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Review of a Series of Complaints made to Fire and Emergency New Zealand

Final Report

7 April 2025

Simon Mount KC

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Overview chronology¹

May 2016	Internal review of bullying and harassment in NZ Fire Service.
8 July 2016	Alleged [REDACTED].
[REDACTED]	[REDACTED].
1 November 2016	[REDACTED].
4 November 2016	[REDACTED] (NZ Fire Service Human Resources) drafted a letter for [REDACTED] “to confirm the complainant’s resignation” (sent 7 November; received 9 November).
7 November 2016	The complainant sent an email to Chief Executive, Fire Service, seeking assistance.
8 June 2017	Fire Service offered mediation to the complainant.
1 July 2017	Fire and Emergency New Zealand formed.
3 July 2017	FENZ sent a letter to the complainant proposing to discharge her due to lack of attendance.
14 August 2017	The complainant made a complaint to FENZ’s new interim dispute resolution process.
10 November 2017	Terms of reference for interim dispute resolution process investigation.
3 December 2017	The complainant complained to FENZ Chief Executive focussing on [REDACTED] after reviewing documents released under the Privacy Act.
12 December 2017	Chief Executive directed independent investigation of the complainant’s complaint. [REDACTED] engaged to conduct the investigation with the complainant’s consent.
January 2018	Senior FENZ manager described the complainant as ‘paranoid’ to her counsellor. The complainant raised that, and a training document closely resembling her case, with IDRP investigator.
12 February 2018	The complainant provided expanded complaint to [REDACTED] investigator.
20 February 2018	[REDACTED] investigation paused at the complainant’s request.
9 May 2018	IDRP investigator provided draft report.
6 August 2018	IDRP investigator finalised report and provided it to the complainant, [REDACTED] and FENZ.
12 September 2018	The complainant asked [REDACTED] to resume investigation.
15 October 2018	IDRP investigator provided anonymised report to FENZ following a request.
November 2018	The complainant provided additional complaints [REDACTED] regarding IDRP investigation, ‘paranoid’ statement and brigade minutes.
24 January 2019	Judge Coral Shaw’s report publicly released. [REDACTED]
13 February 2019	FENZ provided the apology the IDRP investigator had recommended in August 2018.
2 April 2019	FENZ proposed mediation with the complainant to agree an outcome.
May-June 2019	FENZ responded to questions from DIA (as monitoring agency) re the complainant’s case.
20 June 2019	[REDACTED] engaged as the complainant’s lawyer and said next step should be mediation.
August-Sept 2019	FENZ refused to release response to the DIA to the complainant. Mediation did not proceed.
October 2019	The complainant complained to Privacy Commissioner re FENZ and DIA withholding documents.
29 October 2019	[REDACTED] set out the process FENZ would follow to respond to the complaints.
17 December 2019	[REDACTED] took over as decision maker.
21 February 2020	The complainant provided detailed list of process questions [REDACTED] (re-sent in March).
12 March 2020	FENZ paused the complainant’s complaints pending Privacy Commissioner

¹ This is an overview summary of key dates to assist the reader, rather than a comprehensive chronology.

	determination.
27 August 2020	FENZ suggested that it transfer the complainant's complaints to the Ombudsman.
7 September 2020	FENZ paused the complainant's complaints pending an investigation by [REDACTED].
22 December 2020	[REDACTED] provided a preliminary decision to the complainant, seeking a response.
19 March 2021	FENZ and DIA settled the complainant's complaint to the Human Rights Review Tribunal.
22 April 2021	[REDACTED] issued [their] final decision.
November 2022	Belinda Clark QSO's report released.

Consolidated list of findings

During the initial phase of the response the New Zealand Fire Service / Fire and Emergency New Zealand:

1. Did not communicate the applicable process to the complainant when she approached the New Zealand Fire Service for help to resolve the situation [REDACTED].
2. Did not follow the applicable policy/process (the *Respond to bullying* policy).
3. Drafted a letter “to confirm” The complainant’s resignation when she had not resigned and FENZ had not checked the position with her.
4. Wrongly insisted it could not act unless the complainant made a formal complaint.
5. Did not adequately manage conflicts of interest.
6. Did not treat the complainant with sensitivity or respect.
7. Did not take any steps to reintegrate the complainant into the brigade.
8. Unreasonably proposed to discharge the complainant from the brigade.

During the interim dispute resolution process phase, Fire and Emergency New Zealand:

9. Did not adequately establish the interim dispute resolution process investigation, including by omitting reference to the relevant standards and policies.

During the interim dispute resolution process phase, the investigator:

10. Did not properly interpret the period under investigation in the terms of reference.
11. Did not comply with an agreed process to give the complainant an opportunity to comment on interviews before preparing draft findings.
12. Did not adequately deal with pre-interview contact between interviewees.
13. Did not adequately deal with additional matters that arose during the investigation.
14. Wrongly suggested that corroboration of the complainant’s account was required.
15. Reached conclusions that were unsustainable on the evidence.

Following the interim dispute resolution process, Fire and Emergency New Zealand:

16. Responded to the investigation in a slow and disjointed way.
17. Mishandled the apology to the complainant.
18. Did not properly address the complainant’s ongoing status by engaging with her to understand what training and other support she required as a volunteer.

In responding to the complaints after the interim dispute resolution process, Fire and Emergency New Zealand:

19. Did not respond to the complainant's complaints with an appropriate process or structure.
20. Did not provide adequate support for the complainant at key points in the process.
21. Took an overly rigid approach to defining the scope of the complaints.
22. Made an unreasonable and unilateral decision not to proceed with the external investigation.
23. Did not respond to the complainant's reasonable questions and correspondence.
24. Failed to ensure that the people handling the complainant's complaints had the information, training and support they required.
25. Did not follow applicable policies and processes.
26. Did not follow the process it told the complainant it would follow.
27. Wrongly withheld documents requested under the Privacy Act.
28. Unreasonably delayed the process.
29. Did not adequately manage conflicts of interest.
30. Made a procedurally unfair and unsound decision to close the complainant's complaints.

In overall terms, Fire and Emergency New Zealand:

31. Failed to learn from past incidents and external reviews, including the IDRP report and the Shaw report. This led the organisation to repeat mistakes that had been identified in those reviews and reports.
32. Lost sight of the person at the centre of the complaints. This led FENZ to take an approach often characterised by narrow, defensive thinking that saw the complainant primarily as an organisational risk to be managed.
33. Did not meet the standards of sound complaints handling.

1. Introduction: the origins of the complaints

1.1. [REDACTED].

1.2. [REDACTED] is served by a volunteer fire brigade. At the time, New Zealand's 360 volunteer fire brigades were largely independent of the New Zealand Fire Service. Each brigade was managed by a Chief Fire Officer and had its own set of rules, typically based on model rules. The New Zealand Fire Service appointed and had some oversight of Chief Fire Officers but did not directly manage the volunteers or brigades.

1.3. Bullying and harassment were known problems within both the Fire Service and in the volunteer brigades at the time. A May 2016 review commissioned by the Fire Service identified ongoing concerns with bullying and harassment. The report showed there was a need for significant improvements in the way the Fire Service prevented and responded to bullying and harassment in the workplace.²

1.4. Late 2016 was also on the cusp of an important transition for volunteer brigades. The Fire Service was about to go through what the responsible Minister, [REDACTED], described as the "most significant change to New Zealand's fire legislation in 70 years",³ with the creation of a new Crown Entity, Fire and Emergency New Zealand (commonly known as FENZ) under a new statute.⁴ FENZ brought together the rural, urban, paid and volunteer fire fighters into a single organisation from 1 July 2017 with expanded functions including road accidents, natural disasters, and medical emergencies. The May 2016 bullying and harassment report observed that the impending move into a new organisation presented an ideal opportunity for the Fire Service to review its approach to preventing and responding to bullying and harassment in the workplace.⁵

1.5. [REDACTED] Volunteer Fire Brigade in 2016. [REDACTED]

1.6. The complainant, Sarah Hullah*, joined the [REDACTED] Volunteer Fire Brigade on ANZAC Day in 2015. [REDACTED]. She said during her first year as a volunteer, the environment was "like a brotherhood ... It was totally like the group had each other's backs and the group had a goal and it's just one of the nicest feelings".⁶

² New Zealand Fire Service, Internal Audit Report, Bullying and Harassment Review, May 2016, page 7.

³ <https://www.beehive.govt.nz/release/fire-and-emergency-new-zealand-bill-passes-third-reading>

⁴ The Fire and Emergency New Zealand Act 2017.

⁵ New Zealand Fire Service, Internal Audit Report, Bullying and Harassment Review, May 2016, page 7.

⁶ The complainant's interview transcript, page 3 line 11.

* The Public Service Commission has referred to Ms Hullah throughout this Redacted Report as "the complainant".

- 1.7. There was an inherent power disparity [REDACTED].
- 1.8. The complainant's complaints [REDACTED] related to alleged actions from July to November 2016 [REDACTED] strongly disputes the allegations, and, in this report, I make no findings about the alleged underlying events in July to November 2016. My focus is on how the Fire Service (and later FENZ) responded to the complaints. I describe [REDACTED] as a necessary part of the background to the response, not to reach conclusions about them.
- 1.9. On the complainant's account, the starting point was [REDACTED].
- 1.10. [REDACTED]
- 1.11. [REDACTED]
- 1.12. [REDACTED] and the complainant approached the Fire Service in relation to this matter. [REDACTED]. There was a real potential for conflicts of interest, actual or perceived. In short, it was a delicate situation with some difficult features.
- 1.13. Given these factors, the response of the Fire Service, and later Fire and Emergency New Zealand, needed to be robust and principled. There needed to be:
 - (a) A clear and fair process that could deal with the issues proportionately;
 - (b) Clear communication of the process to all involved from the start;
 - (c) A timely response avoiding unnecessary delay;
 - (d) The proper management of conflicts of interest;
 - (e) Principled decision making;
 - (f) Sensitivity to the human factors involved; and
 - (g) Appropriate support for both parties.
- 1.14. Unfortunately, the response fell short of these requirements. Instead of resolving matters, the steps taken by the Fire Service and Fire and Emergency New Zealand escalated the situation and led to a spiralling series of complaints.
- 1.15. In the following sections of this report, I identify key deficiencies in the response over the seven years from 2016 to 2023. There were four broad phases, which are addressed in sections 4–7 of the report:
 - (a) The initial response;
 - (b) The interim dispute resolution process;

- (c) The response to the interim dispute resolution process;
 - (d) Post interim dispute resolution process complaints.
- 1.16. I do not attempt to narrate every twist and turn in the events but in my view, there were inadequacies in the response at every stage, as described below. In large measure, that is why, eight years after the initial incidents, these matters remain unresolved.
- 1.17. The overall response is considered in section 8 of the report. In section 9, I address whether FENZ acted fairly, reasonably, and in compliance with relevant policies.

2. The New Zealand Fire Service's initial response

Introduction

- 2.1. [REDACTED]⁷
- 2.2. [REDACTED]^{8 9}
- 2.3. [REDACTED]¹⁰ On 28 October 2016 the complainant asked, via an intermediary, [REDACTED] to resolve matters informally. [REDACTED] replied via the same intermediary that [they] would only meet with the complainant if she emailed [them] with the subject matter, agenda, and a desired outcome for a meeting. From the complainant's perspective, this amounted to [REDACTED] declining her request to resolve things informally.
- 2.4. The situation worsened on 1 November 2016, when the complainant attended a training night [REDACTED]. According to the complainant, [REDACTED] said things would never be resolved informally, and if the complainant wanted to pursue the matter her only option was to make a formal complaint [REDACTED].¹¹ [REDACTED] denies saying this.
- 2.5. In the first week of November, both the complainant and [REDACTED] turned to the New Zealand Fire Service head office for help. The first phase of the Fire Service response spans the period from November 2016 to July 2017: essentially the final eight months of the Fire Service before the creation of Fire and Emergency New Zealand.
- 2.6. In summary, during that period the New Zealand Fire Service / FENZ:
- (a) Did not communicate a clear process to the complainant;
 - (b) Did not follow the applicable Fire Service policy;
 - (c) Drafted a letter that unfairly "confirmed" the complainant's resignation;
 - (d) Insisted on the complainant making a "formal complaint", rather than supporting informal methods as she initially wanted;
 - (e) Failed to manage conflicts of interest appropriately;
 - (f) Treated the complainant's situation with a lack of sensitivity and respect; and
 - (g) Unreasonably proposed to discharge the complainant from the brigade.

⁷ The complainant's interview with IDRP investigator, page 8 PSC.03.0017.

⁸ [REDACTED] interview with IDRP investigator, page 11 PSC.03.0088

⁹ The complainant's synopsis of 1 August 2023 at [12] and the complainant's interview transcript page 14 line 15.

¹⁰ The complainant's synopsis of 1 August 2023 at [13].

¹¹ The complainant's interview transcript page 17 line 6.

2.7. The next sections of this report address each of these matters in turn.

Communication of the process

2.8. The complainant's first approach to the Fire Service was an email to the Chief Executive, Paul Baxter, on 7 November 2016.¹² [REDACTED]. The complainant said she found the matter extremely distressing. She did not want to make a formal complaint but did want help from the Fire Service to resolve matters, rather than leaving things [REDACTED] to resolve. The Chief Executive referred the matter to [REDACTED].¹³

2.9. What the complainant needed was a clear articulation of the process that could be followed to resolve matters. She was a volunteer in a small town, without the protections and job security of an employee. [REDACTED]. At a minimum, the complainant needed clarity about the process and options ahead. Ideally the process would be clearly spelled out and easily accessible, for example on a website or intranet, in plain English.

2.10. The Fire Service did in fact have a process designed to deal with this type of situation, albeit that the complainant had not explicitly used the word "bullying" in her initial email. The *Respond to bullying* policy applied to all personnel including volunteers, and the substance of her complaint fell within that policy.¹⁴ The policy had a four-tier escalation pathway with avenues of support at each stage of the process:

- (a) Self-help;
- (b) Informal intervention;
- (c) Formal intervention;
- (d) External intervention.

2.11. Despite that policy applying and being relatively recent, the Fire Service did not refer the complainant to it, or any other policy or process, until she specifically asked for this in December 2016, a month after her initial email. Instead, she was simply told there was nothing that could be done without a formal complaint, echoing [REDACTED] position as she understood it. The complainant expressed her concern about this in a follow-up email to the Chief Executive, which did refer to bullying:¹⁵

¹² Email from the complainant to Paul Baxter of 7 November 2016 PSC.04.0036.

¹³ Email from Paul Baxter to the complainant of 9 November 2016 PSC.04.0035.

¹⁴ New Zealand Fire Service, *Respond to bullying*, August 2015 PSC.01.0196. The policy was reviewed at some point in 2016 with no material changes: New Zealand Fire Service, *Respond to bullying*, 2016 PSC.01.0217.

¹⁵ Email from the complainant to Paul Baxter of 2 December 2016 PSC.04.1113.

You are the first person I informed, and you passed me onto [REDACTED] I found [their] response, that nothing short of me making a formal complaint will cause [them] to take action, inadequate. I believe there is irrefutable evidence that should not require me, [REDACTED] to put my head above the parapet [REDACTED].

Yet still no one has a process for dealing with this. I would imagine bullying is an extremely common issue across volunteer organisations – you possibly need to look at your processes as to why this has not been dealt with in a better manner; why your staff do not have a process to follow. Is there a group of people who have had anti-bullying training?”

- 2.12. About a week later, [REDACTED] sent the complainant a link to the *Respond to bullying* policy,¹⁶ but the link was not accessible to the complainant.

- 2.13. On 20 December 2016, the complainant emailed [REDACTED] and said:¹⁷

A person in my situation shouldn't have to request information; as I previously stated, I would expect there would be a culture in a professional public emergency service where every person, especially in Human Resources, has a zero-tolerance approach to this type of behaviour. As a minimum, information on policies and procedures should be provided at NZFS first awareness of any issue to ensure potential complainants understand their rights and the processes to address those rights.

- 2.14. It was only after the complainant's email of 20 December that the Fire Service, through [REDACTED], provided the complainant with PDF copies of the applicable policies on 22 December 2016, more than six weeks after the complainant first sought help.¹⁸

The applicable policy

- 2.15. When the Fire Service did refer the complainant to its applicable policies, it provided her with three: the *Respond to bullying* policy,¹⁹ the *Report and investigate alleged misconduct* policy,²⁰ and an equivalent policy in the Volunteer Resource Kit.²¹ Unfortunately, over the next nine months and indeed throughout its handling of these matters, the Fire Service did not follow the *Respond to bullying* policy.
- 2.16. It was clear from the complainant's initial email to the Chief Executive that the subject matter fell within the *Respond to bullying* policy. In case there was any doubt, her email of 2

¹⁶ Email from [REDACTED] to the complainant of 8 December 2016 PSC.04.0151. [REDACTED] also provided a link to the Fire Service's *Report and investigate alleged misconduct* policy PSC.01.0199.

¹⁷ Email from the complainant to [REDACTED] of 20 December 2016 PSC.04.0163.

¹⁸ Email from [REDACTED] to the complainant of 22 December 2016 PSC.04.0163.

¹⁹ New Zealand Fire Service, *Respond to bullying*, August 2015 PSC.01.0196.

²⁰ New Zealand Fire Service, *Report and investigate alleged misconduct*, August 2015 PSC.01.0179.

²¹ New Zealand Fire Service *Volunteer Chief Officer Personnel Resource Kit*, PSC.01.0221. [REDACTED] advised that the Fire Service process and the Volunteer Resource Kit process were “technically the same”: email from [REDACTED] to the complainant of 22 December 2016 PSC.04.0163.

December 2016 quoted above specifically referred to bullying.²² The complainant's email was circulated among a group of senior managers at the Fire Service [REDACTED].²³ Despite the complainant's email referring to bullying, no one appears to have considered applying the Fire Service *Respond to bullying* policy to the situation.

- 2.17. As noted above, the *Respond to bullying* policy had a four-stage escalation pathway beginning with self-help. Self-help had not worked as an option, [REDACTED]. The next stage, under the policy, was informal intervention using methods such as mediation or facilitated meetings. The Fire Service did not initially explore this as an option [REDACTED]. Rather, its consistent position was that a formal complaint was required before the Fire Service could do anything.²⁴ The complainant had been clear that she did not want to make a formal complaint given the power imbalance.²⁵ After [REDACTED] proposed mediation in May 2017,²⁶ the Fire Service belatedly offered it as an option in June 2017, about 7 months after the complainant's initial complaint.²⁷ By that stage, the complainant's confidence in the process had been undermined, which made mediation a far more challenging prospect than it would have been at the outset.
- 2.18. FENZ submitted that it did comply with the policy because informal intervention was unavailable due to [REDACTED] unwillingness. However, there is no evidence that the Fire Service took any steps [REDACTED] to explore informal resolution during the initial phase of the response. In my view, the policy required the Fire Service to offer both parties a pathway to informal resolution, with appropriate support, so they could make an informed decision whether to participate. Moreover, the contemporaneous documents do not support a conclusion that Fire Service personnel considered this option but felt unable to pursue it because of [REDACTED] unwillingness. In short, although the senior staff in the Fire Service dealing with this situation were aware of the *Respond to bullying* policy, and should have been aware that the complainant's situation fell within it, the Fire Service did not follow the policy. A later investigation, discussed further below, reached the same conclusion.²⁸

²² Email from the complainant to Paul Baxter of 2 December 2016 PSC.04.1113.

²³ Emails of 2 December 2016 PSC.04.0112; PSC.04.0123.

²⁴ For example, email from [REDACTED] to the complainant of 17 November 2016 PSC.04.0069 & PSC.04.0127; email from [REDACTED] [REDACTED] of 2 December 2016 PSC.04.0112; email from [REDACTED] to [REDACTED] of 2 December 2016 PSC.04.0123.

²⁵ For [REDACTED] comment, see the complainant's text message of 1 November 2016 PSC.04.0018, her email to the Chief Executive of 7 November 2016 PSC.04.0053 and [REDACTED] interview with the IDRPs investigator at [11] PSC.03.0139 and later evidence.

²⁶ Email from [REDACTED] to [REDACTED], copied to [REDACTED] and [REDACTED], of 18 May 2017 PSC.04.0748.

²⁷ Letter from [REDACTED] to the complainant of 8 June 2017 PSC.04.0250.

²⁸ IDRPs report at [132] PSC.02.0123.

Letter ‘confirming’ resignation

- 2.19. On 9 November 2016, two days after emailing the Chief Executive seeking help, the complainant received a formal letter, in a Fire Service National Headquarters envelope,²⁹ signed by [REDACTED]. The letter said:³⁰

Dear Sarah,

This letter is to confirm your resignation from [REDACTED] Volunteer Fire Brigade.

[REDACTED] has informed me of the text you sent [them] on the 16 October stating that you had left your uniform in the store room and returned your keys to the station, you also commented who else did you need to tell.

I have interpreted this text, together with you [sic] non-attendance at training nights following this as your resignation from the brigade.

I would like to thank you for your service to the community during your time with us. I wish you all the best in your future endeavours.

Yours sincerely

[REDACTED]

[REDACTED] Volunteer Brigade

- 2.20. [REDACTED] drafted the letter on 4 November 2016 at [REDACTED] request.³¹ [REDACTED] signed and sent it on 7 November 2016, although the date remained 4 November.
- 2.21. There were two main problems with the Fire Service’s approach to this letter. First, the process was not fair to the complainant. The letter “confirmed” the complainant’s resignation without giving her an opportunity to clarify whether she had in fact resigned. That opportunity was required as a matter of basic fairness. [REDACTED] knew at the time [they] drafted the letter that there was some doubt whether the complainant had resigned. [Their] covering email to [REDACTED] said “She may come back to us on her view on this, ie if she has actually resigned or not. If this happens let me know and we can deal with it then”.³² [REDACTED] copied this email to [REDACTED], perhaps indicating an awareness that the matter could escalate.
- 2.22. The letter did not call for a response, but the complainant contacted the Fire Service almost immediately after receiving it. She said, “I have not at any point resigned and have not mentioned the word resignation to anyone.”³³ Given this, I have no doubt the complainant

²⁹ Fire Service National Headquarters envelope, addressed to the complainant, dated 7 November 2016 PSC.06.0007.

³⁰ Letter from [REDACTED] to the complainant of 4 November 2016 PSC.04.0026.

³¹ Email from [REDACTED] to [REDACTED], copied to [REDACTED] of 4 November 2016 PSC.04.0729.

³² Email from [REDACTED] to [REDACTED], copied to [REDACTED], of 4 November 2016 PSC.04.0729

³³ Email from the complainant to [REDACTED] of 10 November 2016 PSC.04.0051-52.

would have made the same point if the Fire Service had given her a fair opportunity to comment before determining that she had resigned. She would also have had an opportunity to tell the Fire Service that, from her perspective:

- (a) There was an unresolved matter [REDACTED].
- (b) A fellow firefighter had put in (requested) her leave for the relevant training nights.
- (c) She attended training on 1 November 2016 and had a confrontation [REDACTED] witnessed by other firefighters.
- (d) She was a committed volunteer firefighter who wanted to continue in her role.

2.23. Secondly, [REDACTED] had a conflict of interest in dealing with the matter [REDACTED]. Even if [REDACTED] did not tell [REDACTED] the full context and background of events, [REDACTED] should have asked enough questions to understand the situation before drafting the letter. Any questioning about the circumstances would have made [REDACTED] conflict of interest apparent. [REDACTED] acknowledged the conflict of interest in an email to [REDACTED] six months later.³⁴ Given its decision to assist in drafting the ‘confirmed resignation’ letter, the Fire Service had a responsibility to ensure conflicts of interest were properly identified and managed.

Insistence on a formal complaint

2.24. The complainant was clear from the outset that she wanted to explore informal ways to resolve the dispute [REDACTED], and that she did not want to make a formal complaint. There was a significant power imbalance and the complainant was concerned that escalation to more formal procedures would leave her vulnerable given that imbalance. Although the *Respond to bullying* policy contemplated the use of informal methods as the first line response to bullying complaints, Fire Service managers took the position that the complainant’s only option was to make a formal complaint, otherwise there was nothing they could do. For example, after the complainant emailed the Chief Executive on 2 December 2016, [REDACTED] said “currently she has refused to formalise her complaint so nullifying our ability to deal with it”.³⁵

³⁴ Email from [REDACTED] to [REDACTED], copied to [REDACTED] and [REDACTED], of 18 May 2017 PSC.04.0749: [REDACTED].

³⁵ Email from [REDACTED] to Chief Executive’s Executive Assistant of 2 December 2016 PSC.04.0123. See also, email from [REDACTED] to the complainant of 17 November 2016 PSC.04.0069 & PSC.04.0127.

- 2.25. It was only after approximately seven months had passed, and [REDACTED], suggested to Fire Service Managers that they could “offer her the opportunity to meet [REDACTED] to hear her out”³⁶ that the Fire Service offered mediation.³⁷ [REDACTED] wrote to the complainant on 8 June 2017, to invite her to attend a mediation [REDACTED].³⁸ [REDACTED] edited the letter before it was sent out,³⁹ and the complainant interpreted the letter as a sudden change of position demonstrating that the Fire Service had been engaging with [REDACTED] behind the scenes about the way to deal with her situation. She said she had been asking for options, and rather than options she was presented with a firm deadline to confirm her willingness to participate in a specific mediation. She said:⁴⁰

They said it had to be formal and then one day it suddenly flicked to informal, but they had clearly already spoken to [REDACTED] because like here’s [REDACTED] and here’s a date, and so that’s when I felt complete total mistrust that they are not independent. They are talking with [REDACTED]....

- 2.26. The complainant said she was not prepared to attend a mediation [REDACTED]. She also lacked trust that the managers at FENZ handling her complaints were acting impartially.
- 2.27. The letter from the Fire Service proposing mediation sought a response from the complainant within eight days. The delay of seven months after the complainant’s initial email to the Fire Service clearly did not help the situation. The complainant was also correct in her interpretation that the Fire Service had been engaging [REDACTED] in responding to the matter. The approach of the Fire Service in insisting on a formal complaint process for the first seven months deprived the complainant of an opportunity to resolve matters informally, in a timely way, and contributed to the path of escalation and mistrust between the parties.

Management of conflicts of interest

- 2.28. Properly identifying and managing conflicts of interest is fundamental in any organisation, including the Fire Service. In this case, it was important for the Fire Service to manage conflicts of interest in addressing the complainant’s situation from the outset. [REDACTED].⁴¹
- 2.29. Despite this, senior managers in the Fire Service allowed and invited [REDACTED] to be closely involved in the organisation’s response to the situation. [REDACTED] and senior managers including [REDACTED] had various meetings and discussions on the topic, not all of which were

³⁶ Email from [REDACTED] to [REDACTED], copied to [REDACTED] and [REDACTED], of 18 May 2017 PSC.04.0749.

³⁷ Email from [REDACTED] to [REDACTED] of 19 May 2017 PSC.04.0579: “Worth a try even though I think we both know the response.”

³⁸ Letter from [REDACTED], to the complainant of 8 June 2017 PSC.04.0250.

³⁹ Email from [REDACTED], to [REDACTED], copied to [REDACTED], and [REDACTED], of 1 June 2017 PSC.04.0547.

⁴⁰ The complainant’s interview transcript, page 24 line 31.

