1 dismiss the complaint; or
 - E.1.2 uphold the complaint and find that the conduct of the subject of the complaint constitutes Unsatisfactory Conduct; or
 - E.1.3 uphold the complaint and find that the conduct of the subject of the complaint constitutes Professional Misconduct.
- E.2 If the Ethics Committee finds that there has been a breach of the Codes of Ethics and/or Professional Conduct resulting in a finding of either Unsatisfactory Conduct or Professional Misconduct, the Ethics Committee may recommend a remedy or action.
- E.3 The Ethics Committee shall inform the Board of its findings and recommendations. The Board may accept or challenge the Ethics Committee's findings and recommendations but may not change them. Upon agreement as to the findings and recommendations, the Board Chair shall inform the complainant and defendant of those findings and recommendations.
- E.4 Where a finding of Unsatisfactory Conduct is made, one or more of the following penalties may be imposed:
 - E.4.1 require a written undertaking by the defendant to the Ethics Committee to complete, at the defendant's expense and by a certain date, specified training, appropriate counselling or some other activity;
 - E.4.2 issue a letter of reprimand to the defendant;
 - E.4.3 issue a letter of censure to the defendant;
 - E.4.4 prohibit the defendant from holding office in FINZ either for a specified period, or indefinitely.
- E.5 Where a finding of Professional Misconduct is made, one or more of the following penalties may be imposed:
 - E.5.1 require a written undertaking by the defendant to the Ethics Committee to complete, at the defendant's expense and by a certain date, specified training, appropriate counselling or some other activity;
 - E.5.2 issue a letter of reprimand to the defendant;

- E.5.3 issue a letter of censure to the defendant;
 - E.5.4 prohibit the defendant from holding office in FINZ either for a specified period, or indefinitely;
 - E.5.5 suspend the defendant’s membership of the Institute for a specified period of time or until certain defined criteria for reinstatement have been met, at which time the member may make a written request to FINZ, asking the Ethics Committee to approve reinstatement; or
 - E.5.6 cancel the defendant’s membership of the Institute including where applicable, revocation of credentials.
- E.6 The Board Chair shall, within ten (10) working days of the completion of the review process outlined in E3, inform the complainant and defendant in writing of the determination and reasons for the determination.
- E.6.1 A complainant or defendant who is a Member of the Institute may request, by notice in writing to the Ethics Committee within three (3) working days of receiving the determination, that his/her details be suppressed which shall be agreed by the Ethics Committee at its discretion if the complaint concerns Unsatisfactory Conduct.
 - E.6.2 The Ethics Committee can not suppress identification if it makes a finding of Professional Misconduct.
- E.7 In circumstances where a defendant’s membership has been suspended or cancelled, FINZ may note this on its website but will not record details of the complaint nor the reasons for the suspension or expulsion apart from the following:
- E.7.1 **Suspension** - “[Defendant] is currently a Member of the Fundraising Institute of New Zealand. Membership was suspended due to a finding of the Ethics Committee of Professional Misconduct on [date]”. The above notation in relation to a suspension will remain for the period of suspension.
 - E.7.2 **Cancellation** – “[Defendant] is no longer a member of the Fundraising Institute of New Zealand. [Defendant’s] membership was cancelled due to a finding of the Ethics Committee of Professional Misconduct on [date]” The above annotation will remain on the FINZ website indefinitely. A FINZ member whose Membership has been cancelled will not be permitted to renew his/her membership at a later stage; can no longer purport to be a Member of the Institute and can no longer, if relevant, continue to use post-nominal letters MFINZ or FINZ.
- E.8 The Ethics Committee shall monitor compliance by a defendant with any penalty imposed against them under section E.3.
- E.9 FINZ shall keep records of all correspondence with a complainant and defendant and must keep that correspondence confidential and secure in accordance with New Zealand privacy legislation.

F. Appeal Process

- F.1 An appeal against a determination made by the Ethics Committee under section E.3 of the Complaints Process shall:
 - F.1.1 be in writing;
 - F.1.2 be addressed to the Appeal Officer;
 - F.1.3 be lodged with FINZ within twenty (20) working days of notice of the determination by the Ethics Committee; and
 - F.1.4 state the grounds on which the appeal is made.
- F.2 The grounds for an appeal by a complainant or defendant are limited to one or more of the following:
 - F.2.1 failure by the Ethics Committee to follow the complaints process
 - F.2.2 a material error or omission of fact by the Ethics Committee; and/or
 - F.2.3 the leniency, inappropriateness or severity of the penalty imposed.
- F.3 An Appeal Officer will be appointed by the FINZ Board within twenty (20) working days of FINZ receiving notification of an Appeal.
- F.4 The Appeal Officer must not be an Institute Board member nor a member of the Ethics Committee, nor have taken part in the review and determination of the complaint which is being appealed.
- F.5 The Appeal Officer will review the evidence and findings of the Ethics Committee. The Appeal Officer will decide whether or not to interview relevant individuals.
- F.6 The Appeal Officer shall make a determination either to:
 - F.6.1 dismiss the appeal; or
 - F.6.2 uphold the appeal.
- F.7 Where the Appeal Officer determines to dismiss an appeal, no further action is required by the Board or the Ethics Committee except to inform the complainant and defendant in accordance with section F.10.
- F.8 Where the Appeal Officer determines to uphold an appeal, (s)he may:
 - F.8.1 substitute his/her own determination for that of the Ethics Committee, or
 - F.8.2 remit the complaint to the Ethics Committee for further determination as required with directions as to the issues which require reconsideration.
- F.9 The Appeal Officer shall inform the FINZ Board who will inform the Ethics Committee of his/her determination and the reasons for the determination within ten (10) working days of completing the Appeal process.

- F.10 The CEO shall, on behalf of the Board, report the outcome to the defendant and the complainant.
- F.11 The decision of the Appeal Officer will be final.