⁴¹ Email from [REDACTED] to [REDACTED], copied to [REDACTED] and [REDACTED] of 18 May 2017 PSC.04.0749.

documented.⁴² But even relying on the written record, it is clear that [REDACTED] was heavily involved and influential in the Fire Service response:

- (a) There was close co-operation between [REDACTED] and [REDACTED] in drafting the 4 November 2016 letter “confirming” the complainant’s resignation.⁴³
- (b) It was [REDACTED] email of 18 May 2017 that caused the Fire Service to change its position on the need for a formal complaint.⁴⁴
- (c) [REDACTED] sent [REDACTED] a draft of the 1 June 2017 letter to the complainant offering mediation. [REDACTED] amended the letter, at [REDACTED] invitation.⁴⁵
- (d) [REDACTED] allowed [REDACTED] to be influential in the proposal to discharge the complainant from the brigade in late June/early July 2017.⁴⁶

2.30. [REDACTED] had a conflict of interest in taking these steps, which the Fire Service did not manage appropriately. The Fire Service’s *Conflict of interest, gifts, prizes and hospitality policy*,⁴⁷ and *Standards of conduct*,⁴⁸ required all personnel to avoid or manage situations that might compromise, or be perceived to compromise, their integrity or otherwise lead to conflicts of interest. The Fire Service [REDACTED] did not comply with these requirements. This finding is consistent with the recommendation of the interim dispute resolution investigator in 2018, set out at [4.1](d) below.⁴⁹

2.31. The close contact between [REDACTED] during this period further undermined the complainant’s confidence in the integrity of the process when she discovered, much later, that [REDACTED] had helped [REDACTED] from the time of the deemed resignation letter of 4 November 2016 onwards, while also being the complainant’s point of contact.

2.32. It is not unusual for human resources staff to face inherent tensions when dealing with disputes or complaints between people in an organisation. Successfully managing those tensions can be challenging. In this case, the tensions were not well managed and contributed to further escalation of the situation.

⁴² See, for example, email from [REDACTED] to [REDACTED] of 23 November 2016 PSC.04.0078 and email from [REDACTED] to [REDACTED], copied to [REDACTED] of 23 May 2017 PSC.04.0550.

⁴³ Letter from [REDACTED] to the complainant dated 4 November 2016 PSC.04.0026.

⁴⁴ Email from [REDACTED] to [REDACTED], copied to [REDACTED] and [REDACTED] of 18 May 2017 PSC.04.0748.

⁴⁵ Email from [REDACTED] to [REDACTED], copied to [REDACTED] and [REDACTED], of 1 June 2017 PSC.04.0547.

⁴⁶ Email from [REDACTED] to [REDACTED] and [REDACTED] of 30 June 2017 PSC.04.0260, email from [REDACTED] to [REDACTED] of 4 July 2017 PSC.04.0537.

⁴⁷ New Zealand Fire Service, *Conflict of interest, gifts, prizes and hospitality policy*, September 2015 PSC.01.0649.

⁴⁸ New Zealand Fire Service, *Standards of Conduct*, August 2015 PSC.01.0206.

⁴⁹ IDRP Investigation report at [139](d) PSC.02.0126.

- 2.33. The perception that [REDACTED] was effectively merged with the Fire Service was not helped by the response to media enquiries [REDACTED].
- 2.34. [REDACTED].⁵⁰
- 2.35. This reinforced the complainant's concern that the Fire Service was taking sides and acting in concert [REDACTED]. [REDACTED] did not help lower the overall temperature of the situation, or the likelihood of constructive informal resolution.

Sensitivity and respect

- 2.36. The complainant's initial contact with the Fire Service raised serious allegations, which the Fire Service was obliged to treat seriously and with sensitivity and respect for the complainant.⁵¹ The complainant made it clear [REDACTED] and she wanted [them] to be told not to deal with her or her matter and to leave her alone.⁵² Her follow-up email on 2 December 2016 to the Chief Executive said she was still affected [REDACTED] and described the matter as bullying.⁵³ [REDACTED] had a very different perspective of the situation, but that did not change the obligation on the Fire Service to respond with sensitivity and respect.
- 2.37. However, senior managers within the Fire Service did not do so on several occasions. On 29 November 2016, the complainant emailed [REDACTED] raising a concern that the brigade would be left critically low on staff due to her absence and the resignation of her colleague. She offered to have a meeting to discuss the way to resolve the situation.⁵⁴ This was a genuine concern raised in good faith. However, [REDACTED] did not respond. Instead, [they] forwarded the complainant's email to [REDACTED] stating:⁵⁵

I haven't replied to this and to be fair will not lose too much sleep over it.

- 2.38. [REDACTED] obviously did recognise the potential seriousness of the situation, because [they] put in place backup arrangements for the brigade the same day.⁵⁶ But [REDACTED] did not tell the complainant what [they] had done, or reply to her email. This left the complainant without the reassurance of knowing that action had been taken to cover the potential gaps at her brigade.

⁵⁰ Email from [REDACTED], to [REDACTED], of 8 May 2017 PSC.04.0242.

⁵¹ WorkSafe New Zealand, *Preventing and responding to workplace bullying, Best Practice Guidelines*, 2014, page 44 PSC.01.0139.

⁵² Email from the complainant to Paul Baxter of 7 November 2016 PSC.04.0036.

⁵³ Email from the complainant to Paul Baxter of 2 December 2016 PSC.04.0113.

⁵⁴ Email from the complainant to [REDACTED] of 29 November 2016 PSC.04.1082.

⁵⁵ Email from [REDACTED] to [REDACTED] of 29 November 2016 PSC.04.1081.

⁵⁶ Letter from [REDACTED] to the complainant of 7 December 2017 PSC.04.1043; letter from [REDACTED] to the complainant of 29 January 2018 PSC.04.1077.

- 2.39. [REDACTED] was similarly disparaging of the situation when the Chief Executive asked [them] to take personal oversight of the complainant's matter and provide him with advice and assurance it was being dealt with appropriately. [REDACTED] responded on 6 December 2016, to [REDACTED]:⁵⁷

It's amazing that this minor issue can gain so much traction! I guess you get rewarded for just scatter gunning emails to all and sundry. Anyway I'll ensure yet another response goes out.

- 2.40. Fire and Emergency New Zealand submitted to this review that it "did seek to treat [the complainant] respectfully and with dignity during the complaints handling process".⁵⁸ That submission did not address the key question: whether Fire and Emergency did in fact treat the complainant respectfully and with dignity. It did not always do so, and the submission that Fire and Emergency "sought" to treat the complainant respectfully and with dignity is not easy to reconcile with the evidence. In a follow-up letter, Fire and Emergency New Zealand said:⁵⁹

While FENZ has accepted, with the benefit of hindsight, that the way the organisation handled [the complainant's] complaints could have been more constructive, FENZ had endeavoured to engage with [the complainant] fairly and respectfully.

...

Notwithstanding FENZ's acknowledgement that with the benefit of hindsight, the organisation's engagement with [the complainant] could have been more constructive, there is no reason for FENZ to consider that the staff involved in handling her complaint were not taking [the complainant's] concerns seriously and/or genuinely attempting to communicate effectively with [the complainant].

- 2.41. FENZ's submissions stand in contrast to [REDACTED] comments [REDACTED] regarding [REDACTED] email quoted above:⁶⁰

"[REDACTED]"

- 2.42. Overall, FENZ's submissions demonstrated a lack of appreciation of the deficiencies in this case, which included the two communications above as well as more general failures, such as the ongoing lack of prompt and constructive responses. I do not suggest that individual personnel at FENZ were deliberately intending to harm the complainant or seeking to treat

⁵⁷ Email from [REDACTED] to [REDACTED] of 6 December 2016 PSC.04.0114.

⁵⁸ FENZ's letter of 22 September 2023, at [4.1].

⁵⁹ FENZ's letter of 14 December 2023, at Appendix 1.

⁶⁰ [REDACTED].

her without dignity and respect. Regardless of what FENZ staff intended, they did not treat the complainant with sensitivity or respect.

The proposal to discharge the complainant from the brigade

- 2.43. The complainant's position with the brigade went through three phases over the course of the initial response. First, there was the letter dated 4 November 2016 that incorrectly "confirmed" the complainant's resignation.⁶¹ Secondly, when the complainant corrected the position, the Fire Service followed up on 11 November 2016 with a letter [REDACTED] apologising for the "misunderstanding" and granting three months leave to 13 February 2017.⁶² The covering email [REDACTED] said the complainant would need to advise the brigade closer to the return date what her intentions were, and said this could be done through [REDACTED], given the complainant's wish to avoid any contact [REDACTED].⁶³
- 2.44. The third phase ultimately led to a proposal to discharge her from the brigade. As noted above, matters escalated in the period after early November 2016 and the complainant did not contact the brigade [REDACTED] to update them on her intentions before the end of the leave period. At [REDACTED] suggestion, the Fire Service invited the complainant to attend a mediation in a letter of 8 June 2017.⁶⁴ The complainant interpreted that letter as indicating the Fire Service was not acting impartially in the matter. She did not respond. On 29 June 2017, [REDACTED] sent a follow-up email asking the complainant to respond within 24 hours by 3.30pm on 30 June 2017.⁶⁵ It is unclear why the matter was seen as so urgent.
- 2.45. On the evening of 29 June 2017, [REDACTED] met with [REDACTED] and told [REDACTED] they were "both of the opinion that we would like to bring the process to a conclusion".⁶⁶ [REDACTED] then drafted a letter proposing to discharge the complainant from the brigade. [They] sent it to [REDACTED] and [REDACTED] on 29 June and said:

... open to your feedback on the decision-maker. I have used [REDACTED] in this instance as my thinking was that by [REDACTED] signing this out it may create more tension. Happy to change this though if you have a different view.⁶⁷

⁶¹ Letter from [REDACTED] to the complainant of 4 November 2016 PSC.04.0026.

⁶² Letter from [REDACTED] to the complainant of 11 November 2016 PSC.04.0048.

⁶³ Email from [REDACTED] to the complainant of 11 November 2016 PSC.04.0059.

⁶⁴ Letter from [REDACTED] to the complainant of 8 June 2017 PSC.04.0250

⁶⁵ Email from [REDACTED] to the complainant, copied to [REDACTED], of 29 June 2017 PSC.04.0256.

⁶⁶ Email from [REDACTED] to [REDACTED] and [REDACTED] of 30 June 2017 PSC.04.0260.

⁶⁷ Email from [REDACTED] to [REDACTED] and [REDACTED] of 30 June 2017 PSC.04.2061.

- 2.46. [REDACTED] responded and said, “I agree it best for [REDACTED] to be decision-maker. We both agree a shorter process for dismissal”.⁶⁸
- 2.47. The complainant did not respond to [REDACTED] 29 June 2017 email. On 3 July 2017, using the newly created Fire and Emergency New Zealand letterhead, [REDACTED] sent the letter to the complainant proposing to discharge her from the brigade “due to lack of attendance”.⁶⁹ The letter stated that [REDACTED] was the decision maker [REDACTED]. It proposed a meeting on 21 July 2017 with [REDACTED] to “discuss your absence and your future membership of the brigade and stated if [they] did not hear from the complainant by 12 July 2017, “I may have no option but to consider you have abandoned your membership of [REDACTED] Volunteer Fire Brigade”.
- 2.48. The complainant responded on 9 July 2017 and said she did not wish to deal with [REDACTED] in respect of the matter, setting out her reasons for that. In short, she said she had lost confidence in the impartiality and willingness of [REDACTED] to deal with the matter appropriately.⁷⁰ The complainant provided examples of other volunteer firefighters from the same brigade who had been on leave for lengthy periods.
- 2.49. At a later point, Fire and Emergency New Zealand recorded the complainant as being on leave until the year 9999 in its system. To date, Fire and Emergency New Zealand has not taken any steps to reintegrate the complainant into the brigade, or to find her a position in any other brigade. Nor has Fire and Emergency New Zealand made any attempt to keep the complainant’s training up to date. The importance of ensuring volunteers can remain up to date with their training requirements is something Belinda Clark noted in her report into Fire and Emergency New Zealand’s workplace culture and complaint handling practices many years later in 2022. Recommendation 16 stated:⁷¹

FENZ should safeguard the wellbeing and safety of complainants while their complaints are being investigated by:

- Providing a programme that enables complainants to keep their active firefighting and emergency response training requirements up to date for the duration of the investigation and that the period of leave taken is not debited from their continuous service and honours eligibility.

⁶⁸ Email from [REDACTED] to [REDACTED], copied to [REDACTED], of 30 June 2017 PSC.04.2061.

⁶⁹ Letter from [REDACTED] to the complainant of 3 July 2017 PSC.04.0257. The letter was emailed: email from [REDACTED] to the complainant PSC.04.0258.

⁷⁰ Email from the complainant to [REDACTED] and [REDACTED] of 9 July 2017 PSC.04.0306.

⁷¹ Belinda Clark QSO, Independent Review of FENZ’s Workplace Culture and Complaint Handling Practices, November 2022 (Clark report), page 53 PSC.02.0281.

- 2.50. It would have been appropriate for the Fire Service to take proactive steps at the end of the complainant's period of leave in February 2017 given the lack of progress in resolving the underlying issues. Rather than require the complainant to contact them, the Fire Service should have recognised the need to extend the period of leave, and taken active steps to ensure the complainant was supported and up to date with her training while the issues [REDACTED] were being worked through.
- 2.51. The decisions to propose to discharge the complainant, and to give her only 24 hours to respond to the earlier mediation offer, were not reasonable. These escalated matters and did not assist in bringing things to a satisfactory conclusion.
- 2.52. The direct involvement of [REDACTED] in the decision to propose to discharge the complainant, and the behind-the-scenes decision to have [REDACTED] identified as the nominal decision-maker, reinforced the complainant's lack of confidence in the process when she ultimately learned of the way in which the matter was being approached by the Fire Service and Fire and Emergency New Zealand. The reference to [REDACTED] conflict of interest in [REDACTED] letter does not sit comfortably with the reality, which was that [REDACTED] was closely involved in determining the approach taken by the Fire Service and Fire and Emergency New Zealand, albeit in the background and without the complainant's knowledge. In the circumstances, [REDACTED] undisclosed involvement in the proposal to discharge the complainant was also unreasonable.

Findings

I find that during the initial phase of the response the New Zealand Fire Service / Fire and Emergency New Zealand:

1. Did not communicate the applicable process to the complainant when she approached the New Zealand Fire Service for help to resolve the situation [REDACTED].
2. Did not follow the applicable policy/process (the *Respond to bullying* policy).
3. Drafted a letter "to confirm" the complainant's resignation when she had not resigned and FENZ had not checked the position with her.
4. Wrongly insisted it could not act unless the complainant made a formal complaint.
5. Did not adequately manage conflicts of interest.
6. Did not treat the complainant with sensitivity or respect.
7. Did not take any steps to reintegrate the complainant into the brigade.
8. Unreasonably proposed to discharge the complainant from the brigade.

3. The Interim Dispute Resolution Process

Introduction

- 3.1. After the complainant's response to the "propose to discharge" letter, FENZ and the complainant reconsidered their approaches. The creation of FENZ was an opportunity for a reset in the relationship and there was a new tool at FENZ's disposal, an "interim dispute resolution process". FENZ set this up, as required by the Act,⁷² to resolve disputes under the statute or regulations. The interim process had a variety of resolution pathways with associated guides and processes.
- 3.2. For her part, the complainant decided that her concerns required an independent investigation [REDACTED].⁷³ This was an escalation after her initial attempts to seek an informal resolution and initial reluctance to make a formal complaint. The months of back and forth with the Fire Service had entrenched and aggravated the complainant's concerns, as well as giving rise to new grievances.
- 3.3. In August 2017, FENZ invited the complainant to apply under the interim dispute resolution process. On the face of it, that process was not ideally suited to the situation, because the complainant was seeking an investigation [REDACTED] not the adjudication of a dispute. She made that point in a response to FENZ in August 2017.⁷⁴ However, after discussing the matter with FENZ's case manager for dispute resolution, the complainant completed an application form for the dispute resolution process, supported by a timeline of relevant events.
- 3.4. The complainant's application made it clear that she wanted an independent investigation [REDACTED]. She sought accountability for the deficiencies in the Fire Service's response over the previous nine months, as she saw them. She supported the application with a detailed 17-page timeline of events, separately addressing [REDACTED] conduct and that of the Fire Service. She said her two main concerns were that [REDACTED] community had a healthy fire brigade that could respond to calls and that FENZ learned lessons so that no one else had to go through anything like this in the future.⁷⁵ [REDACTED].
- 3.5. FENZ accepted the application and commissioned an independent investigation through the interim dispute resolution process. [REDACTED] and the complainant were provided with legal counsel and consulted over the terms of reference, although the complainant later said she

⁷² Fire and Emergency New Zealand Act 2017, Part 4, Subpart 5.

⁷³ Email from the complainant to [REDACTED] of 14 August 2017 PSC.04.0348.

⁷⁴ Email from the complainant to [REDACTED] of 14 August 2017 PSC.04.0348.

⁷⁵ Email from the complainant to [REDACTED] of 14 August 2017 PSC.04.0348.

did not agree with the terms of reference. The investigator, contracted through [REDACTED], was an experienced [REDACTED] barrister, [REDACTED]. Both [REDACTED] and the investigator operated independently and at arm's length of FENZ.

- 3.6. There were a series of deficiencies in the steps taken by both FENZ and the investigation. During the establishment phase FENZ did not adequately address the differing expectations about the type of investigation required and did not ensure the terms of reference referred to the relevant standards and policies.
- 3.7. For [their] part, the investigator did not:
 - (a) properly interpret the period under investigation in the terms of reference;
 - (b) comply with an agreed process to give the complainant an opportunity to comment on interviews before preparing draft findings;
 - (c) adequately deal with pre-interview contact between interviewees; or
 - (d) adequately deal with additional matters that arose during the investigation.
- 3.8. The investigator also wrongly concluded that corroboration was required before any finding could be made [REDACTED] and reached two conclusions that were unsustainable on the evidence.

The establishment of the investigation

- 3.9. This was the first independent investigation conducted under the interim dispute resolution framework, and it was the responsibility of FENZ to establish the parameters and the terms of reference for the investigation. FENZ ensured that [REDACTED] and the complainant were legally represented, which was appropriate given that neither could access support from the United Fire Brigades' Association. The terms of reference, drafted by [REDACTED], were settled over a three-month period, with input from [REDACTED] the complainant, and FENZ together with their legal advisers. The IDRP investigator was not involved in settling the terms of reference. The final terms of reference are attached as Appendix C.⁷⁶
- 3.10. The first challenge for FENZ was the apparent misalignment between the complainant's request for an investigation and the adjudicative paradigm contemplated in the interim dispute resolution process. Despite the length of time taken to negotiate the terms of

⁷⁶ Excluding the appendix, which contained a list of witnesses that the investigation was to interview, along with their contact details.

reference, this fundamental tension over the form of the investigation was not adequately resolved, with repercussions throughout the process and beyond.

3.11. One consequence of this was that the terms of reference did not refer to any relevant standards of conduct. The complainant had specifically [REDACTED] conduct was “not of an acceptable standard”.⁷⁷ The terms of reference provided that the final report was to set out recommendations for further action based on the investigator’s findings, which “at the investigator’s discretion may include recommendations as to disciplinary processes”.⁷⁸ Given that the terms of reference required the investigator to consider potential recommendations as to follow-up disciplinary processes, there should have been reference to the relevant standards against which conduct could be measured. There were several documents that set out such applicable standards of conduct. They included:

- (a) The New Zealand Fire Service *Standards of conduct* August 2015;⁷⁹
- (b) The State Services Commission *Standards of integrity and conduct*;⁸⁰
- (c) The *Standards of conduct of operational members* from [REDACTED] Volunteer Fire Brigade Rules.⁸¹

3.12. FENZ did not include these documents in the terms of reference. This made it difficult for the investigator to address the clause in the terms of reference that enabled [them] to make recommendations regarding further disciplinary processes.

3.13. It may have given FENZ some comfort that the complainant was legally represented during the establishment phase, and there was an opportunity for her to comment on the draft terms of reference. But the complainant was unable to argue to include the applicable standards of conduct because she did not have them. And it appears her access to legal representation was constrained, with limited time allowances.⁸² The complainant said “... the terms of reference went back and forth with all kinds of crazy stuff and [my lawyer] basically said to me, just go with them ...”.⁸³

⁷⁷ Email from the complainant to [REDACTED] of 14 August 2017 PSC.04.0348.

⁷⁸ Terms of Reference for Independent Investigation into issues raised by the complainant [REDACTED] Volunteer Fire Brigade, and Fire and Emergency New Zealand, 10 November 2017 PSC.02.0002 and set out in Appendix C
⁷⁹ New Zealand Fire Service Standards of Conduct, August 2015 PSC.01.0201.

⁸⁰ State Services Commission Standards of Integrity and Conduct, June 2007 PSC.01.0048. The Fire Service Standards of Conduct incorporated and linked to the SSC Standards.

⁸¹ [REDACTED] Volunteer Fire Brigade Model Rules, 2008, Standards of Conduct of Operational Members PSC.01.0090.

⁸² See the complainant’s interview transcript, page 87 line 21 and following.

⁸³ The complainant’s interview transcript, page 28 line 15.

- 3.14. By way of contrast, FENZ took a different approach several years later when it commissioned an independent investigation [REDACTED] made by another volunteer firefighter about [REDACTED]. In that investigation, which was established in 2020, FENZ provided the investigator with the 2015 New Zealand Fire Service Standards of Conduct and the rules of the relevant volunteer brigade, including the standards of conduct applicable to members of the brigade. The terms of reference required the investigator to make findings whether the behaviour and conduct breached any of the standards of conduct, if so which standards, and the level of seriousness of the breach or breaches.⁸⁴ I asked FENZ why the terms of reference in that case came to include those standards. FENZ said “despite good faith efforts, FENZ has to date been unable to identify information that would respond to this question. Should any information be identified, it will be shared with you.”⁸⁵ FENZ has not provided any further information.
- 3.15. The complainant asked FENZ for copies of the relevant standards of conduct more than once. On 24 November 2017 FENZ provided her with a link to the 2017 Standards of Conduct, rather than the 2015 Standards of Conduct, which were relevant to her complaints. In an email of 29 November 2017 to FENZ’s [REDACTED] Dispute Resolution, the complainant said:⁸⁶

I should have been provided with the policies and procedures that relate to my complaint on 7 November 2016 when I first contacted NZFS/FENZ and at least when I specifically requested them on 7 December 2016. I am really struggling to understand why an organisation aiming for good standards of conduct and an acceptable level of health and safety would keep its employees and volunteers in the dark as to what those standards are.

FENZ obviously knows what its policies are. [REDACTED] My only support (the lawyer provided to me because of [REDACTED]) has no background with or knowledge of FENZ processes.

You say my lawyer is my support, how do you expect me to be supported by [them] when FENZ is withholding standard information from [them]? It does not get more standard than the framework/rules that relate to a dispute.

Please do not disadvantage me further.

I ask again:

1. Pre 1 July 2017 NZFS had the power to discipline including dismiss volunteer [REDACTED] can FENZ please provide me with the framework under which that would occur.

⁸⁴ [REDACTED], Report on Investigation into Allegations at [Redacted] Fire Brigade, 22 October 2020 at [3.2] PSC.02.0315.

⁸⁵ FENZ’s letter of 4 September 2023 at [2](e).

⁸⁶ Email from the complainant of 29 November 2017 PSC.04.1023.

2. Can FENZ please tell me if the work duties and failure to comply sections of the standards of conduct apply to [REDACTED] volunteer brigades pre July 2017?
 3. Are there any other documents/processes that apply/ied that we have not yet been provided with?
- 3.16. FENZ did not substantively respond to that request, instead suggesting the enquiries could be forwarded to the Official Information Act request team.⁸⁷
- 3.17. FENZ submitted to this review that “internal policies were always available to [the complainant] and were provided to her when requested”.⁸⁸ That statement is inconsistent with the evidence of the complainant’s repeated requests and FENZ’s failure to provide the relevant documents within a reasonable time of the requests.

Interpretation of the period under investigation

- 3.18. The terms of reference for the investigation under the interim dispute resolution process began as follows:⁸⁹
- 1.1 These terms of reference relate to issues raised by [the complainant] (see email dated 14 August 2017 and attached documentation) about:
 - (a) [REDACTED] Volunteer Fire Brigade; and
 - (b) Fire and Emergency New Zealand, **known as the New Zealand Fire Service up until and including 30 June 2017.**(emphasis added)
- 3.19. The bolded description of Fire and Emergency New Zealand in paragraph 1.1(b) of the terms of reference noted that the organisation was “known as the New Zealand Fire Service up until and including 30 June 2017”. As I interpret the terms of reference, the date referred to the final day upon which the organisation had that name.
- 3.20. The investigator, however, interpreted clause 1.1(b) as limiting the scope of [their] investigation to events up until 30 June 2017.⁹⁰ [They] maintained this interpretation in response to a written question as part of this review.⁹¹

⁸⁷ Email to the complainant of 29 November 2017 PSC.04.1023.

⁸⁸ FENZ’s letter of 14 December 2023, page 13.

⁸⁹ Terms of Reference for Independent Investigation into issues raised by the complainant about [REDACTED] Volunteer Fire Brigade, and Fire and Emergency New Zealand, 10 November 2017 (IDRP Terms of Reference) PSC.02.0002 and set out in Appendix C.

⁹⁰ [REDACTED], Report to Fire and Emergency New Zealand (FENZ) in respect of independent investigation into issues raised by the complainant about [REDACTED] Volunteer Fire Brigade and FENZ, 6 August 2018 (IDRP Investigation Report) at [1] PSC.02.0074.

⁹¹ Response by [REDACTED] to written question 31.

3.21. The complainant's complaint to the interim dispute resolution process had included steps taken by Fire and Emergency New Zealand in July 2017. Shortly before her interview with the investigator, the complainant provided her with further documents relevant to the July conduct. The complainant wanted the investigator to address the conduct [REDACTED], leading to the 3 July 2017 letter proposing to dismiss her from the brigade. That would have required the investigator to trigger clause 3.4 of [their] terms of reference which provided:

3.4 If the investigation reveals any additional matters of potential concern to the investigator, the investigators [sic] will consult with the Manager, Dispute Resolution, and these Terms of Reference may be extended, or subsequent investigations may be initiated.

3.22. The investigator did not deal with the July 2017 issues because they incorrectly believed the terms of reference excluded events after 30 June 2017.⁹² Those matters went to the integrity of the response by the New Zealand Fire Service and were of central importance to the complainant. They remain unaddressed. As the investigator pointed out, FENZ, the complainant and [REDACTED] had an opportunity to address this when they received the draft report, but did not draw the point to the investigator's attention.

Departure from agreed process for the complainant to comment on material gathered

3.23. The terms of reference required the investigator to carry out the investigation in accordance with the principles of natural justice. There was no requirement to give the complainant an opportunity to comment on the material gathered in interviews before the investigator prepared a draft report. However, in a series of written and oral exchanges, the investigator agreed that the complainant would be given that opportunity.⁹³

3.24. Despite that agreement, the investigator drafted the report before giving the complainant the opportunity to comment on the information gathered in the 16 interviews the investigator carried out.

3.25. Much of the information in the interviews was adverse to the complainant, and some of it would not have been readily foreseeable. She had no opportunity to respond to that information before the investigator drafted their proposed findings based on the adverse information. Natural justice does not always require disclosure of adverse information before

⁹² IDRP Investigation Report at [1] PSC.02.0074; Response by [REDACTED] to written question 31.

⁹³ Email exchanges between [REDACTED], the complainant and [REDACTED] (the complainant's lawyer) of 12 February 2018 PSC.04.1188. The investigator also told FENZ [REDACTED], in an email of 20 February 2018 that they would disclose the information gathered to the complainant "in order to obtain her final comments before I draft my report" PSC.04.1215.

draft findings are reached, but in this case the investigator's agreement created a reasonable expectation that they would follow that process.

- 3.26. The change in process, together with the overall tenor of the draft findings, which appeared to the complainant to have uncritically accepted prejudicial information, left the complainant without confidence that the investigator had retained an open mind. The complainant said she wanted the chance to take time off work to go through the transcripts and comment on them, and that she was surprised by the change in the process and the content of the draft.⁹⁴ In explanation for the change in process the investigator said, "From my recollection, there was some pressure on timing, and I therefore provided all relevant information, including my draft, to the complainant and allowed her a month to respond".⁹⁵
- 3.27. Having received the draft report together with a large package of material from the 16 interviews, the complainant requested a further interview with the investigator, which took place on 6 July 2018. The investigator did not keep a formal record of that interview, although the report said it was a principle of natural justice that "a written record will be kept of all interviews conducted".⁹⁶ In this instance, the investigator made notes on a hard copy of the draft report, which cannot now be located.
- 3.28. The complainant said the investigator told her they would make further inquiries of:
 - (a) FENZ, regarding who wrote a training document that the complainant was concerned breached her privacy by using her experience as the basis for the training scenario; and
 - (b) [REDACTED], to ask further questions about [their] phone call to the complainant the day after the alleged incident [REDACTED]
- 3.29. However, the investigator did not make any further inquiries on these matters. The only further inquiry related to brigade turnout.⁹⁷
- 3.30. The power dynamics and underlying nature of the investigation in this case made it particularly important that there was a demonstrably fair process. In this context, the investigator's decision to depart from the process they told the complainant they would follow reasonably undermined the complainant's confidence in the fairness and impartiality of the investigation.

⁹⁴ The complainant's interview transcript, page 41 line 31.

⁹⁵ Response by [REDACTED] to written question 9. For completeness, the complainant was initially given three weeks to respond but that was subsequently extended.

⁹⁶ IDRP Investigation report, Appendix 2, page 58 PSC.02.0130.

⁹⁷ Email from [REDACTED] to [REDACTED] [REDACTED] lawyer) and [REDACTED] copied to [REDACTED] of 18 July 2018 PSC.04.1266.

The investigation's approach to contact among interviewees

- 3.31. The nature of this investigation made it inevitable that by the time of the interviews (a year to 18 months after the events) many of the interviewees would have spoken to each other. The underlying events took place in a small volunteer fire brigade [REDACTED] with close bonds among those working in the brigade. [REDACTED] some aspects of the conduct had played out in front of other volunteers.
- 3.32. The complainant told the investigator she was concerned many of the witnesses were in fear [REDACTED], which could affect the accounts they gave (something [REDACTED] strongly disputes). She asked the investigator if it would be possible to ask interviewees whether [REDACTED] had spoken to them. She pointed out that [REDACTED] had spoken to [REDACTED] about the incident,⁹⁸ something [REDACTED] confirmed.⁹⁹ The investigator said they “definitely” would ask interviewees about contact from [REDACTED], as requested.¹⁰⁰
- 3.33. Despite that assurance, there is no record in the interview notes that the investigator asked that question of any interviewee. [REDACTED] interview was recorded and transcribed, and [they were] not asked who [they] spoke to about the events or what [they] had said. Nor did the draft or final reports say anything about the interviewer's approach to this issue, or indicate that the investigator had taken into account the inevitability of contact among interviewees, or the potential for that to influence the accounts given.
- 3.34. I asked the investigator about [their] assurance that [they] would ask interviewees whether [REDACTED] had spoken to them, and whether this had happened. I also asked if there was a record of the responses, which were not apparent from the material available to me. The investigator said:¹⁰¹

All witnesses were told not to discuss their evidence including with [the complainant] or [REDACTED] All assured me they had not.

- 3.35. That response left some ambiguity whether the investigator had asked each interviewee if they had any contact from [REDACTED] *before* the interview, as [they] agreed to do, as well as telling the witnesses not to discuss their evidence with others *after* their interviews.
- 3.36. The absence of any record that the investigator did what they said they would do in either the interview notes or draft report again undermined the complainant's confidence in the

⁹⁸ The complainant's interview with IDRPs investigator, page 6-7 PSC.03.0015-16.

⁹⁹ [REDACTED] interview with IDRPs investigator, page 21 PSC.03.0098.

¹⁰⁰ The complainant's interview with IDRPs investigator, page 6 PSC.03.0015.

¹⁰¹ Response by [REDACTED] to written question 13.

integrity of the investigation. Given the power dynamics of the underlying situation, and the passage of time, it was important for the investigation to show that it addressed potential contact between interviewees and [REDACTED]. This was not done, which reasonably undermined the complainant's confidence in the investigation.

Additional matters arising during the investigation

3.37. The terms of reference enabled the investigator to address additional matters of potential concern that arose during the investigation. The threshold to trigger this was low, namely "if the investigation reveals any additional **matters of potential concern to the investigator**", followed by a mandatory requirement to consult ("**will consult**") as follows:

3.4 If the investigation reveals any additional matters of potential concern to the investigator, the investigators [sic] will consult with the manager, dispute resolution, and these Terms of Reference may be extended, or subsequent investigations may be initiated.

3.38. During the investigation the complainant raised several matters of potential concern that she wanted the investigator to address. They included:

- (a) The action taken by staff at Fire Service headquarters, which the complainant regarded as improper contact or collusion [REDACTED], leading to the two significant letters – the 4 November 2016 letter [REDACTED] "confirming" the complainant's resignation; and the 3 July 2017 letter [REDACTED] proposing to discharge the complainant from the brigade.
- (b) The statement by [REDACTED], to the complainant's EAP counsellor in late January 2018 describing the complainant as "paranoid". The complainant told the investigator that [REDACTED] had telephoned her and apologised for making the comment. [They] agreed to put the apology in writing, but she had not received anything.¹⁰²
- (c) The development and use of training materials within FENZ, which closely mirrored the facts of the complainant's case.

3.39. Each of these issues was important to the complainant and appeared sufficiently material to have met the threshold of "additional matters of potential concern to the investigator". (The use of the phrase "... to the investigator" did not make it a purely subjective test.)

3.40. The investigator's initial response gave the complainant confidence that these issues would be considered. The complainant sent the relevant documents to the investigator a day before her interview. She said the significance of the material was that it showed misrepresentations

¹⁰² Email from the complainant to [REDACTED] of 20 February 2018 PSC.04.1317.

by key head office staff, disparagement of her, and the closing of ranks, as well as in effect pre-determination and collusion [REDACTED]. Later that day, the investigator responded to say they were happy for the complainant to speak to the documents “as they would appear to fall within the Terms of Reference as currently drafted”.¹⁰³

- 3.41. At the interview, the investigator said it was very important for them to receive the underlying documents, and “I don’t think I would be doing my job properly, from the sound of it, if I tried to investigate this without it”.¹⁰⁴ The complainant’s lawyer said to the investigator her view was the terms of reference were “broad enough to encompass these issues”, and she explained that she did not think it was worth going back to FENZ to try and renegotiate the Terms of Reference to include the issues more specifically because she considered they were already within scope.¹⁰⁵ The complainant’s lawyer went on to say “Particularly around [REDACTED] ... [their] conduct is clearly going to be relevant in terms of the Terms of Reference”.¹⁰⁶ The investigator responded:

“Well, that’s been really helpful, and ... there is obviously a lot in here that I will need to put to [REDACTED] and I will need to get any response that they have to hear from you”.¹⁰⁷

- 3.42. Despite the apparent consensus at the complainant’s interview that this material and the questions arising from it were relevant and within the terms of reference, the investigator did not put any of these matters to [REDACTED]. Nor did [they] address the 3 July 2017 letter proposing to discharge the complainant from the brigade in the interviews with [REDACTED].
- 3.43. The investigator said in their report, “I have not had reason to invoke clause 3.4 of the terms of reference”, which could have enabled an extension of the investigation to address these matters.¹⁰⁸ In response to my question about this, the investigator said, “I stand by the comment in my report that, at that time five years ago, I made the decision I did not need to use clause 3.4”.¹⁰⁹
- 3.44. The effect of the investigator’s decision not to take any further steps in relation to those matters was that there has been no investigation into:

- (a) The events leading to the proposal to discharge letter of 3 July 2017;

¹⁰³ Email from [REDACTED] to the complainant, copied to [REDACTED], of 30 November 2017 PSC.04.1034.

¹⁰⁴ The complainant’s interview with IDR P investigator, page 59 PSC.03.0068.

¹⁰⁵ The complainant’s interview with IDR P investigator, page 59 PSC.03.0068.

¹⁰⁶ The complainant’s interview with IDR P investigator, page 59 PSC.03.0068.

¹⁰⁷ The complainant’s interview with IDR P investigator, page 60 PSC.03.0069.

¹⁰⁸ IDR P Investigation Report at [11] PSC.02.0081.

¹⁰⁹ Response by [REDACTED] to written question 25.

- (b) The description of the complainant as “paranoid” to her counsellor;
 - (c) The creation of training materials closely mirroring the complainant’s experience (although the investigator did receive a copy of the training materials after the interview with the complainant, but formed the view they did not need to do anything further).
- 3.45. The investigator told me that they recalled there was some pressure on timing to complete [their] work.¹¹⁰ Even allowing for an imperative to complete the investigation swiftly, it is difficult to understand the basis for any view that the “potential concern” threshold was not met by the matters the complainant had raised. The investigator’s decision left those matters un-investigated and unresolved. From the complainant’s perspective, the investigator’s approach to this issue again involved the investigator failing to do things that they had said they would do. Again, this reasonably undermined the complainant’s confidence in the process.

The approach to fact finding

- 3.46. The investigator had a difficult task in this case and was required to report within a relatively short period of time with, it appears, particularly acute time pressure towards the end of the process. Acknowledging those difficulties, there were three main difficulties with the report:
- (a) First, the investigator said the “he said, she said” nature [REDACTED] meant they were unable to make a finding whether the incident occurred;
 - (b) Second, the investigator reached an unsustainable conclusion that [REDACTED] 4 November 2016 letter to the complainant reflected an “understandable” interpretation of the complainant’s actions; and
 - (c) Third, the investigator wrongly concluded the New Zealand Fire Service had no applicable policy that covered the complainant’s situation.
- 3.47. These deficiencies, both cumulatively and individually, undermined the integrity of the investigation.

He said, she said

- 3.48. [REDACTED]¹¹¹

[REDACTED].

¹¹⁰ Response by [REDACTED] to written question 9.

¹¹¹ [REDACTED], Report on Investigation into [Redacted] Fire Brigade, 22 October 2020 at [7.56] PSC.02.0343.

- 3.49. The complainant's complaint to the interim dispute resolution process had outlined [REDACTED], and the terms of reference required the investigator to investigate [REDACTED]. It was the second of seven matters that the investigator was required to address.
- 3.50. Despite the importance of the issue, the investigator did not ask the complainant any questions about it at interview. As the complainant said in her synopsis to the review:¹¹²
- [REDACTED].
- 3.51. The complainant also gave a statement to [REDACTED].¹¹³ There is no reason to doubt that the investigator would have obtained a similarly detailed account, had [they] asked.
- 3.52. [REDACTED] response was a forceful denial and assertion of fabrication, coupled with a character defence, [REDACTED]. The investigator did not ask [REDACTED] any questions to elicit or probe [REDACTED].
- 3.53. [REDACTED]¹¹⁴
- [REDACTED]
- 3.54. The investigator concluded [they were] unable to make findings whether [REDACTED] because it was a "he said, she said" situation. [REDACTED]¹¹⁵
- 3.55. There is no legal requirement for allegations to be corroborated. Rather, it is open to an investigator to make a credibility determination. To make such a determination, the investigator needed to question all relevant parties about what occurred with sufficient detail, and analyse their responses. They did not do this.
- 3.56. In response, the investigator said they are aware that corroboration is not required and stood by their assessment of the evidence.
- 3.57. However, the written conclusion in the report that the investigator was "unable to find" [REDACTED] because of the absence of corroboration suggested an erroneous view of the fact-finding process, particularly after the omission to ask relevant questions of the witnesses and to test their accounts. This was a further deficiency in the investigation.
- 3.58. The investigator adopted a similar approach to another issue raised by the complainant, concluding [they were] unable to find a plan to oust the complainant from the brigade "in the

¹¹² The complainant's synopsis of 1 August 2023 at [46].

¹¹³ The complainant's [REDACTED] statement of 18 October 2017 PSC.06.0019.

¹¹⁴ [REDACTED] interview with IDRP investigator, page 21-22 PSC.03.0098.

¹¹⁵ IDRP Investigation Report at [55] PSC.02.0098.

absence of any corroborating evidence”.¹¹⁶ It appears from the interview records that the investigator did not ask any of the relevant individuals about the existence of such a plan.

Conclusion the 4 November 2016 letter was based on an ‘understandable’ interpretation

- 3.59. The terms of reference required the investigator to make a finding whether [REDACTED] wrongly alleged the complainant had resigned when she had not.¹¹⁷ The investigator therefore had to reach findings about [REDACTED] letter dated 4 November 2016 which “confirmed” the complainant’s resignation.
- 3.60. The investigator concluded in [their] report that [REDACTED] did “state that the complainant had resigned when it later transpired that was not her intention”.¹¹⁸ [They] said the subsequent escalation may not have occurred if [REDACTED] had simply confirmed the complainant’s intentions first. However, [they] said [REDACTED] “understandably” interpreted the complainant’s actions as a resignation.
- 3.61. These findings vindicated the complainant’s position, up to a point, albeit in muted terms. However, from the complainant’s perspective, the conclusion that the 4 November letter was based on an “understandable” interpretation of events was inconsistent with the evidence. Specifically, the investigator did not address the complainant’s evidence that:
- (a) On 1 November 2016, [REDACTED] yelled at the complainant that she hadn’t resigned [REDACTED].¹¹⁹ This was further evidenced by the complainant’s email of 10 November 2016 [REDACTED].¹²⁰ This evidence, if accepted, tended to show [REDACTED] knew the complainant had not resigned. The investigator noted that the complainant “claim[ed]” that [REDACTED] yelled at her that she hadn’t resigned. However, [they] did not make any finding whether this occurred, nor did [they] ask [REDACTED] whether [they] had done so. There was no mention of the corroborating email to [REDACTED].
 - (b) Contrary to the 4 November 2016 letter, the complainant *had* attended training on 1 November 2016, [REDACTED] had prevented her from completing training after a confrontation.¹²¹

¹¹⁶ IDRP Investigation Report at [28] PSC.02.0088.

¹¹⁷ IDRP Terms of Reference at [2.1](c) PSC.02.0001.

¹¹⁸ IDRP Investigation Report at [93](a) PSC.02.0110.

¹¹⁹ The complainant’s timeline for IDRP investigation PSC.04.0371.

¹²⁰ Email from the complainant to [REDACTED], copied to Paul Baxter, of 10 November 2016 PSC.04.0035.

¹²¹ Text message from the complainant to [REDACTED] and [REDACTED] of 1 November 2016 PSC.04.0018.

(c) [REDACTED] told the complainant on 1 November 2016 she would need to put in a formal complaint, as further evidenced by the complainant's text message that evening.¹²²

3.62. It does not appear possible to reconcile the investigator's conclusion that [REDACTED] 4 November 2016 letter was "understandable" with this evidence. At the very least, the investigator needed to address the conflicting evidence and its significance before reaching that conclusion.

3.63. Moreover, the investigator did not grapple with the broader significance of the resignation letter from the complainant's perspective, namely that it showed head office staff supporting [REDACTED] behind the scenes in a way that was not disclosed to the complainant and which amounted to them participating in steps designed to oust the complainant from the brigade.

The conclusion about the applicability of the 'Respond to Bullying' policy

3.64. The terms of reference for the interim dispute resolution process investigation required the investigator to address whether the Fire Service had a process for dealing with the issues raised by the complainant as identified in the Terms of Reference, and whether the Fire Service followed that process.

3.65. The investigator concluded that the New Zealand Fire Service did not have a "centralised process" for dealing with those issues, and that it was a matter for each individual volunteer brigade to deal with the issues according to their rules.¹²³ The investigator concluded the Fire Service "Respond to Bullying" policy applied only to employees not volunteers,¹²⁴ and [they] said if that policy had been available to the complainant, she may have been able to achieve resolution of her concerns much earlier.¹²⁵

3.66. Contrary to the investigator's conclusions, the *Respond to bullying* policy did apply to volunteers, as I have addressed above. This was clear both from the statement in the document that it applied to "all personnel", and the specific reference in the document to volunteers.¹²⁶ Moreover, [REDACTED] provided the document to the complainant on 22 December 2016 as an applicable policy.¹²⁷ The investigator had that email, but did not refer to it other than a passing reference in the chronology contained in an appendix.

¹²² Text message from the complainant to [REDACTED] of 1 November 2016 PSC.04.0018.

¹²³ IDRP Investigation Report at [118] PSC.02.0118-19.

¹²⁴ IDRP Investigation Report at [121] PSC.02.0119-20.

¹²⁵ IDRP Investigation Report at [123] PSC.02.0120.

¹²⁶ New Zealand Fire Service, Respond to Bullying, August 2015 PSC.01.0097.

¹²⁷ Email from [REDACTED] to The complainant of 22 December 2016 PSC.02.0305.

3.67. It was important to the complainant to have a finding that the New Zealand Fire Service had failed to follow the applicable policy. This was not a matter of mere academic significance, because as I have found above, the resolution and escalation pathway contained in the policy would have helpfully steered matters away from the direction they took with the insistence by [REDACTED] that the complainant's only option was to make a formal complaint.

3.68. As the investigator said:¹²⁸

132. In my view, more informal intervention methods (as set out in the "response to bullying" [sic] document) could and should have been employed by the NZFS at the early stage of the complainant raising her concerns. If those informal methods had not resolved the situation, then more formal intervention could at that point have been considered and discussed with the complainant.

3.69. The complainant was entitled to a finding that the New Zealand Fire Service did not follow the applicable policy, which acted materially to her disadvantage.

Finalising the report

3.70. A week after receiving the draft report and supporting material, the complainant's lawyer wrote to the investigator raising serious concerns with the investigation process. [Their] principal concern was that the investigator had drawn detailed factual conclusions on matters that had not been put to the complainant.¹²⁹

3.71. The complainant met with the investigator on 6 July 2018 and reiterated concerns with the content of the report and process of the investigation. The investigator then finalised [their] report on 6 August 2018, making relatively few changes.

Findings

I find that during the interim dispute resolution process phase—

Fire and Emergency New Zealand:

9. Did not adequately establish the interim dispute resolution process investigation, including by omitting reference to the relevant standards and policies.

The investigator:

10. Did not properly interpret the period under investigation in the terms of reference.

11. Did not comply with an agreed process to give the complainant an opportunity to comment on interviews before preparing draft findings.

¹²⁸ IDRP Investigation Report at [132] PSC.02.0123.

¹²⁹ Letter from [REDACTED] to [REDACTED] of 15 May 2018 PSC.04.1245.

12. Did not adequately deal with pre-interview contact between interviewees.
13. Did not adequately deal with additional matters that arose during the investigation.
14. Wrongly suggested that corroboration of the complainant's account was required.
15. Reached conclusions that were unsustainable on the evidence.

4. FENZ's response to the Interim Dispute Resolution Process

Introduction

4.1. The investigator provided [their] final report to the complainant, [REDACTED] and FENZ [REDACTED] on 6 August 2018, nine months after the start of the investigation. The report made the following six recommendations:¹³⁰

- (a) FENZ acknowledges that there were errors made at an early stage in its handling of the issues raised by the complainant and issues an apology to her for its actions and inactions in that regard.
- (b) All those personnel in a position of seniority within FENZ, both in a volunteer and in an employed capacity, be reminded of the importance of respecting the personal information of others when in discussion with other FENZ personnel, and of ensuring any information they convey in such discussions is, at all times, accurate.
- (c) All FENZ personnel should be reminded that a transparent and fair process exists for raising and dealing with any concerns with regard to both workplace bullying allegations as well as other concerns at a volunteer or employee level and including at an informal level if that is appropriate. This reminder should occur in conjunction by provision to all members, both volunteer and employed, of the current iteration of the "Response to Bullying" document, as well as the Interim Dispute Resolution Scheme Guide for Applicants (if those remain separate documents) and any other relevant documentation for the raising of concerns.
- (d) In the future where allegations are made [REDACTED] not be party to any steps taken, informal or formal, to address or otherwise investigate the allegations, unless the person making them has consented to [REDACTED] being present or otherwise involved.
- (e) That all members, both volunteer and employed, have access to both internal and external (in the form of counselling assistance) support when they raise issues of this nature.
- (f) That FENZ gives consideration to implementing unconscious bias training for all its members to address the issues conveyed to me by several people of negative comments towards, and treatment of, female members, and that regular review of the impact of that training, in the form of member surveys or otherwise, is undertaken.

4.2. FENZ did not communicate with the complainant after receiving the report. The complainant remained in limbo—she had not resigned or been discharged, nor did she have an active place in her brigade or a clear pathway back.

4.3. The complainant's lawyer requested confirmation in early September 2018 whether FENZ would accept and implement all the recommendations and the details of any steps taken by

¹³⁰ IDRP Investigation Report at [139] PSC.02.0126.

FENZ to date.¹³¹ There was no substantive response. In October 2018, the complainant's lawyer told FENZ the Chief Executive should be the one to make the primary apology on behalf of FENZ and [the should be given the report for that purpose, and should also be told that the complainant had serious concerns about the content of the report and the process employed by the investigator].¹³²

- 4.4. FENZ's response to the report was extremely slow. One reason was that it limited who had access to the report internally, based on a misinterpretation of the confidentiality clause in the terms of reference:¹³³

3.3 The investigation, including the terms of reference, the complaints, information received during the course of the investigation, final and draft reports of the investigator are to be made available only **to any party directly involved in the investigation process**, otherwise the investigation, including the terms of reference, the complaints, information received during the course of the investigation, final and draft reports of the investigator are to be kept confidential. (Emphasis added)

- 4.5. FENZ considered that clause prevented it from circulating the investigation report to internal FENZ decision-makers and people able to take any action on recommendations. That interpretation overlooked the words in bold above. FENZ as an institution was a party directly involved in the investigation process, and the terms of reference were no impediment to FENZ providing the report to those with a proper interest in receiving it.
- 4.6. As a result of its overly narrow interpretation, FENZ, without consulting with the complainant, asked the investigator to prepare an anonymised summary of the report. [They] provided this on 15 October 2018. The anonymised summary report was stripped of the facts of ¹³⁴ the complainant's matter.¹³⁵
- 4.7. By January 2019, five months after receiving the report, FENZ had not implemented the recommendations or provided any substantive response to the complainant. On 28 January 2019, the complainant raised FENZ's lack of response with the decision-maker on her

¹³¹ Email from [REDACTED] to [REDACTED], copied to the complainant, of 3 September 2018 PSC.04.1279.

¹³² Email from [REDACTED] to [REDACTED], copied to the complainant, of 4 October 2018 PSC.04.1301.

¹³³ IDRP Terms of Reference PSC.02.0002.

¹³⁴ [REDACTED], Report in respect of independent investigation into issues raised within a volunteer fire brigade, October 2018 PSC.02.0133.

¹³⁵ [REDACTED], Report in respect of independent investigation into issues raised within a volunteer fire brigade, October 2018 PSC.02.0133.

complaints, [REDACTED]. She said she had “been waiting more than 5 months for FENZ to figure out how to effect that apology.”¹³⁶

- 4.8. As a result FENZ sent an apology letter, signed by [REDACTED], to the complainant on 13 February 2019. [REDACTED] had only been provided with the anonymised summary report and did not have any information about the facts of the situation to inform the apology.
- 4.9. There were three failures in this phase. FENZ:
 - (a) Responded in a slow and disjointed way;
 - (b) Mishandled the apology to the complainant;
 - (c) Did not properly address the complainant’s status as a volunteer.

Timeliness and co-ordination of FENZ’s response

- 4.10. As already noted, FENZ took an overly restrictive approach to the confidentiality of the final report. As a result, the report sat on a desk within FENZ for two months.
- 4.11. When FENZ eventually provided the document to a broader internal audience, it was merely the anonymised version, which had been stripped of all facts. That meant the readers within FENZ had no way to understand the findings or recommendations in context. The anonymised report was only 10 pages long, compared to the 60 pages of the full report.
- 4.12. In addition, and more fundamentally, it appears that FENZ’s initial approach was influenced by its earlier failure during the establishment phase to be clear about the nature of the investigation. The documents suggest that key people within FENZ wrongly conceptualised the process as the resolution of a dispute between [REDACTED], rather than an investigation into allegations of potential wrongdoing including by FENZ itself, which FENZ needed to respond to and deal with.
- 4.13. That misconception existed from early in the investigation. On 31 January 2018, the Chief Executive, Rhys Jones, told the complainant that FENZ would only receive a copy of the report if she decided to provide one to them, and his intention was for [REDACTED] to be her point of contact should she “wish or need FENZ to take action over any findings of the report”.¹³⁷ The

¹³⁶ Email from the complainant to [REDACTED] of 28 January 2019 PSC.04.1392.

¹³⁷ Email from [REDACTED] to the complainant, copied to [REDACTED] and [REDACTED], of 31 January 2018 PSC.04.1085.

Chief Executive had recused himself from dealing with the complainant's complaints because of a personal conflict of interest.

- 4.14. The complainant, through her lawyer, [REDACTED], made the position clear in [REDACTED] email of 8 February 2018:¹³⁸

The evident purpose of the report is to inform FENZ of the investigator's recommendations, if any, in the expectation that FENZ would give due consideration, in good faith, to such recommendations, including as to disciplinary processes. Your suggestion that the process is independent of FENZ to the point that FENZ need only consider "taking action" if the complainant so requests would seriously undermine the principles of the dispute resolution scheme as set out in s 179 of the FENZ Act, and particularly that of accountability.

- 4.15. FENZ's position remained unclear. [REDACTED], advised on 14 February 2018:¹³⁹

As for FENZ 's obligations following the outcome of the IDRPs investigation, I don't know anything other than what is in the Terms of Reference. As the IDRPs is independent of FENZ, I have never spoken to Rhys or anyone else about this dispute. The IDRPs does not generally include investigations, so there is no precedent and/or guidance for next steps.

- 4.16. The above factors all contributed to a slow, disjointed, and ill-informed response by FENZ.

The apology to the complainant

- 4.17. The first recommendation from the IDRPs investigation was for FENZ to acknowledge there were errors made at an early stage in its handling of the issues raised by the complainant, and that FENZ apologise to the complainant for its actions and inactions in that regard.¹⁴⁰

- 4.18. The complainant finally received an apology letter, more than six months after the recommendation, on 13 February 2019. The letter was signed by [REDACTED]. The letter began by saying [REDACTED] had been provided with the anonymised summary of the report, which [they] had read and carefully considered. The letter noted that the summary of the report identified systemic problems with the relevant policies and processes administered by the then New Zealand Fire Service and associated organisations including volunteer fire brigades. It went on to say:¹⁴¹

While the details of what occurred are not set out in the summary of the report, I accept from the findings and recommendations that what occurred must have

¹³⁸ Email from [REDACTED] to [REDACTED], copied to [REDACTED], of 8 February 2018 PSC.04.1204.

¹³⁹ Email from [REDACTED] to [REDACTED] of 14 February 2018 PSC.04.1201.

¹⁴⁰ IDRPs Investigation Report at [139](a) PSC.02.0126.

¹⁴¹ Letter from [REDACTED] to the complainant of 8 February 2019 PSC.04.1387.

had an impact on you that was distressing, hurtful and destructive of your faith in the processes that were used to address your concerns.

On behalf of Fire and Emergency New Zealand and its predecessor organisations, I formally apologise for the actions and omissions that have had this negative effect on you. In particular, I recognise and acknowledge [REDACTED] finding that errors were made at an early stage in the handling of the issues you raised and that this contributed to an escalation of the situation.

- 4.19. The letter said that [REDACTED] was determined to ensure that Fire and Emergency New Zealand developed a more positive and inclusive culture that encouraged and enabled all members to be the best they could be. [They] said they would make sure that [REDACTED] recommendations were taken into account as the organisation took steps to reform some of the negative attitudes and approaches of the past.
- 4.20. [REDACTED] referred to the recommendations made by Judge Coral Shaw's independent review, which had recently been completed.¹⁴² [They] apologised for the time taken to provide the apology, but did not give reasons, and closed:

I wish you all the very best for the future.

- 4.21. There were several deficiencies with this apology. First, it was extremely late. There was no adequate justification for the six-month delay after FENZ received the full report, or the four-month delay after FENZ received the anonymised summary. FENZ did not explain the delay to the complainant. It appears one of the solicitors from the legal team provided a draft apology to [REDACTED] in October or November 2018, approximately four months before it was eventually sent.¹⁴³ The apology was made only after the complainant specifically complained to [REDACTED] about the fact she had not received it. [REDACTED] told the review that [they] initially declined to sign the apology because [they] thought it should be signed by the Chief Executive (as the complainant's lawyer had also said to another FENZ manager) or other relevant decision makers, but that request was not taken up. [They] said this process carried on for several months. [They] sought advice [REDACTED] and weeks later received the same letter to sign. [They] continued to decline to sign it but eventually made a "management decision" to sign a letter of apology "that did say we were sorry but I did not feel was substantial", rather than keep the complainant waiting longer because of internal differences of views.¹⁴⁴

¹⁴² Judge Coral Shaw, Independent Review of Fire and Emergency New Zealand's workplace policies, procedures and practices to address bullying and harassment, 24 January 2019 (Shaw report) PSC.02.0152

¹⁴³ [REDACTED] interview transcript page 18, line 21.

¹⁴⁴ Statement of [REDACTED], 20 March 2024, page 2.

4.22. Secondly, [REDACTED] did not know the details of what had happened to the complainant. In other words, [they] did not know what [they were] apologising for. This meant [they were] unable to incorporate the key elements of effective apologies as described in guidance from the Ombudsman, which recommends:¹⁴⁵

- Explicitly acknowledging and recognising the wrong to which the apology applies (recognition);
- Expressly accepting responsibility or fault for the wrong that caused the harm (responsibility);
- A plain English explanation of the reasons why the wrong happened (reasons);
- A statement of apology that expresses sincere regret (regret); and
- Proposed or actual action to address the problem and an express promise not to repeat the wrong (redress).

4.23. In addition, there was no attempt to consult with the complainant as to the form or process of the apology. Nor did [REDACTED] send the apology directly to the complainant; instead it was attached to an email exchange between the complainant and [REDACTED].

4.24. The final sentence of the apology was problematic (“I wish you all the very best for the future”). At that stage, the complainant was, as she still is, a volunteer firefighter with unresolved complaints. From her perspective, the sentence was insulting. It suggested, once again, that the complainant was no longer part of the FENZ organisation and was being given best wishes as a parting gesture. There were echoes of the final sentence in [REDACTED] letter of 4 November 2016 purporting to confirm her resignation, which ended “I wish you all the best in your future endeavours”.¹⁴⁶ The final sentence certainly gave no indication that FENZ had an intention to reintegrate the complainant into the volunteer brigade or saw itself as having any ongoing duties to her.

4.25. [REDACTED] said to the review:¹⁴⁷

Salutation – I regret the complainant has taken a negative inference from the sign off “I wish you all the best for the future”. This was genuine and was certainly not intended to cause offence. I knew the complainant was a member of [REDACTED] Fire Brigade. I knew that the complainant was not currently

¹⁴⁵ Ombudsman, Apologies Guide, August 2022, page 10. The Ombudsman refers to these as the “Six Rs”, including a sixth optional element, release. The same principles are outlined in the Ombudsman’s manual for managing unreasonable complainant conduct, October 2012, page 33-34, which FENZ was aware of.

¹⁴⁶ Letter from [REDACTED] to the complainant of 4 November 2016 PSC.04.0027.

¹⁴⁷ Statement of [REDACTED], 20 March 2024, page 2.

participating in the Brigade (ie. Practise or rostered on). I knew it would be difficult for her to start participating again. It was difficult for females anyway, let alone after making a complaint [REDACTED]. So I didn't mean anything more than what was said, I wished her well.

- 4.26. In my view, the complainant reasonably interpreted the phrase, "I wish you all the very best for the future" as suggesting a parting of the ways. That is the natural and ordinary usage of the phrase. [REDACTED] offering best wishes for the future conveyed a message that the complainant's future lay outside the organisation.
- 4.27. There was also an earlier apology letter that [REDACTED] sent the complainant in response to her complaints that FENZ wrongly sent a Privacy Act request to two of the main people under investigation, [REDACTED].¹⁴⁸ [REDACTED] wrote to apologise in a letter dated 20 December 2018. It said:¹⁴⁹

Dear Sarah

Complaint regarding Privacy Act request process

I refer to your complaint dated 19 November 2018 regarding Fire and Emergency New Zealand's handling of the request for your personal information.

I am sorry you are concerned about the involvement of the two individuals you identified in the processing of your Privacy Act request. I would like to assure you that the individuals you identified were not involved in the decision-making on your request, a dedicated team processing information requests provides advice to me. I have no reason to believe that any information was withheld from the team processing your request.

When a request under the Privacy Act is received, we are often required to contact [REDACTED] and Region HR to ensure that information held by the brigade and region is collected. As you note, not all information is held electronically.

As your complaint was being handled by the confidential Interim Dispute Resolution Process the team handling your Privacy Act request was unaware of your complaint when they began collating all personal information. We have since looked at our systems to make improvements in how we manage this separation of information. I apologise that this has caused you concern.

Yours sincerely

pp [REDACTED]

- 4.28. This letter was also problematic:
- (a) First, the apology featured one of the "traps to avoid" in the Ombudsman's guidance on apologies, in that it shifted blame to the complainant: "I am **sorry you are concerned**

¹⁴⁸ Email from the complainant to [REDACTED] and [REDACTED] of 19 November 2018 PSC.04.1342.

¹⁴⁹ Letter from [REDACTED] to the complainant of 20 December 2018 PSC.04.1357.

about the involvement of the two individuals ...”, and “I **apologise that this has caused you concern**”. The apology should have apologised for FENZ’s actions, rather than apologising that the complainant was concerned.

- (b) Second, the apology stated that FENZ had “looked at” its systems for managing information but provided no detail as to what changes had been or would be made.
- (c) Third, the apology was signed as a “pp”. [REDACTED] says [they] did in fact sign it and wrote in “pp” next to [their] own name in an “administrative error” as the letter should have had another FENZ manager’s name on it. Regardless, the inclusion of “pp” was unhelpful.

4.29. Both letters of apology fell short of what was required.

The complainant’s status as a volunteer

4.30. Upon receiving the IDRPs report in August 2018, it should have been clear to FENZ that there had been deficiencies in the way the situation [REDACTED] had been handled, and that a volunteer, now in a direct relationship with FENZ,¹⁵⁰ had spent most of the last two years attempting to deal with the difficult and distressing situation. It should have been a priority for FENZ to find a substantive way to put matters right for the complainant. The complainant remained a volunteer within the organisation, with a commitment to her role and to the volunteer fire brigade. FENZ ought to have engaged with the complainant, to try to understand her needs, including training, and any other support that might be required to reintegrate her as a volunteer fire fighter.

4.31. Instead, correspondence indicates that senior people within FENZ simply wished to move to dismiss the complainant. On 5 December 2018, [REDACTED], sought advice from [REDACTED], “Can we proceed and dismiss her from the brigade on the grounds that she has abandoned her position”.¹⁵¹ On 30 January 2019, [REDACTED] sent another email to [REDACTED] saying:¹⁵²

“As discussed today can we get a result on independent complaint regarding [the complainant’s] complaint. She has not attended brigade since before 10 June 2019 [sic]. We are looking to terminate her membership of [REDACTED] brigade. This may cause unwanted media attention in particular so close after the release of the Shaw report”.

¹⁵⁰ FENZ, “Enabling Sustainable Volunteerism”, Volunteerism Strategy 2019-2029 records that the Fire and Emergency New Zealand Act brought volunteers into a “direct relationship” with FENZ, described as “one of engagement not employment, and one which honours volunteers’ primary connection to their local brigade or fire force” (page 15).

¹⁵¹ Email from [REDACTED] to [REDACTED] of 5 December 2018 PSC.04.1351.

¹⁵² Email from [REDACTED] to [REDACTED], copied to [REDACTED], of 30 January 2019 PSC.04.1382.

- 4.32. In this review, [REDACTED] presented the proposal to dismiss as responding to “a serious and significant safety issue” arising from the fact that the complainant had not actively participated in the Brigade for over two years. The contemporaneous documents do not support that characterisation. The complainant’s absence from the Brigade was ongoing because of the unresolved situation with FENZ. The proper response from the organisation to any concern about the currency of the complainant’s training would have been to offer her the necessary training, not to treat her as a health and safety risk.
- 4.33. When the complainant belatedly learned of these attempts to dismiss her (following the release of documents under the Privacy Act), she made a new complaint to the FENZ Board Chair, Paul Swain.¹⁵³ The Board Chair responded to the complainant on 18 March 2020 that he saw this [as] a new complaint made under the IDRP, and that it had been forwarded through the correct channels and the appropriate person would be in contact soon.¹⁵⁴
- 4.34. FENZ did not take any steps to terminate the complainant’s membership, as requested by [REDACTED]. However, nor did FENZ do anything to understand the complainant’s position or to support her reintegration. That position continues to the present day and remains unsatisfactory.

Findings

I find that following the interim dispute resolution process, Fire and Emergency New Zealand:

16. Responded to the investigation in a slow and disjointed way.
17. Mishandled the apology to the complainant.
18. Did not properly address the complainant’s ongoing status by engaging with her to understand what training and other support she required as a volunteer.

¹⁵³ Email from the complainant to Paul Swain of 17 March 2020 PSC.04.1924 and IDRP application of 17 March 2020 PSC.04.1927.

¹⁵⁴ Email from Paul Swain to the complainant of 18 March 2020 PSC.04.1931.

5. FENZ's response to complaints after the Interim Dispute Resolution Process

Introduction

- 5.1. The first phases of FENZ's response to this matter had lasted approximately two years. The next phase, following the IDRP investigation, was to last approximately another two and a half years from late 2018 to April 2021.
- 5.2. Over that period the complainant's list of complaints, concerns and grievances multiplied in response to actions taken by FENZ and its employees. The ongoing missteps left the complainant increasingly mistrustful of FENZ and even more determined to seek accountability.
- 5.3. The need for FENZ to provide a principled response was even greater during this period. Again, there needed to be:
 - (a) A clear and fair process that could deal with the issues proportionately;
 - (b) Clear communication of the process to all involved;
 - (c) A timely response avoiding unnecessary delay;
 - (d) The proper management of conflicts of interest;
 - (e) Principled decision making;
 - (f) Sensitivity to the human factors involved; and
 - (g) Appropriate support for all parties.
- 5.4. FENZ's response during this phase again fell short of these requirements, for the reasons described below.
- 5.5. The ongoing flaws in process ultimately dwarfed the original [REDACTED] and became the complainant's focus. One key document named more than 19 individuals and 24 paragraphs of complaints. If each allegation were counted separately against every individual, it would comprise as many as 300 separate allegations.¹⁵⁵ In many ways, the situation was even more challenging during this phase because of FENZ's failures and missteps during the earlier phases, some of which the IDRP report had pointed out. The complainant's confidence in FENZ's processes had been damaged and the temperature of the situation had been escalated

¹⁵⁵ The complainant's expanded second complaint of 12 February 2018 PSC.04.1170. This was provided to [REDACTED], but the matter was paused until later in 2018 whilst the interim dispute resolution investigation was underway.

by actions such as the ‘propose to discharge’ letter. Any stores of goodwill and trust that initially existed had been depleted. From FENZ’s perspective, the complainant’s primary complaints [REDACTED] had not been upheld by the IDRP investigation, but the complainant’s complaints had continued and multiplied to the point of being overwhelming for FENZ to respond to.¹⁵⁶ The complainant made multiple extensive requests for information under the Privacy Act and Official Information Act.¹⁵⁷ Some FENZ staff clearly viewed the complainant as a “risk” and this no doubt coloured their actions.¹⁵⁸

- 5.6. Organisationally, this was also a challenging time for FENZ on the topics of bullying and harassment. In July 2018 FENZ commissioned a report from retired Judge Coral Shaw on bullying and harassment, and Judge Shaw’s report in early 2019 was highly critical of the organisation.
- 5.7. There were many overlapping and inter-twined strands to the complainant’s situation over the next two and a half years, which make it difficult to summarise concisely. In the following sections I focus on what appear to me to be the main issues, without attempting to narrate every twist and turn. In short, Fire and Emergency New Zealand:
 - (a) Did not organise the response to the complainant’s complaints into an appropriate process or structure;
 - (b) Did not follow applicable policies and processes;
 - (c) Wrongly withheld documents requested under the Privacy Act 1993;
 - (d) Did not adequately manage conflicts of interest; and
 - (e) Arrived at a procedurally unfair and unsound decision.

The structure of the response

- 5.8. During the IDRP investigation, the complainant obtained a series of internal Fire Service documents under the Privacy Act. From those documents, the complainant became aware of the actions of senior staff and managers within the Fire Service, including [REDACTED], who had supported [REDACTED] during the early response to the issues.

¹⁵⁶ [REDACTED] letter of 22 September 2023 page 3.

¹⁵⁷ [REDACTED] advised that a 2019 Privacy Act request involved tens of thousands of documents that needed to be searched through and then assessed: [REDACTED] letter of 22 September 2023 p 2.

¹⁵⁸ [REDACTED] interview transcript, page 22 line 31.

- 5.9. In December 2017, the complainant complained to the Chief Executive of FENZ about the conduct of [REDACTED].¹⁵⁹ The Chief Executive (who had a conflict of interest as noted above) directed that an independent investigation be commissioned. A [REDACTED] law firm, [REDACTED], was engaged to undertake that investigation in December 2017.
- 5.10. [REDACTED] allocated the investigation to a lawyer in their office, [REDACTED]. The complainant provided [REDACTED] with an expanded complaint document in February 2018.¹⁶⁰ This was the 24-paragraph document that included allegations against more than 19 FENZ employees and managers. It also raised further concerns about [REDACTED] potential involvement in the FENZ training material that closely resembled the complainant's complaint.
- 5.11. The complainant asked to put the [REDACTED] investigation on hold while she was dealing with the IDRP investigation. FENZ agreed. In September 2018, after the IDRP investigation was completed, the complainant asked that the [REDACTED] investigation recommence.
- 5.12. In November 2018, the complainant added further complaints regarding:
- (a) Gaps and deficiencies in the IDRP investigation;¹⁶¹
 - (b) [REDACTED] describing her as "paranoid" to her counsellor;¹⁶² and
 - (c) [REDACTED] potentially inserting negative comments about the complainant into brigade meeting minutes for a meeting that [they] did not attend.¹⁶³
- 5.13. [REDACTED] was not aware of these further complaints at the time but denies having had any input into the relevant meeting minutes.
- 5.14. By the end of 2018, FENZ was facing a complex and extensive series of complaints from the complainant. As a volunteer the complainant had very little power or influence at the start of the process, and even less after two years away from her brigade. There had been what she regarded as a determined and coordinated plan to oust her from the brigade. Internal documents had revealed some dismissive and disparaging comments about her complaints. Trust was at an all-time low, and the power disparity [REDACTED] had grown. The IDRP investigation had been procedurally and substantively flawed from her perspective. The IDRP

¹⁵⁹ Letter from the complainant to Rhys Jones of 3 December 2017 PSC.04.1039.

¹⁶⁰ The complainant's expanded second complaint of 12 February 2018 PSC.04.1170.

¹⁶¹ Email from the complainant to [REDACTED] of 7 November 2018 PSC.04.1320.

¹⁶² Email from the complainant to [REDACTED] of 6 November 2018 PSC.04.1317.

¹⁶³ Email from the complainant to [REDACTED] of 16 November 2018 PSC.04.1344.

recommendations had been met with silence by FENZ, and the complainant was still waiting for an apology.

- 5.15. FENZ needed to decide what to do about the outstanding complaints, and importantly what process or structure would address them. There had been an initial decision to appoint [REDACTED], an external lawyer, to investigate the first set of complaints a year earlier in 2017, but that process had been paused, and the range of complaints had significantly expanded since then. FENZ needed to get the matter into a proper process and structure as quickly as possible. Instead, over the next two and a half years, the missteps continued and FENZ never successfully put in place an effective process to respond to the complaints. The key reasons for this included that FENZ:
- (a) Did not provide adequate support for the complainant at key points in the process;
 - (b) Took an overly-rigid approach to defining the scope of the complaints;
 - (c) Withheld information from the complainant, knowing it was “pretty obvious” this would prevent an agreed mediation from going ahead;¹⁶⁴
 - (d) Did not respond to reasonable questions from the complainant; and
 - (e) Did not ensure the people responding to the complainant’s complaints had the information and support they needed.

Support for the complainant

- 5.16. The complainant had been supported by a lawyer, [REDACTED], during the IDRP investigation. FENZ met the costs of that engagement, but it appears the retainer was very limited,¹⁶⁵ and it had come to an end even before the end of the IDRP process. At a later stage, FENZ also provided counselling support to the complainant through an independent provider.¹⁶⁶
- 5.17. However, during the critical period towards the end of 2018 and early 2019 when FENZ needed to decide how it would respond to the complainant’s complaints, the complainant was not supported by any legal representation or advice. She repeatedly advised FENZ that she did not have a legal adviser and was “going through this alone, with zero support”.¹⁶⁷ In early December 2018, FENZ proposed a meeting between the complainant and [REDACTED],

¹⁶⁴ [REDACTED] interview transcript at page 30 line 4 and response by [REDACTED] to written question 8.

¹⁶⁵ Refer for example, email from [REDACTED] to [REDACTED] of 14 February 2018 PSC.04.1200.

¹⁶⁶ [REDACTED] letter of 22 September 2023, page 3. Email from [REDACTED] to [REDACTED] and [REDACTED] of 15 September 2020 PSC.04.2220.

¹⁶⁷ See for example, email from the complainant to [REDACTED] and [REDACTED] of 6 December 2018 PSC.04.1353.

the identified decision-maker at that stage. [REDACTED] was to be accompanied by FENZ's [REDACTED]. Initially it was assumed that the complainant would be represented by [REDACTED] again, and [REDACTED] specifically noted that "We don't want this to be interpreted as a 'legal' process, but it is helpful having the legal advisors present".¹⁶⁸

- 5.18. The complainant made it immediately clear that she did not have a lawyer and repeated earlier requests for one, but she was told she could "feel free to bring a support person to the meeting" and after the meeting they could work through options regarding advice or support that FENZ may be able to assist with.¹⁶⁹
- 5.19. FENZ's failure to respond substantively to the complainant's requests for a lawyer, or to respond as to the process to obtain legal funding, caused the complainant ongoing stress during this period. In an email of 26 January 2019 to [REDACTED], she said:¹⁷⁰

Also, I ask – for at least the fifth time (the third time to you), requests which I have made over the course of the year – could you please provide me with FENZ's process for obtaining FENZ funding for legal support ... No worker should have to ask five times to even just get the process for support let alone any actual support.

- 5.20. When FENZ did eventually tell the complainant what process she could use to access legal support, she was able to obtain the assistance of a lawyer, [REDACTED], from approximately June 2019.¹⁷¹ This was immediately constructive. [REDACTED] first email to FENZ proposed mediation as the next step. [Their] email said, "given the history of the matter, it has not been an easy decision to try to mediate. However, Sarah will attempt it".¹⁷²
- 5.21. The delay in the complainant being able to access legal support between the end of the IDR process and March 2019 was unhelpful. Given the complexity and difficulty of the situation, there was an obvious need for legal support. The role of a lawyer in a situation such as this is not only to advocate for the individual, but also to help structure and focus the complaint to give the greatest chance of successful resolution. A lawyer can be an important mediating presence between the complainant and the organisation. A lawyer can also provide important support for the complainant in understanding the available options and working through their

¹⁶⁸ Email from [REDACTED] to [REDACTED] of 5 December 2018 PSC.04.1346.

¹⁶⁹ Email from [REDACTED] to the complainant of 16 January 2019 PSC.04.1373.

¹⁷⁰ Email from the complainant to [REDACTED] of 28 January 2019 PSC.04.1373.

¹⁷¹ FENZ advised The complainant of the Independent Advocacy service on 13 February 2019: email from [REDACTED] to The complainant of 13 February 2019 PSC.04.1390. The complainant made an application on 16 February 2019 which was acknowledged by FENZ on 19 February 2019: PSC.04.1403 and approved on 27 February 2019: letter from [REDACTED] to The complainant of 27 February 2019 PSC.04.2721.

¹⁷² Email from [REDACTED] to [REDACTED] of 26 June 2019 PSC.04.1505.

response to the situation, with the benefit of professional detachment. At times, some within an organisation can regard the involvement of lawyers as something to be avoided, feared or resisted. In this case, earlier legal support would have helped both the complainant and FENZ to identify the process most likely to lead to a satisfactory resolution. [REDACTED] acknowledged that a lawyer would have been helpful “because dealing with lawyers it would go a lot quicker”.¹⁷³

5.22. FENZ’s funding for [REDACTED] involvement was limited and short lived. The proposed mediation did not go ahead after FENZ wrongly withheld documents from the complainant, as described further below. FENZ said its funding for [REDACTED] was only for the purposes of mediation.¹⁷⁴ The complainant repeatedly tried to seek further funding for [REDACTED] to assist her, and it appears [REDACTED] was supportive of this in April 2020, with words to the effect, “It would be better if the complainant was legally represented”.¹⁷⁵ Despite the complainant’s requests, and the apparent support of [REDACTED], FENZ did not provide further funding for [REDACTED] support at that time.

5.23. In correspondence to this review, FENZ took the position that it “sought to ensure that the complainant had access to legal advice”,¹⁷⁶ and said:¹⁷⁷

... In hindsight, FENZ could have been clearer in communicating to the complainant that funding for legal support to engage in FENZ’s process to resolve her complaint was available to her whether that process involved attending mediation or not. ...

5.24. Those submissions are not consistent with FENZ’s emails in October 2019,¹⁷⁸ February 2020,¹⁷⁹ and April 2020,¹⁸⁰ which made it clear that the funding support for [REDACTED] was only for the purpose of mediation, which by that stage was off the table.

5.25. The belated and limited provision of legal support to the complainant was a barrier to the organisation successfully dealing with the complainant’s complaints in an appropriate

¹⁷³ [REDACTED] interview transcript, page 30 line 30.

¹⁷⁴ Refer for example to email from [REDACTED] to the complainant of 23 October 2019 PSC.04.1804 [REDACTED] approved funding for the purposes of your preparation and attendance at mediation with regard to your complaint with Fire and Emergency (as confirmed in [their] email below). The remainder of these funds are still available to you for those original purposes. There has been no change to that approval.”

¹⁷⁵ Response by [REDACTED] to written question 45. See also email from [REDACTED] to the complainant of 28 May 2020 PSC.04.1987. I am comfortable relying on this consistent evidence as reliable despite its technical status as hearsay.

¹⁷⁶ FENZ’s letter of 22 September 2023 at [4.4].

¹⁷⁷ FENZ’s letter of 14 December 2023 at [6](k).

¹⁷⁸ Letter from [REDACTED] to the complainant of 29 October 2019 PSC.04.1816.

¹⁷⁹ Email from [REDACTED] to the complainant of 10 February 2020 PSC.04.1915.

¹⁸⁰ Email from [REDACTED] to the complainant of 23 April 2020 PSC.04.1973.

structure. I do not suggest a general obligation on FENZ to fund complaints to the Privacy Commissioner or Ombudsman in all cases, but in this instance in my view [REDACTED] ongoing assistance would have been helpful to move the matters forward.

Defining the scope of the complaints

5.26. In late 2018 and early 2019, FENZ was focussed on defining the scope of the complainant's complaints. This was understandable, given the very large number of allegations against FENZ employees and managers. FENZ's strategy was to invite the complainant to meet face to face to discuss the scope of her complaints. Again, this was an understandable approach in principle, no doubt with the aspiration that a face-to-face meeting could help to focus or narrow down the scope of what needed to be investigated.

5.27. The complainant indicated a willingness to meet with FENZ for this purpose, but the sticking point was that she did not have funding for a lawyer to assist her with the process. She pointed out the power disparity, and among other things said:¹⁸¹

This system will not work until someone with one year and six months experience and without a network of people in the organisation is put as close as possible on an equal footing with [REDACTED].

5.28. The delay in providing legal support to the complainant, just discussed, meant the complainant's only practical option would have been to attend the meeting without a lawyer despite the power disparity. The proposed meeting therefore did not occur.

5.29. At that point, there were other options available to FENZ to try and make progress in defining the scope of the complaints. For example, FENZ could have attempted a first draft of a terms of reference for the external investigation commissioned by the Chief Executive in 2017. Indeed, [REDACTED] the proposed external investigator had emailed the complainant in September 2018 suggesting that would happen:¹⁸²

The next step in the process is for FENZ to determine the scope of my investigation and **you will be consulted with on the proposed terms of reference.** (Emphasis added)

5.30. At this point, FENZ could have pivoted from seeking a face-to-face meeting with the complainant to another approach such as providing a draft terms of reference for comment, but FENZ took the view that it could not prepare a draft terms of reference until FENZ staff met with the complainant to understand the scope of her complaint.¹⁸³ FENZ [REDACTED], said

¹⁸¹ Email from the complainant to [REDACTED], and [REDACTED] of 6 December 2018 PSC.04.1396.

¹⁸² Email from [REDACTED] to the complainant of 24 September 2018 PSC.04.1371.

¹⁸³ [REDACTED] interview transcript, page 11 line 14.

because “we never got to the point of arranging a meeting”, FENZ did not begin preparing a terms of reference.¹⁸⁴ [REDACTED] acknowledged that it would have been possible to make a scope determination without a meeting, but [they] said FENZ wanted to adopt a modern approach where the complainant was actively involved in defining the process.¹⁸⁵

- 5.31. It would undoubtedly have been helpful if FENZ and the complainant could have sat down face-to-face to work constructively together on defining the scope of her complaints. I have already addressed the key barrier to that occurring, which was the delay in making funding available for legal support so the complainant could participate in that process on a less uneven basis. Unfortunately, FENZ’s desire to work with the complainant face-to-face to define the scope of her complaints appears to have become a fixation and ultimately a roadblock to making progress on those complaints. A more flexible approach from FENZ, such as an openness to preparing draft terms of reference as [REDACTED] had suggested, would likely have presented an opportunity to move the process forward and avoid the deadlock that transpired over coming months. FENZ has accepted that this was an inadequacy of its complaint handling.¹⁸⁶

The external investigation

- 5.32. As noted, the Chief Executive had directed an external investigation by [REDACTED] Lawyers in late 2017. [REDACTED] had prepared and sent terms of reference to FENZ. FENZ did not materially advance the draft terms of reference or alert the complainant to their existence and the external investigation did not proceed.
- 5.33. I have been unable to identify when the decision was made to abandon the investigation. There was never an explicit communication to the complainant to that effect. The closest I have been able to locate is an email from [REDACTED] on 9 October 2019 to the complainant which made it clear that [they] would now determine the complainant’s complaints—implicitly indicating that the [REDACTED] investigation would not happen:¹⁸⁷

I have offered to meet, or mediate, with you to clarify the scope of your complaint on at least the following dates:

- 5 December 2018 (through [REDACTED])
- 10 December 2018

¹⁸⁴ [REDACTED] interview transcript, page 12 line 7.

¹⁸⁵ [REDACTED] interview transcript, page 12 line 25.

¹⁸⁶ FENZ’s letter of 22 September 2023 at [2.4](a), noting the inadequacy as “seeking to meet to discuss scope rather than first providing the [complainant] with a draft terms of reference for her second complaint”.

¹⁸⁷ Email from [REDACTED] to the complainant of 9 October 2019 PSC.04.1770.

- 16 January 2019
- 13 February 2019
- 14 March 2019
- 2 April 2019

You have not accepted these offers. The more recent agreement, through your lawyer, to mediate has not eventuated. You have not indicated a willingness to recommence that mediation process.

I will now consider the substance of your complaint.

I will provide you with a draft of the scope of the complaint as I understand it to be, so that you can confirm whether it is an accurate summary. Following that, I will consider the complaint and provide you with a written decision. You will again be provided the opportunity to comment on that decision before it is finalised.

- 5.34. That email strongly suggested a decision had been taken not to proceed with the external investigation: it said that [REDACTED], not an external investigator, would consider the complaint and make the decision. However, I have not found any record of who, when, or for what reason it was decided not to proceed with an external investigation. It was an adverse decision from the complainant's perspective, and on the face of it she ought to have had an opportunity to comment before FENZ decided to abandon the external investigation.
- 5.35. Given the nature and seriousness of the allegations the complainant had made, an external investigation was very likely going to be required, unless informal means achieved resolution. It is unsatisfactory that FENZ appears to have made a unilateral decision to abandon the external investigation without input from the complainant, and without reasons provided to her.

The proposed mediation

- 5.36. FENZ had another opportunity to make progress with the complainant's complaints after [REDACTED] was engaged and proposed a mediation in June 2019 to "see whether or not the parties can agree on a way forward (and potentially on a resolution of complaints and other issues The complainant has raised).¹⁸⁸ [REDACTED] proposal followed FENZ's earlier offer of mediation to the complainant in April 2019. [REDACTED] offered to provide a summary of the complainant's complaints and issues as part of the mediation. That document would have helped FENZ to define the scope of the complaints, which was a necessary first step towards resolving them. FENZ had been pre-occupied with defining the scope of the complaints, and

¹⁸⁸ Email from [REDACTED] to [REDACTED] of 26 June 2019 PSC.04.1505.

this was [REDACTED] willing to do just that. The parties got to the point of agreeing a mediator for the proposed mediation, and [REDACTED] said the summary of issues was “well progressed”.

- 5.37. Unfortunately, with the prospect of mediation and substantive progress with the complaints within sight, FENZ decided to withhold documents from the complainant that she requested under the Privacy Act. These were documents that FENZ had provided to the Department of Internal Affairs in response to a complaint by the complainant, as discussed further below. FENZ had no proper grounds for withholding these documents, and ultimately FENZ was found to have acted wrongly, as discussed below. It was also obvious that refusing to provide the documents on the eve of mediation would extinguish any chance of the mediation going ahead. FENZ’s [REDACTED], told me it was “pretty obvious at the time what would happen when we didn’t give the information”.¹⁸⁹ [They] said [they] did not think withholding the documents was a good idea and [their] view was that “withholding the response would jeopardise us being able to meet with the complainant and make progress”. [REDACTED] was correct. [They] told me [they were] not the person advising the decision-maker, and FENZ proceeded to withhold the documents, scuppering the mediation.¹⁹⁰
- 5.38. FENZ’s decision to withhold documents at the expense of the mediation process was contrary to its interests. It was particularly harmful to the complainant, who was denied the opportunity to engage constructively and find a way forward on the matters that were of such acute concern to her.

Response to the complainant’s questions and correspondence

- 5.39. Throughout the process, the complainant posed many reasonable questions to FENZ about the handling of her complaints, which were either insufficiently answered or not answered at all. These included important questions that would have assisted FENZ to ensure it was using an appropriate process to respond to the complainant’s complaints.
- 5.40. The best example is a series of questions that the complainant posed to [REDACTED] in early 2020. [REDACTED] was on secondment [REDACTED], and at the end of 2019 [they] took over from [REDACTED] as the designated decision-maker on the complainant’s complaints. When the complainant was advised that [REDACTED] had taken over, she sought clarity about the

¹⁸⁹ [REDACTED] interview transcript at page 30 line 4.

¹⁹⁰ Response by [REDACTED] to written questions 6 and 8.

process that [they] would follow in resolving her complaints. Among other things, she asked:¹⁹¹

- (a) To be sent the procedure document for the process that [REDACTED] would follow, together with other relevant documents such as any guidelines for applicants;
- (b) For [REDACTED] to set out the laws, policies, standards and principles [REDACTED] would apply to the matter;
- (c) Whether and how individual people would be held to account for their actions;
- (d) How the process would preserve impartiality and avoid conflicts of interest;
- (e) [REDACTED] reporting line within FENZ;
- (f) Any conflicts of interest with named individuals who featured in the complaints;
- (g) Who else would be working on the matter with [REDACTED] and their conflicts of interest;
- (h) How [REDACTED] would deal with the power imbalance inherent in the matter, taking into account “the fact that I have the lowest possible social capital in the organisation, including by having been physically isolated, ostracised and not being provided by FENZ one single contact or advocate in the organisation, [REDACTED]”
- (i) Whether [REDACTED] had reviewed the documents FENZ had provided the Department of Internal Affairs and which had been withheld from the complainant;
- (j) To be sent any relevant policy documents on support.

5.41. These questions, together with others, were sent to [REDACTED] and then followed up nearly a month later with the query “Could [you] please answer my procedural questions from my last email within the week? ... This has taken almost 3.5 years of my life, which is an unreasonable amount of time and it needs to get moving”.¹⁹² The complainant also asked how FENZ would protect her from victimisation and ensure her privacy and confidentiality were protected during the process.

¹⁹¹ Email from the complainant to [REDACTED] of 21 February 2020 PSC.04.1913-14.

¹⁹² Email from the complainant to [REDACTED] of 17 March 2020 PSC.04.1919.

- 5.42. [REDACTED] acknowledged that the complainant's questions were reasonable,¹⁹³ but FENZ did not answer them. [REDACTED] did however make the complainant aware of the counselling and long-term psychological services she could access.¹⁹⁴
- 5.43. The complainant's questions sought basic information about the process FENZ would use to respond to her complaints, and related matters such as support and avoiding conflicts of interest. They were reasonable questions, and they were fundamental to FENZ dealing fairly and appropriately with the complaints. It should not have been necessary for the complainant to ask them – the information should have been provided to the complainant at an early stage in response to her complaints. Both the IDRP report, and Judge Coral Shaw's report had made this clear.¹⁹⁵
- 5.44. FENZ did not have good reason to leave the complainant's questions unanswered. [REDACTED] said [they] expected the legal team would help with a response,¹⁹⁶ and if [they] had their time again, [they] would have instructed the legal team to respond.¹⁹⁷
- 5.45. I asked [REDACTED] why FENZ had not replied to these questions. [They] said in response to a written question:¹⁹⁸
- ... FENZ's experience at that date was that the more it engaged with the complainant's questions, the more questions that arose and the further away any progress and resolution became. As a result, FENZ took an approach that it needed to actively manage and take greater control over progressing the complaint, which meant not necessarily engaging with every detailed question unless it would allow for constructive progress.
- 5.46. I do not accept that answering the complainant's reasonable questions would have hindered constructive progress. It would have promoted it.
- 5.47. [REDACTED] referred to the Ombudsman's guidance on managing unreasonable complainant conduct,¹⁹⁹ and said [they] turned to that guidance when providing advice and support on the complainant's complaint. The complainant made many complaints, but those complaints and her conduct were both reasonable.

¹⁹³ [REDACTED] interview transcript, page 18 line 1.

¹⁹⁴ Email from [REDACTED] to the complainant of 19 March 2020 PSC.04.1933.

¹⁹⁵ IDRP Investigation Report at [123], [135] PSC.02.0120; Shaw report at page 39 PSC.02.0183.

¹⁹⁶ [REDACTED] interview transcript, page 28 line 15.

¹⁹⁷ [REDACTED] interview transcript, page 24 line 33.

¹⁹⁸ Response by [REDACTED] to written question 41.

¹⁹⁹ [REDACTED] letter of 22 September 2023, page 3.

5.48. FENZ said its response was “considered at the time as reasonable and consistent with Public Service system-wide guidance”.²⁰⁰ But FENZ’s approach was not consistent with the Ombudsman’s guidance, which states that complainants should be given a thorough explanation of the complaints process and what is likely to happen with their complaint. It says that all complainants should be informed in general terms of:²⁰¹

- (a) The complaints processes and procedures that the organisation will follow in relation to the complaint;
- (b) How the complaint will be dealt with;
- (c) The likely timeframes for completing key tasks, among other things.

5.49. FENZ’s failure to respond to these basic questions about process was a serious deficiency and contributed to further escalation of matters.

5.50. On 3 August 2020, FENZ’s Chief Executive appeared on Radio New Zealand to respond to complaints made about FENZ [REDACTED]. He said that FENZ was going to stamp out bullying and harassment and that it was intolerable.²⁰² At this time the complainant was still waiting for a response to her questions. She said she felt she needed to complain directly to the Chief Executive at that point, in part because she had been asking for basic information since February without success. She emailed the Chief Executive, copying in the Board Chair, Minister of Internal Affairs, and a Radio New Zealand journalist.²⁰³ She later explained:²⁰⁴

When FENZ did not act constructively or in good faith to progress my complaint, I felt I had no other option but to make a complaint in other forums. I only took this step after years of attempting to resolve it through FENZ. I have always tried to engage with FENZ first but, unfortunately, FENZ has not been responsive to my complaints.

5.51. This was an understandable response by the complainant given FENZ’s failure to answer her questions. But copying in the Minister and media likely had the effect of further entrenching the view within FENZ that the complainant was an “unreasonable complainant”.

²⁰⁰ FENZ’s letter of 14 December 2023 at [6](i).

²⁰¹ Ombudsman’s manual for managing unreasonable complainant conduct, October 2012, page 22-23.

²⁰² [REDACTED] “Calls for independent complaints authority for Fire and Emergency”, Radio NZ, 3 August 2020 PSC.05.0022.

²⁰³ Email from the complainant to Rhys Jones, copied to [REDACTED], of 5 August 2020 PSC.04.2031.

²⁰⁴ Email from the complainant to [REDACTED], copied to [REDACTED] of 1 September 2020, PSC.04.2108.

- 5.52. After the complainant ventilated her concerns externally, FENZ engaged external legal counsel to draft correspondence, however that correspondence did not adequately answer the complainant's questions and did not progress matters.
- 5.53. In short, the failure of FENZ to respond to reasonable questions acted as a barrier to the resolution of the complaints and the establishment of a suitable process.
- 5.54. In response to this review, FENZ acknowledged that "delaying some written responses to the complainant and not addressing all her open questions when responding" was an inadequacy of its complaints handling.²⁰⁵ That understates the extent and significance of the failure. FENZ also:
- (a) Failed to respond at all to several important emails from the complainant;²⁰⁶
 - (b) Provided incorrect responses to the complainant on key points;²⁰⁷
 - (c) Inaccurately asserted there had been a genuine and sincere effort to keep the complainant informed as to how her complaints would be investigated.²⁰⁸

The information, training and support provided to those handling the complainant's complaints

- 5.55. As I have emphasised, the challenges posed by this situation required FENZ to respond in a principled way in accordance with best (or at least adequate) practice. Those handling the complainant's complaints needed access to the right information, the relevant policies and procedures, and adequate support. Regrettably, this was not the case.
- 5.56. After the Chief Executive commissioned the external investigation in late 2017, he advised the complainant in January 2018 that [REDACTED] would be the decision-maker for any actions arising from her complaints.²⁰⁹ It was essential that [REDACTED] was provided with the relevant information.
- 5.57. [REDACTED] should have been provided with a complete file, including the full report from the interim dispute resolution process, the complainant's original and expanded complaints to

²⁰⁵ FENZ's letter of 22 September 2023 at [2.4](d).

²⁰⁶ See for example, email from the complainant to [REDACTED] of 21 February 2020 PSC.04.1913 and email from the complainant to [REDACTED], copied to Rhys Jones and Paul Swain, of 21 July 2020 PSC.04.2001. Mr Swain did ask management for information about the complainant's matter after the July 2020 email, and received that information.

²⁰⁷ See for example, letter from Rhys Jones to the complainant of 11 August 2020 PSC.04.2069 (suggesting that the BCO was handling the complainant's complaints); letter from [REDACTED] to the complainant of 11 August 2020 PSC.04.2079 (suggesting that FENZ had repeatedly but unsuccessfully been seeking to develop a terms of reference with the complainant).

²⁰⁸ Letter from [REDACTED] to the complainant of 11 August 2020 PSC.04.2079.

²⁰⁹ Email from Rhys Jones to the complainant, copied to [REDACTED] and [REDACTED] of 31 January 2018 PSC.04.1085.

the external investigator, and in due course, the complainant's additional complaints to the investigator. However, FENZ did not provide [REDACTED] with either the full or anonymised reports from the interim dispute resolution process. [They] later received a copy of the anonymised report, but not the full report. By the time [REDACTED] left FENZ in December 2019, [they] still had not been given the full report from the interim dispute resolution process.

- 5.58. Legal counsel [REDACTED] supported [REDACTED] in the process.²¹⁰ It was essential that [they] had all relevant material to inform [their] legal advice. [REDACTED] was allocated this matter very soon after [they] started at FENZ. [REDACTED] too was not provided with a file, or a handover.²¹¹ [REDACTED] did have access to the full and anonymised reports from the interim dispute resolution process, and the complainant's complaints about that process.²¹² However, it appears [REDACTED] was not provided with the draft terms of reference that the external investigator had prepared.²¹³
- 5.59. In December 2019, [REDACTED] took over from [REDACTED] as decision-maker. [REDACTED] was also hampered by incomplete documentation. [They] described getting two or three ring binders of material. [They] said [they] read every page, "but there was nothing of substance. It seemed to be admin type emails".²¹⁴ [REDACTED] said [they] provided [REDACTED] with the documents [they] had, which [they] understood to be a complete file of relevant documents. [REDACTED] found it frustrating that [they were] not privy to anything from the interim dispute resolution process other than the report. [They] said [they] signalled that, but it just seemed to be an accepted position.²¹⁵
- 5.60. In June 2020, as part of a tense exchange with the complainant about the scope of her complaint discussed further below, [REDACTED] said [they] would review 62 emails from the complainant to see whether they required changes to the grounds of complaint.²¹⁶ The implication was that [REDACTED] would obtain and read all the emails specified. However, because neither [REDACTED] nor [REDACTED] had a comprehensive file, [REDACTED] was not able to review all the communications. [REDACTED] acknowledged [they were] not aware of any

²¹⁰ [REDACTED] advised the review that they were not the only lawyer advising on the complainant's complaints. FENZ' [REDACTED] were also involved in advising on matters associated with the complainant's complaints: [REDACTED] letter of 14 December 2023 at [2.2].

²¹¹ [REDACTED] interview transcript, page 4 line 18.

²¹² Email from [REDACTED] to [REDACTED] of 24 January 2019 PSC.04.1366.

²¹³ [REDACTED] interview transcript, page 10 line 22.

²¹⁴ [[REDACTED] interview transcript, page 7 line 22.

²¹⁵ [REDACTED] interview transcript page 7 line 28.

²¹⁶ Email from [REDACTED] to the complainant of 1 July 2020 PSC.04.2002.

process by anyone at FENZ to ensure all emails had been read.²¹⁷ [REDACTED] said [they] reviewed the correspondence [they] had access to against the dates provided by the complainant, but there were some dates for which [they were] unable to find correspondence or where [they were] unclear what questions related to.²¹⁸ FENZ did not go back to the complainant to clarify.

- 5.61. As far as I am aware, FENZ did not provide either [REDACTED] or [REDACTED] with training on the relevant processes and policies applicable to the complainant's complaints.
- 5.62. In written submissions on behalf of [REDACTED] [they] said "I highlight the fact I requested documents relating to the complainant's complaints and reviewed the material I was provided. To the extent I was unable to access documents, that was as a consequence of the way in which FENZ had designed the IDRP process and operated its document management system".²¹⁹
- 5.63. FENZ stated in submissions to this review, "It would be inappropriate to hold [REDACTED] and [REDACTED] personally responsible for ensuring that a complete FENZ (and the New Zealand Fire Service) file for the complainant's complaints was maintained".²²⁰ I agree that neither [REDACTED] nor [REDACTED] are personally responsible for the deficiencies in FENZ's training or support. The key point is that FENZ did not ensure those responding to the complainant's complaints had the information and training they needed to ensure a proper response.

Failure to follow applicable policies and processes, and a change of process

- 5.64. From at least February 2018, it was clear that the complainant was making complaints of misconduct, and the breach of New Zealand Fire Service / FENZ policies, by named individuals within the organisation.²²¹ There were policies and processes in place to deal with such allegations. They began with the *Make initial misconduct assessment* procedure,²²² which set out five initial steps:
- (a) Offer the complainant support and representation if they don't already have it;
 - (b) Ask the complainant to put the allegation in writing;

²¹⁷ [REDACTED] interview transcript, page 34 line 28.

²¹⁸ Response by [REDACTED] to written question 49.

²¹⁹ [REDACTED] letter of 14 December 2023 at [3.2] – [3.3].

²²⁰ FENZ's letter of 14 December 2023 at [6](b).

²²¹ The complainant's expanded complaint of 12 February 2018 PSC.04.1170.

²²² New Zealand Fire Service, *Make initial misconduct assessment procedure*, August 2015 PSC.01.0180 – reviewed and reissued in July 2019 FENZ, *Make initial misconduct assessment procedure*, July 2019 PSC.01.0475.

- (c) Make the complainant aware that for the respondent to be able to respond to the allegation, the complaint cannot be kept anonymous;
 - (d) Make preliminary inquiries to determine the nature of the allegation and evidence to support it;
 - (e) Determine whether the nature of the allegation could, if proven, amount to misconduct or serious misconduct, which were defined in the separate standards of conduct.
- 5.65. There were further policies and processes to deal with conduct that could amount to either misconduct or serious misconduct. These were all outlined in the overview *Report and investigate alleged misconduct* policy,²²³ and included the following procedures:
- (a) *Consider suspension pending investigation*;²²⁴
 - (b) *Inform respondent of misconduct allegation*;²²⁵
 - (c) *Conduct investigation and present findings*;²²⁶
 - (d) *Draft investigation report*;²²⁷
 - (e) *Approve and issue draft investigation report*;²²⁸
 - (f) *Consider response and make misconduct decision*.²²⁹
- 5.66. The complainant has submitted that if FENZ had followed the *Make initial misconduct assessment* procedure, it would have meant:
- (a) Advising the complainant what process the decision-maker would follow and providing her with copies of the relevant documents;
 - (b) Making a preliminary assessment of all the complainant's complaints, including preserving and securing applicable evidence and taking notes;
 - (c) Making preliminary inquiries to determine the nature of each allegation and the evidence to support it;
 - (d) Determining which of the complainant's complaints had already been investigated in the interim dispute resolution process investigation. The complainant submitted the

²²³ New Zealand Fire Service, *Report and investigate alleged misconduct* procedure, August 2015 PSC.01.0199.

²²⁴ FENZ, *Consider suspension pending investigation* procedure, July 2017 PSC.01.0369.

²²⁵ FENZ, *Inform respondent of misconduct allegation* procedure, July 2019 PSC.01.0472.

²²⁶ FENZ, *Conduct investigation and present findings* procedure, July 2019 PSC.01.0469.

²²⁷ New Zealand Fire Service, *Draft investigation report* procedure, August 2015 PSC.01.0187.

²²⁸ New Zealand Fire Service, *Approve and issue draft investigation report* procedure, August 2015, PSC.01.0191.

²²⁹ FENZ, *Consider response and make misconduct decision* procedure, July 2019 PSC.01.0469.

decision-maker should have assessed whether any matters considered as part of that process could be reasonably regarded as having been resolved by the investigation, or whether inadequacies in the IDRP investigation required those matters to be re-investigated;

- (e) Determining whether the nature of the allegations could amount to misconduct or serious misconduct, applying the FENZ *Standards of conduct* and other relevant standards, and then taking the next steps as outlined, including the *Consider suspension pending investigation* procedure for those FENZ employees subject to allegations of serious misconduct.

5.67. However, those dealing with the complainant's complaints did not follow the applicable policies and procedures. When [REDACTED] eventually wrote to the complainant describing the process [they] would follow in October 2019, the letter made no reference to the *Make initial misconduct assessment* procedure or any other FENZ process. [REDACTED] drafted the letter for [REDACTED], and told me it was only *after* writing the letter that [they] turned [their] mind to applicable FENZ processes and identified the relevant document as the *Make initial misconduct assessment* procedure.²³⁰ [REDACTED] said that no thought was given to applying the FENZ documented processes, including the *Make initial misconduct assessment* procedure.²³¹ None of the individuals concerned were ever notified of the complainant's complaints against them.²³²

5.68. In submissions to this review, FENZ accepted it "may not have had the ... make initial misconduct assessment [procedure] front of mind when dealing with the [complainant's] complaints".²³³ FENZ also caveated a further submission as follows: ²³⁴

... even in the event this review were to establish [REDACTED] failed to apply FENZ's make initial misconduct assessment procedure (**which is not accepted**)
... (emphasis added)

²³⁰ [REDACTED] letter of 14 December 2023 at [4.8]. [REDACTED] concluded the approach set out in the 29 October 2019 letter was consistent with the *Make initial misconduct assessment* procedure. However, there were departures from that procedure. For example, there was no documented assessment of the level of misconduct alleged. This was necessary to direct the next steps (ie the *Consider suspension pending investigation* procedure for allegations of serious misconduct and *Inform respondent of misconduct allegation* procedure for allegations of misconduct). Neither of those procedures was followed.

²³¹ [REDACTED] interview transcript, page 21 line 4.

²³² Response by [REDACTED] to written question 76.

²³³ FENZ's letter of 14 December 2023 page 14-15. This concession applied to the July 2019 version of the *Make initial misconduct assessment* procedure, but clearly it applies equally to the materially identical 2015 version of the procedure.

²³⁴ FENZ's letter of 14 December 2023, at [6](e).

- 5.69. These submissions did not go far enough. The record is clear that FENZ did not follow the applicable procedures to deal with allegations of misconduct.
- 5.70. FENZ also submitted the allegations against [REDACTED] and [REDACTED] were better characterised as allegations of “employees not performing their job to a reasonable standard”, rather than serious misconduct, and therefore an independent investigation was not required under FENZ’s *Standards of conduct*.²³⁵ However, these were undoubtedly allegations of misconduct or serious misconduct. [REDACTED] described them as ‘allegations of serious misconduct’ and ‘serious allegations’ in [their] final decision letter of 22 April 2021.²³⁶ [REDACTED] similarly described them as misconduct or serious misconduct allegations.²³⁷ FENZ’s submission to this review is not sustainable and was a backwards step.

The process advised to the complainant

- 5.71. More than a year and a half after the complainant’s complaint against FENZ personnel, the decision-maker, [REDACTED], wrote to the complainant on 29 October 2019, to set out the process [they] would follow to consider her complaint.²³⁸ As already noted, [REDACTED] letter departed from the applicable internal policies and procedures. Instead, the letter drafted by legal counsel [REDACTED] set out a different process. In summary it said there would be five steps:
- (a) [REDACTED] would receive advice and make a decision to confirm the scope of the complaint, which would include consideration of all correspondence from the complainant between 3 December 2017 and 16 November 2018;
 - (b) [REDACTED] would provide the complainant with a draft scope of the complaint before finalising it to give her an opportunity to confirm whether it was accurate;
 - (c) [REDACTED] would make a decision to confirm the scope of the complaint, taking into account the complainant’s feedback;
 - (d) [REDACTED] would consider whether an investigation was required into part or all of the complaint in order to resolve it;
 - (e) If [REDACTED] decided an investigation was required, [they] would not personally carry out the investigation. The inference was that an external investigator would be used.

²³⁵ FENZ’s letter of 14 December 2023, page 9.

²³⁶ Letter from [REDACTED] to the complainant of 22 April 2021 PSC.04.2453.

²³⁷ [REDACTED] letter of 14 December 2023 at [4.10].

²³⁸ Letter from [REDACTED] to the complainant of 29 October 2019 PSC.04.1814.

5.72. Despite setting that process out to the complainant in writing, FENZ did not follow it. [REDACTED] candidly accepted that. [REDACTED] letter said FENZ would provide the complainant with a draft scope for comment (steps 1–3) but, as [REDACTED] accepted, FENZ did not ever do so.²³⁹

5.73. The fact that FENZ did not follow the process it had set out to the complainant in writing was compounded by the lack of response to the complainant’s repeated queries about process, which I have already addressed. [REDACTED] letter setting out process had been prompted by an email from the complainant that said:²⁴⁰

... What process is this? If there is any process you are following, I am unaware what this is. Is it an official FENZ process or an impromptu thing you’ve come up with?

5.74. The complainant then repeatedly asked [REDACTED] to confirm the process [they were] following, for example:

(a) On 21 February 2020:²⁴¹

Please send me the procedure document for the process you are suggesting you undertake and any other relevant documentation, such as guidelines for applicants.

(b) On 21 April 2020:²⁴²

Could you please clarify what FENZ’s approach to my matter is at the moment and who is handling it? In March 2020, I asked you to provide information about the process you were about to embark on in dealing with my complaint and you refused.

(c) On 15 May 2020:²⁴³

I repeat my appeal that you progress this matter, in particular that you do not delay further in providing the process you will follow.

(d) On 21 July 2020:²⁴⁴

As you know, I have been trying for months to get an answer on what your process is (and I had the same issue with [REDACTED] before you).

²³⁹ [REDACTED] interview transcript, page 44 line 36.

²⁴⁰ Email from the complainant to [REDACTED] of 16 October 2019 PSC.04.1769.

²⁴¹ Email from the complainant to [REDACTED] of 21 February 2020 PSC.04.1913.

²⁴² Email from the complainant to [REDACTED] of 21 April 2020 PSC.04.1944.

²⁴³ Email from the complainant to [REDACTED] of 15 May 2020 PSC.04.1971.

²⁴⁴ Email from the complainant to [REDACTED] of 21 July 2020 PSC.04.2001.

- 5.75. FENZ did not answer any of these emails substantively. The first, of 21 February 2020, was not even acknowledged.
- 5.76. On 22 December 2020, [REDACTED] wrote to the complainant and stated, “I have been following the same process [REDACTED] advised to you”.²⁴⁵ That was not correct. [REDACTED] later accepted that FENZ “didn’t get past step one” of the process set out by [REDACTED].²⁴⁶ Without completing step one, FENZ could not proceed to the subsequent steps.
- 5.77. FENZ has accepted that it was “unclear about what processes FENZ was applying when handling the [complainant’s] second complaint”.²⁴⁷ FENZ has said it “now appreciates that Ms [Complainant] did not get a clear understanding of how FENZ was handling her second complaint. This was unintentional.”²⁴⁸ It is accurate to say that the complainant did not get a clear understanding of how FENZ was handling her complaint. The reason for that was because FENZ did not answer her repeated and reasonable questions, and also because FENZ did not follow either its documented internal policies, or the process it told the complainant on 29 October 2019 that it would follow. There was therefore not only a failure of communication by FENZ, but also a failure to follow applicable procedures, and a departure from the process the complainant had a reasonable expectation FENZ would follow.

Withholding documents

- 5.78. As referred to earlier, after [REDACTED] became involved in the middle of 2019, the complainant agreed to attend a mediation with FENZ, which provided an opportunity to make progress with the complaints. As I have described, the primary reason that mediation did not proceed was because FENZ decided to withhold documents from the complainant. The Privacy Commissioner ultimately determined that FENZ’s decision to withhold those documents was wrong and, after the complainant brought a claim in the Human Rights Review Tribunal, both FENZ and the Department of Internal Affairs acknowledged they had interfered with the complainant’s privacy and paid financial compensation to her.
- 5.79. The context for this was the complainant’s complaint to the State Services Commission in March 2019, which the State Services Commission referred to the Department of Internal Affairs as the monitoring agency for FENZ. The Department of Internal Affairs sought information from FENZ, including responses to questions about the handling of the

²⁴⁵ Letter from [REDACTED] to the complainant of 22 December 2020 PSC.04.2306.

²⁴⁶ [REDACTED] interview transcript, page 44 line 36.

²⁴⁷ FENZ’s letter of 22 September 2023 at [2.4](c).

²⁴⁸ FENZ’s letter of 22 September 2023 at [4.4].

complainant's complaints. FENZ's response to the Department of Internal Affairs included a 51-page chronology, with commentary on the various steps in the case together with other material expressing FENZ's position on the matter. The information provided by FENZ was personal information about the complainant and relevant to the mediation process.

- 5.80. The Department of Internal Affairs considered the complainant's request for access to the information and could see no reason to withhold any information. In accordance with usual practice, it let FENZ know that it proposed to release the material. That caused concern within FENZ. [REDACTED] FENZ, [REDACTED] telephoned [REDACTED] the Department of Internal Affairs to convey FENZ's view that the Department should not release the documents. FENZ followed up with an email from [REDACTED] to the person at the Department of Internal Affairs dealing with the information request. FENZ argued that it had provided a "free and frank" response to the Department of Internal Affairs and that release of the information could prejudice the maintenance of the law.²⁴⁹
- 5.81. The 'free and frank' and 'maintenance of the law' grounds for withholding were weak. FENZ's covering letter to the Department of Internal Affairs had provided an overview of the complainant's complaints together with limited acknowledgements that "there were delays in having the complainant's first complaint appropriately addressed", and that there were "deficiencies with our current IDRP".²⁵⁰ The covering letter ended with a request to be advised if there was any intention to provide the letter to the complainant or her lawyer, "because we have been as open as possible in our response to you".²⁵¹
- 5.82. The Department of Internal Affairs' initial view that the documents should be released was correct. But, after the intervention of FENZ's [REDACTED] the Department of Internal Affairs was persuaded to withhold the documents. FENZ also declined a mirror request that the complainant made to it for release of the documents. The Privacy Commissioner later concluded in response to a complaint from the complainant that FENZ and the Department of Internal Affairs had no grounds to withhold the documents.
- 5.83. As I have noted above, [REDACTED] said it was "pretty obvious" that withholding the material would put an end to any chance of mediation.²⁵² The decision to block the release of these documents was wrong and damaging in the delicate context of mid-2019.

²⁴⁹ Email from [REDACTED] to Department of Internal Affairs of 30 July 2019 PSC.04.1633.

²⁵⁰ Letter from [REDACTED] to [REDACTED] (DIA) of 27 June 2019 PSC.04.1591.

²⁵¹ Letter from [REDACTED] to [REDACTED] (DIA) of 27 June 2019 PSC.04.1591.

²⁵² [REDACTED] interview transcript, page 30 line 16.

- 5.84. In March 2021, the Chief Executive of FENZ and [REDACTED] of the Department of Internal Affairs wrote to the complainant. An apology would have been appropriate given the wrongful withholding of information and the significant consequences of that decision. However, the complainant did not want another apology—from her perspective any further apology would not be meaningful.²⁵³ The letter therefore did not apologise for the error:²⁵⁴

Dear Sarah

You made complaints to Fire and Emergency alleging [REDACTED] improper complaint handling by Fire and Emergency personnel.

In 2019, you approached the (then) State Services Commission (SSC) with concerns, including about the way in which your complaint was investigated by an external barrister. The SSC referred the matter to the Department of Internal Affairs, in its capacity as the monitoring agency of Fire and Emergency. You had given your consent for the Department of Internal Affairs to approach Fire and Emergency on the condition that this would be in writing and that they would seek a written response from Fire and Emergency.

The Department of Internal Affairs sought assurance from Fire and Emergency that the matter was being handled in the appropriate manner. Fire and Emergency had understood that the Department of Internal Affairs was seeking that information in confidence and in its role as the monitoring agency. Fire and Emergency provided a response to the Department of Internal Affairs.

In 2019 you made requests under the Privacy Act to both agencies for your personal information, including a request for a copy of Fire and Emergency's response to the Department of Internal Affairs.

Based on their understanding and consultation with one another, and in good faith, both agencies considered that a withholding provision in the Privacy Act applied to Fire and Emergency's response to the Department of Internal Affairs. On that basis both agencies decided to withhold the response. You asked for those decisions to be reconsidered but both agencies decided to maintain their decisions. Other personal information was also withheld.

You made a complaint to the Office of the Privacy Commissioner against both agencies regarding your Privacy Act requests. In a final decision dated 24 June 2020, the Office of the Privacy Commissioner did not agree that the withholding ground applied. It held that there had been a refusal of access to your personal information and therefore there was an interference with your privacy. On the basis of that finding, both agencies provided you with the information you sought. In acknowledgement of the interference with your privacy, both Fire and Emergency and the Department of Internal Affairs have paid a sum of compensation to you.

Ngā mihi

Rhys Jones (Chief Executive FENZ)

²⁵³ Email of behalf of the complainant of 16 February 2024.

²⁵⁴ Letter from Rhys Jones and [REDACTED] to the complainant of 26 March 2021 PSC.04.2429.

[REDACTED] (DIA)

Delay

- 5.85. It is a basic principle of complaints handling that any response should be timely and avoid unnecessary delay.²⁵⁵ That was clearly not achieved in this case. FENZ's response was characterised by ongoing delays at almost every step of the process. Two examples of unnecessary delay may be mentioned as examples. They were the decisions by FENZ to pause the process for four and a half months in March 2020, and for another three months in September 2020. In both instances, FENZ unilaterally paused the process of addressing the complainant's complaints because of external processes: [REDACTED]. In neither case was the delay justified.
- 5.86. [REDACTED] said [they] got consistent advice from [REDACTED] that "we need to pause".²⁵⁶ In an email of 12 March 2020, [REDACTED] noted the complainant's complaint to the Privacy Commissioner, and said, "I am putting this process on hold until an outcome has been reached with respect to your privacy complaint. I will be in touch again after the Office of the Privacy Commissioner makes their decision".²⁵⁷
- 5.87. The complainant repeatedly challenged FENZ on this decision. She said in April 2020, "I do not understand how a [Privacy Commissioner] decision on releasing information FENZ holds would affect FENZ's obligation to communicate the process it is embarking upon".²⁵⁸
- 5.88. There was no justification for FENZ's decision to pause the response to the complainant's complaint, without her consent, to await the outcome of the Privacy Commissioner process. As the complainant pointed out, the effect of pausing the process was to prolong the period during which she had no response to the reasonable questions she was asking. The only party affected by the ongoing Privacy Commissioner complaint was the complainant, who did not have access to the relevant documents. If she wished for the complaint process to continue, FENZ should have pressed on.
- 5.89. The second unilateral pause occurred in September 2020 after the complainant complained to [REDACTED] about [REDACTED]. [REDACTED] decided to appoint [REDACTED] as an independent investigator into allegations by the complainant [REDACTED].

²⁵⁵ Clark report page 39 PSC.02.0267. FENZ recognised this in the letter from [REDACTED] to the complainant of 22 April 2021 PSC.04.2450, referring to the need to "make a decision without undue delay".

²⁵⁶ [REDACTED] interview transcript, page 26 line 13. FENZ did not waive legal privilege and accordingly, I have not seen any of the legal advice that FENZ received.

²⁵⁷ Email from [REDACTED] to the complainant of 12 March 2020 PSC.04.1922.

²⁵⁸ Email from the complainant to [REDACTED] of 21 April 2020 PSC.04.1944.

- 5.90. After unsuccessfully attempting to transfer the complainant's complaints against FENZ to the Ombudsman,²⁵⁹ FENZ again unilaterally decided to pause the process in September 2020.²⁶⁰ FENZ said to the complainant that with the terms of reference for the [REDACTED] investigation yet to be finalised and released, "We are mindful of not doing anything that could be construed as compromising the [REDACTED] investigation in any way".²⁶¹
- 5.91. Again, the complainant protested at this unilateral pause, and said this was "Yet another excuse on FENZ's part not to take action".²⁶² FENZ's position remained the same and resulted in a further three-month hiatus in FENZ's consideration of the complainant's complaints. Shortly after [REDACTED] decided not to proceed with [REDACTED] investigation into [REDACTED] in December 2020, FENZ issued a preliminary decision letter to the complainant.²⁶³
- 5.92. Submissions on behalf of [REDACTED] argued that putting the complainant's complaints on hold for the [REDACTED] investigation was "an entirely appropriate step to allow that investigation to be formed and to not be seen to be influencing or cutting across that process before it had a chance to be established".²⁶⁴ Submissions on behalf of FENZ took a different stance, and said "FENZ hoped the terms of reference for [REDACTED] inquiry might enable at least some of the matters subject to [the complainant's] second complaint to be investigated without the involvement of FENZ, given that independence from FENZ (or potential lack thereof) seemed to be an area of concern for [the complainant]".²⁶⁵ However, the [REDACTED] matter did not require FENZ to stop work on the complainant's complaints. If FENZ's concern had been the desirability of having the complainant's complaints determined by someone other than FENZ, a more appropriate response would have been to continue the external investigation directed by the Chief Executive in 2017.
- 5.93. Overall, FENZ must accept responsibility for the process, including the two unreasonable instances of delay to which I have referred.

Conflicts of interest

- 5.94. It was imperative that the New Zealand Fire Service and FENZ properly managed any conflicts of interest in responding to the complainant's complaints. This was obvious from the start of the process, [REDACTED]. When the complainant made further complaints against [REDACTED]

²⁵⁹ Email from [REDACTED] to the complainant of 27 August 2020 PSC.04.2092.

²⁶⁰ Email from [REDACTED] to the complainant of 7 September 2020 PSC.04.2143.

²⁶¹ Email from [REDACTED] to the complainant of 7 September 2020 PSC.04.2143.

²⁶² Email from the complainant to [REDACTED] and Rhys Jones, [REDACTED], of 8 September 2020 PSC.04.2142.

²⁶³ Letter from [REDACTED] to the complainant of 22 December 2020 PSC.04.2306.

²⁶⁴ FENZ's letter of 14 December 2023, at [7.3](c).

²⁶⁵ FENZ's letter of 22 September 2023, at [5.4]

within FENZ the need to avoid both actual and perceived conflicts of interest became even more important. The proper management of conflicts of interest was required not only by the context of the complainant's complaints, but also by FENZ's internal conflict of interest policies,²⁶⁶ and *Standards of conduct*.²⁶⁷ The 2015 *Conflicts of interest, gifts, prizes and hospitality* policy said:²⁶⁸

A conflict of interest arises where your duties or responsibilities to the Fire Service could be affected by some other interest or duty that you might have. Its where your:

- Personal or professional interests, obligations or roles conflict, have the potential to conflict, or could be perceived as conflicting with your role with the Fire Service.
- Independence, objectivity or impartiality can be called into question.

5.95. When the complainant complained about several senior personnel, FENZ was aware it would be necessary to consider carefully who to appoint as the decision-maker. FENZ selected [REDACTED] as the initial decision-maker for the complainant's complaint. [They were] a tier two manager and there were no issues with [their] selection as a decision-maker.

5.96. The challenge arose when [REDACTED] left FENZ in December 2019 and it was necessary to appoint a new decision-maker. [REDACTED] told me:²⁶⁹

We thought very carefully about who would be the decision-maker after that, based on, not just actual conflicts of interest but perceived conflicts of interest. So, we excluded people who had been firefighters, for example, from being involved as decision-makers which is why we ended up with [REDACTED]

5.97. FENZ appointed [REDACTED] who was on secondment [REDACTED] as decision-maker in December 2019. [REDACTED] explained [their] recollection of the process of being told [they] would be the decision-maker:²⁷⁰

So, I was frog marched into one of those tiny rooms that one person sits at with a computer. In there was [REDACTED]. So, there was only standing room and we were shoulder to shoulder. ... So, [REDACTED] said "we have a leadership opportunity for you. [REDACTED] has a conflict of interest. Therefore, have this".

²⁶⁶ New Zealand Fire Service, *Conflict of interest, gifts, prizes and hospitality* policy, September 2015, PSC.01.0649; FENZ, *Conflict of interest, gifts, prizes and hospitality* policy, July 2017 PSC.01.0657; FENZ, *Conflict of interest, gifts, prizes and hospitality* policy, May 2018 PSC.01.0593; FENZ, *Conflict of interest, gifts, prizes and hospitality* policy, July 2019 PSC.01.0484; FENZ, *Conflict of interest, gifts, prizes and hospitality* policy, June 2020 PSC.01.0615. It is also required by the State Services Commission, *Acting in the spirit of service – conflicts of interest* PSC.01.0560.

²⁶⁷ New Zealand Fire Service, *Standards of Conduct*, August 2015 PSC.01.0206; FENZ, *Standards of Conduct*, July 2017 PSC.01.0358; FENZ, *Standards of Conduct*, May 2018 PSC.01.0380; FENZ, *Standards of Conduct*, March 2019 PSC.01.0437.

²⁶⁸ New Zealand Fire Service, *Conflict of interest, gifts, prizes and hospitality* policy, September 2015, PSC.01.0649.

²⁶⁹ [REDACTED] interview transcript, page 17 line 38.

²⁷⁰ [REDACTED] interview transcript, page 6 line 14.

So, I wasn't – I didn't really have a choice, I was "[voluntold]". I think the expression is.

- 5.98. [REDACTED] told me FENZ was genuinely trying to appoint someone with the necessary experience, seniority, independence, and expertise to take on a serious, complex, and sensitive role. [They] saw it as essential that the person was willing and able and recalls that they sought to explore this with [REDACTED]. After discussing matters with [REDACTED], [they] viewed [them] as being suitably independent [REDACTED] and a person of good judgment and compassion.
- 5.99. [REDACTED] said [they were] not part of the discussion and decision leading to [REDACTED] appointment as decision-maker, but that [they]:²⁷¹

... understood that there was not considered to be an actual conflict due to the reporting line because the line between [REDACTED] and [REDACTED] in the organisational chart did not represent the true nature of their reporting relationship.

- 5.100. The reference to [REDACTED], who was [REDACTED], arose because the complainant had made a series of complaints against [REDACTED] and it appears the organisational chart showed [REDACTED] reporting directly to [REDACTED]. The complainant wanted to ensure that the decision-maker was not in a reporting relationship with [REDACTED] giving rise to a conflict of interest. In February 2020,²⁷² the complainant asked [REDACTED] to set out [their] reporting line within FENZ and provide her with [their] comments on any conflicts of interest [they] had with named individuals including [REDACTED].
- 5.101. FENZ did not acknowledge this email or respond to the complainant's question about potential conflicts of interest. [REDACTED] said:²⁷³

I do accept that it was reasonable for the complainant to raise concerns about the nature of [REDACTED] relationship with [REDACTED] and these should have been addressed with [the complainant].

- 5.102. The complainant followed up at least three times,²⁷⁴ but [REDACTED] did not respond to these questions. [REDACTED] also did not complete a conflict of interest declaration or go through the procedure required by the FENZ conflict of interest policy. Nor, it appears, did anyone

²⁷¹ Response by [REDACTED] to written question 29.

²⁷² Email from the complainant to [REDACTED] of 21 February 2020 PSC.04.1913.

²⁷³ Response by [REDACTED] to written question 29.

²⁷⁴ Refer email from the complainant to [REDACTED] of 17 March 2020 PSC.04.1919; email from the complainant to [REDACTED] copied to [REDACTED] 15 May 2020 PSC.04.1987; email from the complainant to [REDACTED] of 25 June 2020 PSC.04.1985.

else involved in handling the complainant's complaint,²⁷⁵ and nor does it appear that anyone in the organisation asked [REDACTED] to take that step.

- 5.103. There was a reasonable question whether [REDACTED] reporting relationship to [REDACTED] was a conflict of interest that needed to be managed. After the complainant complained directly to the Chief Executive, Board Chair and others in August 2020, the Chief Executive responded to the complainant that [REDACTED] reported "directly to [REDACTED]".²⁷⁶
- 5.104. [REDACTED] also confirmed that [they] reported "directly to [REDACTED]" when [they] belatedly responded to the complainant's questions on 8 September 2020, stating.²⁷⁷

As [REDACTED], I report to [REDACTED]. In terms of my general management, I report directly to [REDACTED].

However, as the decision-maker in your complaint, I do not report to [REDACTED] or the [REDACTED]. I have been delegated authority directly from the Chief Executive to determine your complaint. This is still in place.

- 5.105. Despite both the Chief Executive and [REDACTED] [themselves] saying that [they] reported "directly to [REDACTED]" [REDACTED] said in written submissions to this review.²⁷⁸

I did not report directly to [REDACTED]. I was not sure who my direct manager [REDACTED]. I initially believed I reported to [REDACTED] who headed [REDACTED]. However, after about a month I was moved down to be seated with [REDACTED]. It was here that I was introduced to [REDACTED]. While I can recall having the occasional meeting with [REDACTED] these were usually with my direct line manager who was for the most part of my time with FENZ, [REDACTED].²⁷⁹

I did not report to [REDACTED] with respect to the complainant's complaints. Nor did I discuss her complaints with [REDACTED] at any point. My role as decision-maker was an independent one and I took the independence of that role incredibly seriously.

- 5.106. At interview, [REDACTED] said that in relation to the complainant's complaint, [they] recalled that [they] reported to [REDACTED] and that [REDACTED] did sit on the panel, "but [they] would have to extricate [themselves]".²⁸⁰
- 5.107. It is clear from the conflicting accounts of [REDACTED] reporting line that there was some confusion about reporting within FENZ. FENZ was not able to identify an organisation chart that would assist this review. Ultimately, however, regardless of the formal reporting lines or structures, it was necessary to assess the potential conflict of interest in accordance with

²⁷⁵ Email from [REDACTED] to the review of 11 September 2023 in answer to a written question.

²⁷⁶ Letter from Rhys Jones to the complainant of 11 August 2020, PSC.04.2069.

²⁷⁷ Email from [REDACTED] to the complainant of 8 September 2020 PSC.04.2147.

²⁷⁸ [REDACTED] letter of 14 December 2023 at [5.3].

²⁷⁹ [REDACTED] at this time. [REDACTED] role [REDACTED].

²⁸⁰ [REDACTED] interview transcript, page 9 line 27.

FENZ's policy. This should have been done in a principled and documented way following a formal declaration of interest. FENZ submitted, "to the extent [REDACTED] was ultimately delegated decision-making powers, there is no evidential basis to find that [their] decisions were compromised by others".²⁸¹ This submission does not address the underlying requirement to manage the conflict of interest, whether actual or perceived, in accordance with FENZ's policy, and other relevant public sector requirements. That was not done.

5.108. FENZ also said in its written submission to this review:²⁸²

FENZ accepts that, with the benefit of hindsight, the organisation's handling of the [complainant's] complaints did not strictly comply with its written conflict of interest, gifts, prizes and hospitality policies. However, FENZ submits that it was very alive at the time to conflict of interest matters and took proactive steps to assuage the [complainant's] concerns that the people subject to her complaints were involved in the handling of her complaints.

5.109. I am not able to accept this submission given FENZ's failure to comply with the conflict of interest policy and standards of conduct, and the lengthy period of at least six months during which the complainant's reasonable questions about conflicts of interest went unanswered. In a context where the proper management of conflicts of interest was so important to the complainant's ability to have confidence in FENZ's response, the failure to follow proper process was particularly damaging.

The final decision on the complainant's complaints

5.110. FENZ reached a final decision on the complainant's complaints two and a half years after the complainant asked for the external investigation to resume. During the first 18 months of its response, as discussed above, FENZ had:

- (a) Unilaterally abandoned the external investigation;
- (b) Failed to follow its own policies and processes;
- (c) Taken an overly rigid approach to defining the scope of the complaints;
- (d) Wrongly withheld documents, which put paid to an agreed mediation;
- (e) Failed to answer reasonable questions about process;
- (f) Unreasonably delayed the response to the complaints; and

²⁸¹ FENZ's letter of 14 December 2023, page 14.

²⁸² FENZ's letter of 14 December 2023 at [14]. FENZ also submitted, "navigating such potential conflicts became increasingly difficult where FENZ staff involved in the handling of [the complainant's] complaints became part of [the complainant's] suite of complaints." FENZ said that the "pool of FENZ personnel left who were sufficiently briefed on [the complainant's] situation became smaller and smaller as complaints were levelled against people with whom [the complainant] had dealings."

(g) Provided inadequate support or training to those dealing with the complaints.

- 5.111. Against that unpromising background, the complainant began next phase of the process asking the new decision-maker, [REDACTED], if [they] would email her the list of issues [they were] going to review as [they] understood them.²⁸³
- 5.112. [REDACTED] responded on 28 May 2020 with a table that [they] described as summarising the matters [they] understood to form part of the complainant's complaint.²⁸⁴ It will be recalled that the complainant's complaints were contained in detailed correspondence that identified on one view more than 300 specific allegations against 19 or more individuals.
- 5.113. The allegations were not necessarily easy to summarise or enumerate. However, [REDACTED], advised by [REDACTED], provided only a superficial summary of those complaints as follows:

In terms of the FENZ approach to this matter and in particular your most recent complaints, it is my view that these are or revolve around the central issues you have raised and are concurrent to the complaint process that is underway. However, I note that I am not dealing with complaints you have made to the Office of the Privacy Commissioner.

The matters I understand to form part of your current complaint are summarised in the table below:

Matter	Reference
Attempts to remove you from your brigade under the guise of a resignation.	3.12.2017 and 12.2.2018 complaint.
Mismanagement of your previous complaint, including allegations of serious misconduct by certain individuals.	3.12.2017 and 12.2.2018 complaint. 17.3.2020 complaint.
Concerns about the way the investigation into your first complaint was carried out and the outcome of that investigation.	12.2.2018 complaint; 7.11.2018 email to [REDACTED]
Creation of training material that closely matches your circumstances and will be clearly identifiable to other employees and volunteers	12.2.2018 complaint
[Alleged insertion of inaccurate material into meeting minutes]	16.11.2018 email to [REDACTED]
Incident relating to a request you made for counselling on 29.1.2018, where a named member of personnel reported you as paranoid.	6.11.2018 email to [REDACTED]

²⁸³ Email from the complainant to [REDACTED] of 15 May 2020 PSC.04.1972.

²⁸⁴ Email from [REDACTED] to the complainant of 28 May 2020 PSC.04.1986.

- 5.114. This table did not adequately summarise the complainant's complaints against FENZ and its personnel. At interview [REDACTED] agreed it was far too vague.²⁸⁵ [They] said it was kept at a high level [REDACTED], and [they] envisaged that if at some point terms of reference was developed then it could have been more specific. [REDACTED] confirmed that it was at a "very high level" and said it was open to the complainant to advise of anything she considered had been missed.²⁸⁶
- 5.115. Predictably, the complainant was not satisfied with the very high-level list in [REDACTED] email. Perhaps exhibiting some frustration with the delays, which by then had extended for 18 months or so, she responded by saying "Thank you for your list of what you describe as forming part of my current complaint. However, I hope that you are dealing with the entirety of my complaints contained in the emails to [REDACTED] and with the issues raised in the communications of ...".²⁸⁷ The complainant then proceeded to list 62 different dates upon which she had sent emails to FENZ.
- 5.116. The two extremes – a superficial summary by FENZ, and a long list of dates from the complainant without detail – reflected the positional state of the relationship as it had become by that point. The complainant had no trust or confidence in FENZ, and FENZ had a similar mindset as explained by [REDACTED]:²⁸⁸
- ... by this time, FENZ had little confidence that anything it suggested, recommended or planned would be accepted by the complainant. I had no confidence that the complainant would agree to any proposed draft terms of reference, and based on [REDACTED] I could not advance anything without an agreed terms of reference.
- 5.117. In August 2020, after the complainant had emailed the Chief Executive, [REDACTED] wrote to the complainant and said that both [they] and [REDACTED] had focussed on trying to get clarity on the nature and scope of the complainant's remaining concerns, "by repeatedly but unsuccessfully seeking to develop a terms of reference with you. This has included offering to enter into mediation to confirm a terms of reference".²⁸⁹ This was not correct, as [REDACTED] agreed at interview.²⁹⁰ FENZ had unsuccessfully tried to meet with the

²⁸⁵ [REDACTED] interview transcript, page 32 line 32.

²⁸⁶ Response by [REDACTED] to written question 48.

²⁸⁷ Email from the complainant to [REDACTED] of 25 June 2020 PSC.04.1985.

²⁸⁸ [REDACTED] response to draft report, 8 March 2024 page 6.

²⁸⁹ Letter from [REDACTED] to the complainant of 11 August 2020, PSC.04.2079.

²⁹⁰ [REDACTED] interview transcript, page 39 line 26.

complainant but had not attempted to develop a terms of reference with her in any realistic or substantive sense.

- 5.118. [REDACTED] email of 7 December 2020 to the complainant, repeated the incorrect assertion and said that FENZ had been actively trying to engage to resolve the complainant's complaint.²⁹¹ The email said that had not been possible as FENZ had been "[unable] to agree a terms of reference with you".²⁹²
- 5.119. The complainant raised her concerns again with the Board Chair, Paul Swain on 14 December 2020.²⁹³ In her email, the complainant referred to the earlier correspondence and stated "I have written to you each time because management is simply not dealing with my complaint. When I wrote to you on 19 November 2020 to express my dissatisfaction with the Behaviour and Conduct Office (BCO) and to ask where my 2016/2017 complaint is up to and reasons for the BCO's delay, I expected you to provide me with a material response." The complainant pointed out that at no point had anyone sent her terms of reference and asked for a genuine response about what action FENZ intended to take on her complaint.
- 5.120. This email was circulated to the Chief Executive and [REDACTED] and [REDACTED]. There was no substantive response to the complainant.²⁹⁴
- 5.121. Ultimately, FENZ decided to proceed to make a decision "on the papers" about the complainant's complaints with no investigation, no agreed scope, and without access to all the communications the complainant had identified in her 25 June 2020 email. [REDACTED] had said [they] would review those communications.²⁹⁵ [They] told me that [they] reviewed the ones to which [they] had access, which did not comprise all 62.²⁹⁶
- 5.122. [REDACTED] drafted the preliminary decision. [REDACTED] signed it and sent it to the complainant on 22 December 2020.²⁹⁷ The complainant by that stage had sufficiently lost

²⁹¹ Email from [REDACTED] to the complainant of 7 December 2020 PSC.04.2276.

²⁹² This email was in response to an email sent by the complainant to the Board Chair on 19 November 2020 which expressed her dissatisfaction with the Behaviour and Conduct Office and asked for an update as to where her complaint was up to and what the reasons were for the delay: email from the complainant to Paul Swain, copied to [REDACTED] (Office of the Ombudsman) of 19 November 2020 PSC.04.2226. The Board Chair responded to the complainant the following day advising that he had forwarded her email to [REDACTED] and [REDACTED] and instructed [REDACTED] to make appropriate enquiries and ensure that the appropriate internal person or persons provide a response in due course: email from Paul Swain to the complainant of 20 November 2020 PSC.04.2268. Email from the complainant to Paul Swain of 14 December 2020 PSC.04.2285.

²⁹³ Email exchange between Paul Swain, [REDACTED] and [REDACTED] of 14 December 2020 PSC.04.2280.

²⁹⁵ Email from [REDACTED] to the complainant of 1 July 2020 PSC.04.2002.

²⁹⁶ [REDACTED] interview transcript, page 34 line 23.

²⁹⁷ Letter from [REDACTED] to the complainant of 22 December 2020 PSC.04.2306.

confidence in the process that she elected not to respond to the preliminary decision. [REDACTED] finalised the decision on 22 April 2021.²⁹⁸

5.123. The preliminary and final decision letters were flawed. The flaws in the final decision included:

- (a) **It wrongly stated that several complaints had already been addressed when they had not.** The decision said that the complainant's allegations against [REDACTED] and [REDACTED] had already been independently investigated. That was incorrect: the IDRP investigation had not addressed these matters. The decision also said that the allegations against [REDACTED] had been addressed. That too was incorrect, as was clear from the IDRP report. Indeed, the paragraph of the IDRP report quoted in the final decision made it clear that the allegation regarding [REDACTED] had not been investigated. In answer to a written question, [REDACTED] acknowledged, "Looking back now I consider it would have been open to FENZ to inquire into the meeting minutes based on [REDACTED] comments".²⁹⁹
- (b) **It did not address the detailed list of alleged flaws in the IDRP report that the complainant had identified.** The decision stated that [REDACTED] had reviewed the IDRP report and that [they] considered "the investigation was carried out in a fair manner I do not consider that I would be justified in reopening that investigation".³⁰⁰ The complainant had identified a detailed list of flaws in the IDRP report from her perspective. The decision letter did not engage with these criticisms and did not give any reasons for dismissing them. The letter did not explain why [REDACTED] considered [they] would not be justified in reopening any aspect of the investigation. In response to a written question, [REDACTED], said the test applied was whether there had been "clear evidence of bias or other improper behaviour from the investigator".³⁰¹ FENZ submitted that this was an appropriate test.³⁰² I agree with the submission on behalf of the complainant that this test set the bar too high. Among other things, the investigator had misinterpreted the terms of reference, as well as the other flaws identified earlier in this report. It was also incumbent on FENZ to give the complainant reasons for the conclusions about the IDRP report. It did not do so.

²⁹⁸ Letter from [REDACTED] to the complainant of 22 April 2021 PSC.04.2450.

²⁹⁹ Response by [REDACTED] to written question 77.

³⁰⁰ Letter from [REDACTED] to the complainant of 22 April 2021 PSC.04.2453.

³⁰¹ Response by [REDACTED] to written question 70.

³⁰² FENZ's letter of 14 December 2023, at [6](h).

- (c) **It adopted an unprincipled approach in assessing the allegations against senior employees.** The decision concluded, “I do not consider the documents provide evidence, on the face of it, of conduct that would warrant a misconduct process being commenced against the individuals you have identified”.³⁰³ This was not consistent with internal FENZ processes; there was no explanation of the test being applied, who the individuals were, or the nature of the allegations. No reasons were provided to enable the complainant to understand why FENZ reached the conclusion it did. In answer to a written question, [REDACTED] said:³⁰⁴

We were looking for anything that was out of the norm for a large organisation or that on the face of it, reasonably supported [the complainant’s] allegations of misconduct. My recollection was that there were some unfortunate statements made at a senior level but other than that, there was nothing unusual on the face of the documents.

This was not consistent with FENZ’s processes, or a defensible response to allegations of misconduct.

- (d) **It wrongly concluded that some of the matters the complainant had raised had been addressed sufficiently by the Shaw report.** The decision stated that “the substance of this matter is effectively covered by the investigation into [the complainant’s] first complaint and by the findings of the [Shaw report].”³⁰⁵ However, as FENZ knew, the Shaw report did not address the complainant’s matters.³⁰⁶
- (e) **It concluded there was no need to investigate the misconduct allegation against the [REDACTED] because [they] had apologised noting [they were] no longer with the same team within FENZ.**³⁰⁷ [REDACTED] said in answer to a written question, that:³⁰⁸

It was considered that the matter had already been addressed directly and an apology provided. Further, [REDACTED] was no longer employed in a role where [they] would be involved in referring people to counselling services so the issue would not reoccur.

In its submissions to this review, FENZ said, “It appears FENZ anticipated this would be captured by – and subsequently investigated – once the scope of the complainant’s second complaint was confirmed”.³⁰⁹ However, that submission is not consistent with

³⁰³ Letter from [REDACTED] to the complainant of 22 April 2021 PSC.04.2454.

³⁰⁴ Response by [REDACTED] to written question 74.

³⁰⁵ Letter from [REDACTED] to the complainant of 22 April 2021 PSC.04.2450

³⁰⁶ Email from [REDACTED] to the complainant of 2 April 2019 PSC.04.1421.

³⁰⁷ Letter from [REDACTED] to Ms Complainant of 22 April 2021 PSC.04.2455.

³⁰⁸ Response by [REDACTED] to written question 79.

³⁰⁹ FENZ’s letter of 14 December 2023, page 6.

[REDACTED] decision that it was unnecessary to commence an investigation into the issue.

- (f) **It dismissed the complainant's complaints about [REDACTED] involvement in training material without making adequate inquiries.** The decision letter stated, "Given [REDACTED] involvement, it is possible that [their] experience with [the complainant's] first complaint was incorporated in a general sense".³¹⁰ No further investigation had been done. [REDACTED] said in answer to a written question [they] had spoken to the responsible project manager, who provided [them] with the material which was still in FENZ's possession.³¹¹ However, there was no further investigation. For completeness, [REDACTED] has denied having any involvement with the training material.

5.124. The complainant protested about the content of the final decision to the Chief Executive, Board Chair and others. However, FENZ maintained the position that [REDACTED] letter had sufficiently dealt with the complainant's complaints. On 27 January 2022, the new Board Chair, Rebecca Keoghan, emailed the complainant advising that FENZ had "already thoroughly considered these matters and has provided you with an outcome. We consider your complaint closed, and there is nothing further for us to do".³¹² The Chair continued, "We cannot subject personnel to yet further repeated inquiries into the same allegations. I understand you are not satisfied with the results of these inquiries, but they have followed robust and objective processes. Again, I consider this the end of the matter".³¹³ Ms Keoghan advised that it was this email that caused her to ask the Public Service Commission to commence this review.

5.125. In the terms of reference for this review, finalised in February 2023, FENZ maintained the position that, "Both of the formal complaints have been properly investigated already", and that "the matter has already been thoroughly considered and concluded".

5.126. FENZ's position changed during the course of this review, after the interviews of [REDACTED] and [REDACTED]. In a letter of 22 September 2023,³¹⁴ FENZ said its previous position about the complainant's second complaint was that it "could not proceed because an investigation scope was unable to be agreed such that a terms of reference could be set". This was not the

³¹⁰ Letter from [REDACTED] to the complainant of 22 April 2021 PSC.04.2454.

³¹¹ Response by [REDACTED] to written question 78.

³¹² Email from Rebecca Keoghan to the complainant of 27 January 2022 PSC.04.2486.

³¹³ Email from Rebecca Keoghan to the complainant of 27 January 2022 PSC.04.2486.

³¹⁴ FENZ's letter of 22 September 2023, at [2.2](b).

position FENZ had previously taken, that FENZ had “thoroughly considered and concluded” the complainant’s complaints.

- 5.127. For the reasons set out in this report, neither of FENZ’s positions is sustainable. FENZ’s response left many aspects of the complainant’s complaints unaddressed. There were also flaws in many aspects of the investigation that did proceed, such that they cannot be regarded as thoroughly considered and concluded. The processes FENZ adopted were not robust and objective.

Findings

I find that in responding to the complaints after the interim dispute resolution process, Fire and Emergency New Zealand:

19. Did not respond to the complainant’s complaints with an appropriate process or structure.
20. Did not provide adequate support for the complainant at key points in the process.
21. Took an overly rigid approach to defining the scope of the complaints.
22. Made an unreasonable and unilateral decision not to proceed with the external investigation.
23. Did not respond to the complainant’s reasonable questions and correspondence.
24. Failed to ensure that the people handling the complainant’s complaints had the information, training and support they required.
25. Did not follow applicable policies and processes.
26. Did not follow the process it told the complainant it would follow.
27. Wrongly withheld documents requested under the Privacy Act.
28. Unreasonably delayed the process.
29. Did not adequately manage conflicts of interest.
30. Made a procedurally unfair and unsound decision to close the complainant’s complaints.

6. The overall response

- 6.1. Standing back from the series of events, it is possible to make some overall observations about the response of the New Zealand Fire Service and FENZ over the seven years from 2016 to late 2023.

What could have been

- 6.2. There are several ways in which this matter might have taken a different path if the New Zealand Fire Service and FENZ had responded differently. At the point of first contact in late 2016, the chances of resolution would have been improved if the New Zealand Fire Service had:

- (a) Provided the complainant with a clear process and appropriate support from the outset;
- (b) Recognised the power imbalance, taken steps to minimise the impact of that imbalance, and taken particular care to avoid conflicts of interest; and
- (c) Offered to help facilitate an informal resolution, in accordance with the applicable policy.

- 6.3. Even if that had not occurred and the complainant had wanted to pursue complaints against [REDACTED] and the Fire Service, the chances of resolution would have been increased if FENZ had:

- (a) Provided (or continued to provide) suitable support and representation for the complainant;
- (b) Continued to explore the potential for restorative resolution, but, if required, established an independent investigation with suitable terms of reference and procedures;
- (c) Followed all relevant internal policies and processes, and communicated them to the complainant;
- (d) Had a clear process for responding in a timely way to the findings and recommendations of the investigation;
- (e) Provided a timely apology for any errors, consistent with the Ombudsman's guidance;
- (f) Responded appropriately to all findings and recommendations.

- 6.4. Even if that had not occurred, and the complainant's complaints had multiplied with a more entrenched situation to address, the chances of resolution would have improved if FENZ had:

- (a) Again focussed on getting the fundamentals right: communicating and following a clear process, providing appropriate support and representation, responding to correspondence in a substantive and timely way, exploring the potential for restorative or informal resolution pathways and if necessary establishing a suitable external investigation to address the complaints, avoiding conflicts of interest, ensuring the people dealing with the matter had the right training and support, providing a timely and suitable apology, and addressing any relevant findings and recommendations from external reviews;
- (b) In addition, with a more entrenched and difficult situation to address, it would have helped to avoid the steps and mindsets that can lead to escalation. That is, not treating the complainant primarily as a risk, not taking an overly legalistic or bureaucratic approach, and not losing sight of the human factors at the heart of the situation;
- (c) It would also have assisted if FENZ had been careful to avoid missteps such as wrongly withholding documents, unreasonably delaying matters, limiting the complainant's access to legal support and misrepresenting the complainant's conduct in correspondence.

6.5. Instead, as this report has summarised, the response of FENZ was characterised by a series of deficiencies. Standing back, there are several themes that went to the heart of the situation. They include:

- (a) A failure to learn from past incidents and external reviews;
- (b) An overly rigid, bureaucratic or legalistic approach, which lost sight of the person;
- (c) Departure from the fundamentals of good complaints handling.

Failure to learn from past incidents and external reviews

6.6. In May 2016, six months before the complainant's first complaint, the New Zealand Fire Service undertook a review of bullying and harassment. This assessed the Fire Service systems against the 2014 WorkSafe bullying guidance, and identified problems with the Fire Service processes and the accessibility of these – particularly to volunteers. The review said:³¹⁵

With a significant part of the workplace relations team time taken up having to deal with a number of high profile, long running disputes within volunteer brigades about bullying and harassment, it is important that reporting methods and mechanisms for volunteers in particular should be clear and well

³¹⁵ New Zealand Fire Service, Internal Audit Report, Bullying and Harassment Review, May 2016, page 10.

communicated. This would help ensure that complaints and concerns related to bullying and harassment can be identified and addressed at an early stage, and not left to fester to a point where legal guidance is required.

- 6.7. It appears that no effective steps were taken to address the issues the review had identified with the accessibility and clarity of information for volunteers. The complainant had no guidance when she first approached the Fire Service and was provided with relevant processes only after she had requested them twice from [REDACTED] Human Resources. Even then, the New Zealand Fire Service did not follow those processes.
- 6.8. As Judge Shaw identified in her report,³¹⁶ the 2016 bullying and harassment review was a missed opportunity for the Fire Service to take active steps to address bullying and harassment.
- 6.9. From late 2018, when FENZ received the interim dispute resolution process report, FENZ must have known that these events had affected the complainant in a way that was “distressing, hurtful and destructive of [her] faith in the processes that were used to address [her] concerns”. Those words are taken from FENZ’s letter of apology of 8 February 2019.³¹⁷ Despite this, the failures of communication and process continued.
- 6.10. Around the same time, the report by Judge Shaw into bullying and harassment at FENZ was released. It pointed out numerous problems with FENZ’s complaint handling processes, including that FENZ personnel needed better information and communication, the practices for managing such matters were “beset by delays and breaches of confidentiality, and sometimes conflict of interest” and that “processes and policies are not applied in a consistent way throughout the organisation and lack transparency”.³¹⁸
- 6.11. FENZ stated publicly that all 33 recommendations of the Shaw report had been accepted. At media conferences, the Chief Executive, Rhys Jones, [REDACTED]. Mr Jones has advised that [REDACTED] was intended to ensure that they were seen to publicly accept the Shaw report, acknowledge the unacceptable behaviour of the past, agree to the implementation of the recommendations of the Shaw report and strive to change their behaviours. [REDACTED]
- 6.12. The complainant reminded FENZ more than once what the Shaw report had found and that the processes she was experiencing replicated problems Judge Shaw had identified. For example:

³¹⁶ Shaw report page 57. PSC.02.0201.

³¹⁷ Letter from [REDACTED] to the complainant of 8 February 2019 PSC.04.1387.

³¹⁸ Shaw report page 48 PSC.02.0202.

- (a) In an email to [REDACTED] in January 2019, she said:³¹⁹

[Her experience was consistent with] the findings of the Shaw report on the FENZ workplace, that information for potential complainants is not known, not available nor readily accessible, that complainants often experience isolation and lack of support and delay, and that inconsistency and lack of transparency are issues.

- (b) In July 2020, the complainant emailed [REDACTED] and others and said:³²⁰

Lack of consistency and transparency around processes is a well-documented failing of FENZ. The Shaw report references it.

- 6.13. The complainant referred to recommendation 15 from Judge Shaw's report:

It is recommended that: ... the practices and procedures for receiving and managing complaints of bullying and harassment include deadlines by which both targets and accused are regularly advised of the progress of the complaint and the outcome of any investigation.

- 6.14. The complainant said, "there are no indications that FENZ's process issues have improved at all since the Shaw report".³²¹ The complainant repeatedly pointed out process failures to FENZ in articulate terms. Even after deficiencies were pointed out in the report of the interim dispute resolution process, FENZ did not learn from its mistakes.

- 6.15. The report by Belinda Clark in 2022 recognised the work FENZ had done to adopt the 33 recommendations in the Shaw report. It also resonated with the complainant's experience and reinforced that FENZ had missed repeated opportunities to improve in the past.

- 6.16. The Shaw report had emphasised the power structures within the Fire Service and FENZ, and the importance of this being addressed. The report said:³²²

The historic sub-cultures inherited by FENZ have very strong internal ties, which enables positions to be used to protect individuals accused of bullying or harassment. From many accounts the "old boys" network is pervasive throughout FENZ at all levels and in both administrative and operational roles.

...

Our current culture emphasises the old boys network – and some of those higher ranked operational staff protect their mates rather than doing the right thing. There is sometimes clear and obvious favouritism, and diversity is not valued.

In an organisation like FENZ where response is the keystone to the corporate culture, the strong operational focus contributes to a culture where operational

³¹⁹ Email from the complainant to [REDACTED] of 28 January 2019 PSC.04.1427.

³²⁰ Email from the complainant to [REDACTED] of 21 July 2020 PSC.04.2001.

³²¹ Email from the complainant to [REDACTED] of 21 July 2020 PSC.04.2001.

³²² Shaw report page 21 PSC.02.0165.

performance or length of service “credits” are taken into consideration where accusations of bullying and harassment are made.

If the complaint is against a more senior colleague or manager, the business tends to side with them as opposed to the complainant. This does come across as “looking after their own”.

- 6.17. In this case there could not have been a bigger power disparity between the complainant, a young, female, volunteer firefighter with only one year of service and [REDACTED]. Overall, FENZ had many opportunities over the 7-year period of this matter to learn from past mistakes, but did not implement the relevant lessons in the complainant’s case.

Losing sight of the person

- 6.18. Almost from the outset, but increasingly as the time passed by, FENZ treated the complainant as a risk that needed to be managed, rather than a person with genuine concerns that needed to be addressed and resolved. [REDACTED] described the close involvement of lawyers in the handling of the complainant’s complaints, and it is clear from the correspondence that [their] typical response to incoming emails from the complainant was to forward them directly to legal counsel. [They] said, “There was certainly advice about risk”,³²³ and:³²⁴

It wouldn’t be very often you would have the [REDACTED] and the [REDACTED] sitting beside you on one file. So that was the risk that FENZ saw with this matter and if I could have handed it on, I would have.

- 6.19. Over time, lawyers took an increasingly dominant role in the handling of the complainant’s complaint after the IDRP process. FENZ explained the reason for this was that there were “allegations about members of the People Branch at FENZ – who ordinarily would have helped support the decision-maker [so] the decision was made to exclude that department and instead involve [REDACTED].”³²⁵
- 6.20. The mere involvement of lawyers is not necessarily problematic, and not all lawyers take a legalistic approach. However, in this case, it appears [REDACTED] did not always have a full appreciation of the context or background to the matter. At times, as described earlier in this report, the correspondence took a narrow or unhelpful view of the situation – for example, the letter of apology of 8 February 2019, and the letter of 11 August 2020 signed out by [REDACTED] responding to queries from the complainant. The latter attempted to summarise the engagement between the complainant and FENZ, but would have come across to the

³²³ [REDACTED] interview transcript, page 22 line 20.

³²⁴ [REDACTED] interview transcript, page 22 line 30.

³²⁵ FENZ’s letter of 22 September 2023 at [4.5].

complainant as misrepresenting key events and actions in a way that would not have helped the overall goal of resolution.

- 6.21. The decision to withhold documents under the Privacy Act, and to encourage the Department of Internal Affairs to do the same, appears to have been a defensive and legalistic decision.
- 6.22. Overall, the series of events between FENZ and the complainant was characterised by entrenched and often rigid thinking that undoubtedly conveyed to the complainant the impression that FENZ was seeking to manage her and resist her attempts to seek impartial accountability and resolution. This was all ultimately unhelpful and counterproductive for FENZ. Along the way, in my view the organisation lost sight of the underlying human needs of a volunteer seeking to call to account [REDACTED].
- 6.23. The protracted and unproductive nature of the processes took a toll on the complainant. She said:³²⁶

When I used to get emails from [REDACTED] if I saw an email from [them] in my inbox ... I used to physically shake and feel like vomiting. Like it was a physical reaction to [their] emails because, it didn't matter what I said, [they] just never responded to it. ... I was completely alone for most of that [REDACTED] period. Completely alone, as in friends are sick of you talking about this anymore, so you don't have friends. I didn't have a lawyer. Your family can't watch you go through it any more. [I was] completely alone and I would just get emails from [them] and it was just a back and forth but [it] was only ever about shutting me down and so yeah, talking about [REDACTED] physically upsets me.

- 6.24. It is not apparent that FENZ ever truly appreciated the experience the complainant was going through, or sought to help her, despite various referrals to counselling or EAP support, and despite some limited access to legal support at times. It is notable that even when FENZ did make an EAP counsellor available to the complainant in 2018, that experience was undermined by a senior person within FENZ describing the complainant as "paranoid" to the counsellor. The person who used that term said [they] wanted the counselling service to know the symptoms of distress the complainant was exhibiting, which [they] believed included some level of paranoia about the organisation. Regardless, when the complainant learned she had been described as paranoid, she felt exposed and embarrassed in front of the counsellor and mistrustful of FENZ, which put her off the counselling experience.³²⁷

³²⁶ The complainant's interview transcript, page 106 line 2.

³²⁷ Email from the complainant to [REDACTED] of 20 February 2018 PSC.04.1318.

- 6.25. The complainant saw firefighting as a calling. She had a high level of passion and commitment to serving her community. She explained at interview:³²⁸

I signed up to volunteer for my community and that was ripped away from me so I think that's a special area of someone's life, service, and no one should have the right to take that away from me for the reason that they took it away ... For me it was ripped away and then I would hear the siren go up and all the adrenaline in my body was used to running to help people when that happened, and I would just sit there by the window and bawl my eyes out and then sometimes I would see the fire truck with two people on it because there was no one there.

- 6.26. There was also an ongoing failure to address the complainant's status in the brigade. [REDACTED].³²⁹ This was a good opportunity for FENZ to take proactive steps to work with [REDACTED] brigade to re-integrate the complainant into the brigade. Instead, senior managers at FENZ discussed how she might be dismissed.³³⁰
- 6.27. Overall, FENZ's response repeatedly lost sight of the person behind the emails and complaints. The effect of that was simply to entrench and prolong matters, to the detriment of all involved.

Departure from the principles of good complaints handling

- 6.28. The Clark report sets out a set of standards that should be incorporated in a sound complaints process, including:³³¹
- (a) Clarity of process, roles and responsibilities, and what complainants and respondents can expect from the process and what would be expected from them;
 - (b) Timeliness targets within which complaints will be acknowledged, investigated, outcome determined, and resolution action taken;
 - (c) Principles of impartiality;
 - (d) Reporting and metrics;
 - (e) What good communications practice will look like.

³²⁸ The complainant's interview transcript, page 15 line 47.

³²⁹ [REDACTED] PSC.05.0018.

³³⁰ Email from [REDACTED] to [REDACTED] of 1 July 2020 PSC.04.1991.

³³¹ Clark report, page 39 PSC.02.0267.

- 6.29. FENZ's complaints process in the complainant's case did not meet any of these standards:
- (a) There was no clear process in the initial Fire Service response to the complainant's complaint, or FENZ's response to the interim dispute resolution process, or in relation to the subsequent complaints;
 - (b) There were no timeliness targets. Indeed, FENZ unilaterally paused consideration of the complaints without consultation or good reason;
 - (c) The Fire Service involved [REDACTED], in its handling of the matter in both 2016 and 2017, which was inconsistent with the principle of impartiality. FENZ then appointed a decision-maker who it appears reported to someone who had been complained about. These conflicts of interest were not adequately identified or managed;
 - (d) There does not appear to have been any adequate reporting or measuring of FENZ's response to these matters;
 - (e) The Fire Service and FENZ did not keep the complainant adequately updated during the response to her complaints.
- 6.30. In feedback on the draft report, [REDACTED] observed with the benefit of some distance that there was a level of disconnection between key staff and a misunderstanding of each other's roles. This could well be correct, and it is fair to acknowledge that FENZ's lack of a clear process was unsatisfactory for its own personnel as well as for the complainant.
- 6.31. The complainant described herself as a "process follower",³³² and said, "If the process is fair and if it investigates the evidence then I will accept the outcome".³³³ Because of the repeated absence of communication about the processes that would be used, and the failure to follow either relevant internal processes or such processes as were advised to the complainant, the complainant described having lost trust in the organisation.³³⁴ That loss of trust in the ability of the organisation to respond in a principled and predictable way was a reasonable response to FENZ's actions.

³³² The complainant's interview transcript, page 12 line 41.

³³³ The complainant's interview transcript, page 29 line 39.

³³⁴ The complainant's interview transcript, page 74 line 36.

The scope of this review

- 6.32. The terms of reference of this review focus on the complainant's complaints and require me to report on any inadequacies in FENZ's handling of the complaints (clause 4) and whether FENZ acted fairly, reasonably and in compliance with relevant policies (clause 6). This report has therefore addressed those questions.
- 6.33. In doing so, I am conscious that other questions could be asked, including why or how it came to be that FENZ's response occurred as it did, the role of organisational culture and the mix of organisational, system, human and individual factors that influenced or led to the response. The answers to these questions could be relevant to any changes that FENZ might consider making for the future and might also provide context to help explain how particular actions came to be taken.
- 6.34. However, this is not a broader culture review, and I acknowledge the work that Judge Shaw and Belinda Clark QSO have already done in that area. I mention these factors because several of the individuals involved in the response queried the balance of the draft report. I acknowledge that the requirement to focus on "any inadequacies" in FENZ's response may make the content of this report uncomfortable for the individuals involved and may appear to lack balance from their perspective. I have taken that perspective into account as far as possible within the scope of the terms of reference.

The role of individual staff

- 6.35. In preparing this report I interviewed [REDACTED] former FENZ staff members [REDACTED]. In fairness to them, and despite the implicit or explicit criticisms I have made, I consider the ultimate accountability for the deficiencies in this case sits with FENZ.
- 6.36. It would be unfair to single out [REDACTED] for criticism without acknowledging that others in the organisation also played key roles that could be equally or more subject to criticism, and to some extent my focus on [REDACTED] was amplified because they were the individuals that FENZ proposed I interview.
- 6.37. I also want to acknowledge the positive things and counterpoints that can be said about [REDACTED]. [REDACTED] was open and candid about many of the deficiencies in the process and was plainly frustrated by many aspects of the structure and response to the complainant's complaints. [REDACTED] was heavily reliant on, and influenced by, advice or direction from others – particularly in the legal team. [They] had a heavy workload and [their] role with the complainant's complaints was an 'add on' that was forced upon [them] without any real

opportunity to decline, three years after the complainant's initial approach to the Fire Service and at a time when the situation had repeatedly spiralled downwards. My sense was that [REDACTED] would have handled things differently had [they] been in charge from the start and given more autonomy to decide how to respond. From [REDACTED] perspective [they] emphasised that [they] made genuine efforts to engage with the complainant within the scope of their role.

- 6.38. [REDACTED] appears to have disagreed with many of the decisions and actions taken by FENZ in the response to the complainant's situation. [They were] handed the complainant's matter to deal with soon after [they] arrived at FENZ [REDACTED], without an adequate handover. [They were] supervised by, and directed by, others more senior in the organisation. [REDACTED].

Findings

I find that in overall terms, Fire and Emergency New Zealand:

31. Failed to learn from past incidents and external reviews, including the IDRP report and the Shaw report. This led the organisation to repeat mistakes that had been identified in those reviews and reports.
32. Lost sight of the person at the centre of the complaints. This led FENZ to take an approach often characterised by narrow, defensive thinking that saw the complainant primarily as an organisational risk to be managed.
33. Did not meet the standards of sound complaints handling.

7. Whether FENZ acted fairly, reasonably and in compliance with relevant policies

7.1. Clause 6 of the terms of reference requires me to determine whether FENZ acted fairly, reasonably and in compliance with relevant internal and Public Service system-wide policies in its response to the series of complaints. It follows from the findings I have made that FENZ did not act fairly or reasonably in relation to the complainant or her complaints.

7.2. In making that assessment, as required by the terms of reference I have considered FENZ's compliance with relevant policies and standards. I have already found that FENZ did not follow, or act consistently with, the following internal policies, procedures, and standards:³³⁵

- (a) *Respond to bullying policy;*
- (b) *Standards of conduct;*
- (c) *Conflicts of interest, gifts, prizes and hospitality policy;*³³⁶
- (d) *Report and investigate alleged misconduct procedure;*
- (e) *Inform respondent of misconduct allegation procedure;*
- (f) *Conduct investigation and present findings procedure;*
- (g) *Draft investigation report procedure;*
- (h) *Approve and issue draft investigation report procedure;*
- (i) *Consider response and make misconduct decision procedure*

7.3. In April 2019, the State Services Commission issued *Speaking up* standards which outlined minimum expectations for organisations to support staff to speak up in relation to wrongdoing that could damage the integrity of the State services.³³⁷ FENZ's handling of the complainant's complaints from April 2019 onwards was inconsistent with these standards. In particular, FENZ:

- (a) Did not assess and act on the complainant's concerns in a timely way;³³⁸
- (b) Did not provide tailored and dedicated support to the complainant;³³⁹

³³⁵ See findings 2, 5, 9, 25, 29.

³³⁶ FENZ was also in breach of the State Services Commission policy, *Acting in the Spirit of Service – conflicts of interest* PSC.01.0560.

³³⁷ State Services Commission, *Acting in the Spirit of Service, Speaking up*, April 2019 PSC.01.0446.

³³⁸ See finding 28.

³³⁹ See finding 20.

- (c) Did not communicate clearly and regularly with the complainant;³⁴⁰
- (d) Did not develop and share clear time frames and terms of reference as soon as practicable;³⁴¹
- (e) Did not ensure that its resolutions and actions were fair and reasonable.³⁴²

7.4. Taking into account these breaches, and the findings I have made, I am satisfied that FENZ's handling of the series of complaints from 2016 to 2023 was inconsistent with the State Services Commission *Standards of integrity and conduct*.³⁴³ Specifically, FENZ:

- (a) Did not treat the complainant fairly or with respect;
- (b) Was not professional or responsive; and
- (c) Acted in a way that could harm FENZ's reputation.

³⁴⁰ See findings 23, 26.

³⁴¹ See findings 21, 28.

³⁴² See findings 19-30.

³⁴³ State Services Commission, *Standards of integrity and conduct*, June 2007, PSC.01.0048.

8. Steps required to resolve this matter

- 8.1. The purpose of this review is to determine the steps required to resolve and close this matter, and to take any of those steps within my control.³⁴⁴ In pursuit of that purpose, I provided my findings on FENZ's handling of the complaints to the complainant and FENZ as an interim report on 16 July 2024. On 28 August 2024, FENZ accepted all findings.³⁴⁵
- 8.2. After receiving the interim report, FENZ and the complainant engaged constructively towards resolving and closing the matter, including a full-day face to face meeting on 29 August 2024 and subsequent correspondence. Due to the history and complexity of this matter, this took some time. On 21 January 2025, the parties advised me they had reached a confidential resolution and that neither party considered that any further investigation was required under clause 5 of the terms of reference.
- 8.3. With this confirmation, I am satisfied the purpose of the review has been achieved. It is neither appropriate nor necessary for me to investigate or re-investigate any aspect of the complaints under clause 5.

9. Conclusion

- 9.1. The events of the last seven or more years have been at times difficult and distressing for the complainant, as I have described. Her determination has been resolute in the face of repeated failures by FENZ. No doubt individuals within FENZ have also found it difficult, frustrating or overwhelming at times to deal with this situation.
- 9.2. In preparing this report, I had the benefit of a written record comprising thousands of pages of documents, face to face interviews and detailed written submissions. When the events are viewed from this distance and from an objective standpoint, the conclusion that FENZ acted unfairly and unreasonably is inescapable. Regrettably, that conclusion strongly echoes the findings of previous reviews.
- 9.3. At the same time, I am aware that FENZ has made changes to try to improve its processes and the culture of the organisation. I acknowledge that I have not received details of these changes in a way that would allow me to assess the organisation as it now is. However, the fact the parties have now reached a resolution of this matter is an encouraging sign that there is a genuine commitment to change. That is undoubtedly a welcome development for all those who share such a strong commitment to the vital work of FENZ.

³⁴⁴ Terms of Reference, Clause 3.

³⁴⁵ Letter from FENZ Chief Executive to Public Service Commission, reproduced in Appendix D.

Appendix A – Terms of Reference



Review of a series of complaints made to Fire and Emergency New Zealand

Background

1. Ms X is a volunteer firefighter. Since 2016, she has made a series of inter-related formal complaints (the series of complaints on this matter) to Fire and Emergency New Zealand (FENZ) and its predecessor the New Zealand Fire Service (NZFS), including about the conduct of a number of FENZ and NZFS employees and/or volunteers (FENZ personnel). The series of complaints are described in Appendix A.
2. Ms X and FENZ disagree as to whether the series of complaints has been appropriately addressed. Ms X's view is that they have not been. FENZ is of the view that this matter has already been thoroughly considered and concluded. FENZ's position is that, in substance, the matter is covered by two formal complaints that Ms X made to FENZ: one on 23 August 2017 and one on 3 December 2017. FENZ considers that both of the formal complaints have been properly investigated already.

Purpose

3. The purpose of this Review is to determine the steps required to resolve and close this matter, and to take any of those steps that are within the Reviewer's control.

Scope

4. The Reviewer is to independently review how FENZ handled the series of complaints (including through the work of contractors) and is to consider, make findings, and report on, any inadequacies.
5. The Reviewer may also investigate or re-investigate any aspect of the series of complaints if the Reviewer:
 - considers it appropriate and necessary to do so in order to achieve the purpose of this Review;
 - has Ms X's consent; and
 - is satisfied that doing so would not be inconsistent with the principles of natural justice and would not otherwise be an abuse of process.
6. In making these assessments the Reviewer is to determine, on the balance of probabilities, whether FENZ acted fairly, reasonably and in compliance with relevant internal and Public Service system-wide policies which may include:
 - the NZFS policy entitled "Respond to bullying"
 - the NZFS "Report and investigate alleged misconduct" process
 - the FENZ policies which corresponded to or replaced the NZFS policies referred to above
 - the FENZ Standards of Conduct (as amended at various times)
 - the FENZ Conflicts of interest, gifts, prizes, and hospitality policy

- the WorkSafe Preventing and Responding to Bullying at Work Good Practice Guidelines (as amended at various times)
 - the State Services Commission (SSC, now the Public Service Commission) Standards of Integrity and Conduct
 - the Public Service Commission Positive and Safe Workplaces Model Standards
 - FENZ's Interim Dispute Resolution Process.
7. In addition, the Reviewer may make any recommendations that they consider necessary or appropriate to assist in achieving the purpose of the Review.

Findings of liability and fault

8. The Reviewer will not make findings as to the civil, criminal, or disciplinary liability of any person but may make:
- findings of fault, including in relation to named institutions or named individuals (including any current or former FENZ personnel or contractors)
 - recommendations that further steps be taken to determine liability.

Process

9. Following consultation with Ms X and FENZ, the Reviewer will develop their own process for this Review and record that process in a Minute. At a minimum, the process must provide both Ms X and FENZ with an opportunity to:
- be interviewed
 - make submissions
 - present supporting documentary evidence
 - comment on the draft report
10. All interviews are to be recorded, transcribed and provided to the complainant and FENZ, with any appropriate redactions from a privacy perspective. This may be necessary if, for example, a reference is made to disciplinary action that has been taken.

Appointment

11. The Deputy Public Service Commissioner has the power to undertake an independent Review under schedule 3, clause 5(2)(b) of the Public Service Act 2020 on the FENZ Board Chair's request.
12. The Deputy Public Service Commissioner appoints Mr Simon Mount KC to undertake this Review (Reviewer).

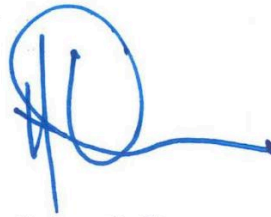
Functions and Powers

13. Pursuant to schedule 3, clause 6 of the Public Service Act and, for the purposes of the Review, the Deputy Public Service Commissioner delegates her functions and powers under schedule 3, clauses 2 to 4 and 8, 10 and 11 of the Public Service Act to the Reviewer.

Deliverables, timeframes, and reporting

14. The Review must be completed as soon as practicable with an indicative reporting date of three months after the Review has commenced, if the Reviewer decides that investigation or re-investigation under clause 5 is not required. The Reviewer will provide the final report to Ms X, the Deputy Public Service Commissioner, and the FENZ Board Chair.

15. If the report contains personal or confidential material and therefore cannot be published on the Commission's website in full, the Reviewer may prepare a summary version suitable for public release and provide it to the Deputy Public Service Commissioner, who will consider whether publication of the summary on the Commission's website is in the public interest, after giving Ms X and FENZ an opportunity to comment.

A handwritten signature in blue ink, consisting of a large, stylized 'H' and 'Q' followed by a horizontal line.

Helene Quilter
Deputy Public Service Commissioner

Date: 28 February 2023

Appendix A – The Series of Complaints

1. Ms X's complaints of 15 October 2016 and following to and/or about [REDACTED]
[REDACTED]
2. Ms X's complaints about FENZ's responses to her requests for leave from the Y Brigade, and FENZ's responses to her requests that individuals be stood down, be directed that they may not speak with or approach Ms X or others in relation to Ms X's complaints and/or not be permitted to continue being involved in handling her complaints.
3. Ms X's complaints about proposals to terminate her membership of the Y Brigade and other steps taken in that regard.
4. Ms X's complaint of 7 November 2016 to the then New Zealand Fire Service Chief Executive and National Commander, and related complaints.
5. Ms X's complaint to the Interim Dispute Resolution Process (IDRP) of 14 August 2017.
6. Ms X's complaint of 3 December 2017 to the then FENZ Chief Executive and related complaints to the then FENZ Chief Executive.
7. Ms X's complaints about the terms of reference for the IDRP investigation, the process and approach employed by the IDRP investigator, and the content of the IDRP Investigator's report.
8. Ms X's complaints regarding witness tampering and intimidation in relation to the IDRP Investigation, and actions of members of Y Brigade in relation to the IDRP investigation.
9. Ms X's complaints about the time it took for FENZ to make the apology recommended by the IDRP Investigator and other matters relating to that apology, and the other steps FENZ took and did not take in respect of the recommendations made by the IDRP investigator (including issues arising and statements made about who in FENZ had access to the IDRP Investigator's report).
10. Ms X's complaints about a case study for FENZ training allegedly based on Ms X's complaints, written by or contributed to by [REDACTED]
11. Ms X's complaints about FENZ's decision not to proceed with an investigation it had commissioned an external law firm to carry out into complaints made by Ms X, and other related decision's and matters.
12. Ms X's complaints about FENZ's responses to requests she made for support and other assistance, including for counselling and funding for legal advice and representation.
13. Ms X's complaint that in early 2018 FENZ's [REDACTED]
[REDACTED] described Ms X as "paranoid" when speaking to a counsellor about Ms X in the context of counselling Ms X had requested.
14. [REDACTED]
15. FENZ's actions in relation to Ms X's in-person complaint to the (then) State Services Commission of 4 March 2019, which was referred to the Department of Internal Affairs (DIA) as the monitoring agency. This includes the way in which FENZ engaged with Ms X and DIA over DIA's handling of the complaint, and FENZ's refusal to provide information requested for a proposed mediation.

16. Ms X's complaints about FENZ advising her that the issues she was raising were the same as those covered by the Shaw Report and therefore did not require separate action.
17. Ms X's complaint of 17 March 2020 to the then FENZ Board Chair, and related complaints.
18. Ms X's complaint of 14 December 2020 to the then FENZ Board Chair, the complaints referred to in that complaint, and subsequent complaints to the then and now current FENZ Board Chairs.
19. Ms X's complaints to and about [REDACTED] and the FENZ Board about [REDACTED] process, decision-making and other handling of her complaints.
20. Ms X's complaints about decisions by FENZ at various stages to pause its consideration of Ms X's complaints because of other processes, including a complaint by Ms X to the Privacy Commissioner and a proposed investigation by a barrister [REDACTED] [REDACTED]
21. FENZ's actions in relation to Ms X's complaints to [REDACTED] of 6 August 2020, including the way in which FENZ engaged with Ms X and [REDACTED] over [REDACTED] handling of these complaints.
22. Ms X's complaints about not having been able to attend the Y Brigade since late 2016, including not having been reintegrated into that Brigade.
23. Ms X's complaints about FENZ's decision to close her complaints in 2021.

Appendix B – Process

The review commenced on 1 May 2023. As required by [9] of the Terms of Reference, I set out the process for the review in a Minute of 8 May 2023 (Minute 1). I consulted with The complainant and FENZ on the content of that Minute.

Documents received

At the start of the review, the complainant and FENZ supplied me with a total of more than 8,000 pages of documents.

On 16 June 2023, FENZ provided a common bundle of documents, which organised the documents provided by both parties.

During the evidence-gathering phase, I sought further documents from both the complainant and FENZ, along with answers to written questions, which were then added to the common bundle.

I exercised my powers of inspection in respect to a report I had requested from FENZ by [REDACTED]. I then formally received this report which was added to the common bundle.

During the natural justice phase, I received a further document from FENZ, which was added to the common bundle and supplied to the complainant. I also received a statement from [REDACTED], which I supplied to the complainant and FENZ.

Interviews conducted

I interviewed the complainant in person on 30 June 2023, and received a 47-page synopsis of the complainant's position. I completed the complainant's interview via Zoom on 26 July 2023. I provided the complainant's synopsis and finalised interview transcript to FENZ on 1 August 2023.

I invited FENZ to nominate its initial interviewees. FENZ nominated [REDACTED]. Prior to interviewing [REDACTED], I ensured that FENZ supplied them with the complainant's synopsis and relevant documents from the common bundle.

I interviewed [REDACTED] in person on 29 August 2023, with [REDACTED] (counsel for FENZ) present. I was not able to complete the interview in the time allocated.

I interviewed [REDACTED] in person on 29 August 2023, with [REDACTED] present.

I recorded all interviews and arranged for transcripts to be produced. I gave interviewees the opportunity to correct or clarify their answers before the transcripts were finalised. Once finalised, I provided the transcripts to the complainant and FENZ.

Written questions

I invited the IDRP investigator [REDACTED] to attend an interview, which [REDACTED] declined. Instead, [REDACTED] agreed to respond to written questions. I provided [REDACTED] with the complainant's synopsis, interview transcript, a bullet point list of the complainant's criticisms of [REDACTED] investigation, and other documents and provided written questions for [REDACTED] to respond to. [REDACTED] responded on 24 August 2023.

[REDACTED] elected to complete the process with a letter of 22 September 2023 and answers to written questions on 3 November 2023.

Disclosure

I provided the complainant and FENZ with all interview transcripts, answers to written questions, and documents received by the review prior to drafting the report.

Consultation on process to be followed

On 3 November 2023, I issued Minute 2 which addressed the next steps for the review. I summarised the material the review had received to date and the interviews conducted, and I outlined my preliminary view on the next steps. I proposed to approach the requirements of the Terms of Reference in a staged manner and to address clauses 4 and 6 (any inadequacies in FENZ's handling of the complaints and whether FENZ acted fairly and reasonably) as far as possible on the evidence to date before making any decision about the manner and scope of any further investigation under clause 5.

I indicated my view that the evidence I had gathered at that point was sufficient for me to prepare an interim report addressing clauses 4 and 6 and that my preference would be to complete that report (including giving both parties an opportunity to comment on it in draft) before addressing the clause 5 discretion to investigate/re-investigate.

At that stage I had interviewed (either in person or through written questions) a relatively limited number of individuals out of the dozens who potentially could have been interviewed. I concluded it was appropriate to proceed in this way, because:

- a. This was a review of how FENZ handled the complainant's complaints, not an investigation into the complaints themselves. FENZ's response to the complaints was set out in the comprehensive set of contemporaneous documents in the common bundle. In addition to the complainant, I had interviewed the key individuals involved in FENZ's response, along with [REDACTED] who conducted the earlier investigation.
- b. Any individuals with a natural justice interest who had not been interviewed would have an opportunity to comment on the draft interim report – and potentially an opportunity to be interviewed if they wished.
- c. The review did not have unlimited resources and it was in the overall interests of the review not to attempt a broad investigation or re-investigation of every incident or matter listed in Appendix A to the terms of reference (which included 23 categories of complaints). In my assessment, such an approach would not have been likely to achieve the purpose of the review, as set out in clause 3 of the Terms of Reference.
- d. I would give the parties an opportunity to indicate whether I should interview any further witnesses.

I invited both parties to consider my preliminary views and provide any submissions on process.

I also invited both parties to advise if they wished me to consider interviewing any further witnesses.

The complainant agreed with my proposed procedural approach and advised that she did not seek a further interview at this stage of the review.

FENZ advised that it would not be making any submissions on process. In relation to interviews, FENZ stated: "FENZ will not seek to make any requests for further interviews (assuming, to the extent you

are minded to make any adverse findings in your interim report against FENZ, that any such findings are directed at the organisation rather than attributed to any former or current FENZ employee)”

On 10 November 2023, I issued Minute 3 which confirmed the process to be followed. I referred to FENZ’s response regarding interviews and advised that I could not exclude the possibility of adverse findings against current or former FENZ personnel, noting that if I did propose to make such findings, I would of course need to comply with natural justice. I extended another opportunity to FENZ to request any further interviews. FENZ did not request any further interviews.

Submissions prior to draft report

I received submissions from the complainant, FENZ, [REDACTED] and [REDACTED]. I received the last submissions on 21 December 2023.

Draft interim report

I provided the draft interim report to the complainant and FENZ on 20 February 2024.

I provided relevant extracts of the draft interim report to other individuals and another organisation, as required by natural justice, between 21 February and 8 March 2024.

FENZ made initial contact with its affected current or former personnel and, with their consent, acted as a conduit between the review and those individuals. At an early stage of the review, FENZ requested that it contact its current or former personnel, rather than the review. Accordingly, I arranged the interviews of [REDACTED] through FENZ. At the natural justice stage, I asked FENZ to confirm to me the names of those individuals who had consented to FENZ acting as a conduit. FENZ supplied those names on a rolling basis, and the relevant individual extracts were then provided.

All those who received the draft interim report, or extracts from it, were requested to respond on a template provided within a specified period of time.

Many (including FENZ) requested extensions of time. I granted all requests for extensions.

I received the final individual response on 26 April 2024.

Issues raised during natural justice process with current or former FENZ personnel

FENZ, on behalf of a number of the named current or former FENZ personnel, queried the process being followed on in a letter of 29 February 2024. I wrote to FENZ on 1 March 2024 and:

- Reassured all personnel that the draft interim report was exactly that – a draft – and that I retained an open mind on all matters;
- Advised I would be happy to adopt a reasonable approach to any extension of time requests to respond;
- Advised that I expected to be able to accommodate any reasonable requests for an interview (either in person or by Zoom);
- Noted that it would make sense for FENZ to provide the underlying documents from the common bundle to the individuals, but if any person would like me to provide the documents, to let me know;
- Advised that if any individual considered they required more context for the passages provided to them, they should let me know.

I subsequently received and approved 13 requests for extension of time.

Several individuals advised me they were considering requesting an interview but wanted a list of the questions that I would ask. I responded to each and provided them with a detailed list of topics that I would cover (a list of questions being impracticable).

Nobody requested an interview. Nor did anyone request that I provide them with documents from the common bundle or with more context for the extracts of the draft report provided to them.

All individuals provided a response to me, which I acknowledged and carefully considered before finalising the interim report.

Many individuals raised concerns about potential publication of what they considered to be confidential personal information in the draft report. I provided all with the Terms of Reference and drew their attention to clause 15 which addresses how the question of publication would be managed.

Finalisation of the interim report

I made amendments to the draft report in response to the feedback provided, and determined it was not necessary for any further natural justice process to be completed before finalising the interim report.

I provided the interim report to the complainant and FENZ on 16 July 2024, addressing the matters in clauses 4 and 6 of the terms of reference.

Non-publication orders under s 15 Inquiries Act 2013

To protect the confidentiality of the interim report, the draft interim report, and the material submitted in response to the draft, I made interim non-publication orders under s 15 Inquiries Act 2013 on 16 July 2024. The power to make these orders became available to me pursuant to a certificate that the Deputy Public Service Commissioner issued under clause 8(1)(b) of schedule 3 of the Public Service Act 2020 on 16 July 2024, which delegated the power in s 15 Inquiries Act to me, pursuant to clause 6 of schedule 3.

Minute 6 set out the scope and basis of the orders.

Resolving and closing the matter

I issued Minute 6 with the interim report, inviting submissions from the complainant and FENZ on two issues:

- Should I invoke the discretion in clause 5 to investigate or re-investigate any complaints?
- Are there any other steps I should take in accordance with clause 3 for the purpose of resolving and closing this matter?

The parties agreed that a face to face meeting was the best way forward. This was scheduled for 29 August 2024.

On 28 August 2024, FENZ formally accepted all of the findings of the interim report. The letter from the FENZ Chief Executive is included in Appendix D.

The meeting on 29 August 2024 was constructive and was followed by further correspondence and discussions between the parties in an effort to resolve the matter. This process necessarily took some time. The parties kept me apprised of developments and progress throughout this period.

On 21 January 2025, I received advice that the parties had reached a confidential resolution and that

neither party considered that any further investigation under clause 5 of the terms of reference was required.

Clause 5 decision

Clause 5 may only be invoked if three preconditions are met. The first is that I must consider investigation or re-investigation appropriate and necessary to achieve the purpose of the review. The purpose of the review is set out in clause 3 being to determine the steps required to resolve and close this matter, and to take any of those steps within my control.

In light of the position of the parties, and the fact that they have resolved matters, further investigation or re-investigation is neither appropriate nor necessary to achieve the purpose of the review.

I accordingly decided not to invoke my discretion under clause 5 to investigate or re-investigate any aspect of the series of complaints.

For completeness, I record that I provided [REDACTED] with the opportunity to comment on my preliminary view on clause 5 on 22 January 2025. This was because [REDACTED] had previously suggested that [REDACTED] wanted the complaints [REDACTED] to be investigated or re-investigated. [REDACTED] did not provide any response.

Finalisation of the report

I amended the interim report by updating parts 8 and 9, this process section, and including the 28 August 2024 letter from FENZ accepting the interim report findings as Appendix D.

On 7 March 2025, I provided a draft final report pending decision on publication to the complainant, FENZ and the Public Service Commission, along with Minute 8.

It was agreed that the Public Service Commission would address all questions of publication, including the need for any permanent non-publication orders under s 15 Inquiries Act. I therefore continued the interim order that I made in Minute 6, with an amendment to direct that it would lapse upon the making of a final decision by the Public Service Commission.

Decision on publication and non-publication orders

The decision on publication under clause 15 is for the Public Service Commission.

On 4 April 2025, the Public Service Commission notified its decision not to publish this report in full, and instead to publish a redacted version of the report. The Public Service Commission will consult with relevant individuals on the extent of the redactions.

On the same day, the Public Service Commission made orders under s 15 Inquiries Act to forbid publication of any of the following material (including extracts thereof):

- a. The draft interim report
- b. The evidence and submissions presented in response to the draft interim report
- c. The interim report
- d. The draft final report for purpose of publication decision
- e. The final report, once issued

- f. The name or other particulars likely to lead to the identification of a witness or other person participating in the review unless that person is identified in the redacted version of the report published by the Commission.

Those orders do not apply to:

- a. Documents that came into existence prior to the commencement of the review
- b. The redacted version of the final report, along with any summary, published by the Public Service Commission

I have recorded the existence of the s 15 non-publication order in the header of each page of this report.

Appendix C – Terms of Reference, IDRP Investigation



Terms of Reference for independent investigation into issues raised by Sarah Hullah about [REDACTED] Volunteer Fire Brigade, and Fire and Emergency New Zealand

10 November 2017

1. Introduction

- 1.1 These Terms of Reference relate to issues raised by Sarah Hullah (see email dated 14 August 2017 and attached documentation) about:
- [REDACTED] Volunteer Fire Brigade, and
 - Fire and Emergency New Zealand, known as the New Zealand Fire Service up until and including 30 June 2017.
- 1.2 Ms Hullah, [REDACTED] and Fire and Emergency have agreed that an independent investigation will be conducted into this dispute. The investigation will be carried out by [REDACTED] Barrister).

2. Terms of Reference

- 2.1 The purposes of the investigation are to investigate the following issues:
- [REDACTED]
 - [REDACTED]
 - Whether following the two allegations referred to above, [REDACTED] prevented Ms Hullah attending training; alleging that Ms Hullah had offered her resignation when she had not, [REDACTED]
 - Whether following the two allegations referred to above, there was any impact on the ability of [REDACTED] Volunteer Fire Brigade to turn out.
 - Did the New Zealand Fire Service have a process for dealing with issues raised in clauses 2(1)a and 2(1)b above.
 - Did New Zealand Fire Service follow that process.
 - Was the process consistent with legal requirements and good industry practice for handling such complaints.

3. Suggested process

- 3.1 It is expected that the Investigator will inter alia:

- a. Carry out this investigation in accordance with the principles of natural justice
 - b. Share information related to this investigation only as necessary with others involved in this investigation.
 - c. Review all background documents provided by Fire and Emergency New Zealand
 - d. Interview the people identified in the Appendix, and any other person(s) the investigator considers may be able to provide relevant information.
 - e. Gather any further information the investigator thinks necessary to conduct the investigation and make findings on the matters identified in paragraph 2.1
 - f. Draft a report, provide the draft report, to relevant persons, with a reasonable opportunity to provide comment before the report is finalised
 - g. Deliver the final report to the Manager, Disputes Resolution setting out:
 - i. issues
 - ii. background
 - iii. process
 - iv. details of the people interviewed and information gathered
 - v. comment and discussion
 - vi. findings in relation to the matters identified in paragraph
 - vii. recommendations for further actions based on the investigator's findings, which, at the investigator's discretion, may include recommendations as to disciplinary processes and learnings for implementation of FENZ's new Rules for disciplinary processes.
- 3.2 The report will be delivered to [REDACTED] Disputes Resolution by the date agreed between the investigator and [REDACTED] Disputes Resolution. The report will be delivered to Ms Hullah and [REDACTED] on the same day.
- 3.3 The investigation, including the terms of reference, the complaints, information received during the course of the investigation, final and draft reports of the investigator are to be made available only to any party directly involved in the investigation process, otherwise the investigation, including the terms of reference, the complaints, information received during the course of the investigation, final and draft reports of the investigator are to be kept confidential.
- 3.4 If the investigation reveals any additional matters of potential concern to the investigator, the investigators will consult with the Manager, Dispute Resolution, and these Terms of Reference may be extended, or subsequent investigations may be initiated.

[REDACTED]

Disputes Resolution
Fire and Emergency New Zealand

Appendix D– FENZ letter of 28 August 2024



National Headquarters
Fire and Emergency New Zealand
National Headquarters
Spark Central, Level 7
42-52 Willis Street
Wellington Central
Wellington 6011

Phone +64 4 496 3600

28 August 2024

By email: gaye.searancke@publicservice.govt.nz

Te Kawa Mataaho Public Service Commission
Level 10, Reserve Bank of New Zealand (RBNZ) Building
2 The Terrace
PO Box 329
Wellington 6140

Public Service Commission review of a series of complaints made to Fire and Emergency New Zealand

Tēnā koe Ms Searancke

As you know, the Chairperson of Fire and Emergency New Zealand (**Fire and Emergency**) requested that the Public Service Commission (the **Commission**) carry out a review in relation to a series of complaints made by Ms Sarah Hullah about: Fire and Emergency, the New Zealand Fire Service (**NZFS**), employees of Fire and Emergency and the NZFS and volunteers for those organisations. In response to that request, the Commission commenced a review under the Public Service Act 2020, sch 3 cl 5(2)(b) and appointed Simon Mount KC to carry out that review (the **Review**).

A Terms of Reference for the Review was issued on 28 February 2023. Mr Mount KC issued a Minute in May 2023 setting out the process he would adopt for the Review. The Review commenced substantively at the same time. Mr Mount KC (along with Ms Anna Longdill) have carried out a detailed and thorough review of the complaints made by Ms Hullah and produced an Interim Report on 16 July 2024.

The Interim Report contains 33 findings. 28 findings relate to Fire and Emergency and its actions. The other five findings relate to the actions of the barrister that was engaged by [REDACTED] [REDACTED] (the independent organisation which administered the Independent Dispute Resolution scheme) to carry out an independent investigation into complaints made by Ms Hullah.

Fire and Emergency accepts each of the 28 findings.¹

¹ Findings 1 - 9 and 16 - 33. Without disputing finding No. 7, Fire and Emergency notes that the organisation is a separate legal entity to [REDACTED] Volunteer Fire Brigade and did not (and does not) have any power to require the Brigade to reintegrate Ms Hullah.

While it is for the independent barrister [REDACTED] to accept (or not) the findings made in the Interim Report about [REDACTED] Fire and Emergency does not contest those findings.² The organisation will bring them to the attention of its staff who are delivering the Eke Taumata work programme (the work programme established to support Fire and Emergency to achieve long-term workplace culture change and ensure a positive work experience for our people) to inform that work.

Nāku noa, nā



Kerry Gregory
Chief Executive

Copy to:

Simon Mount KC
[REDACTED]