



Behaviour and Conduct Office – Fire & Emergency New Zealand

Independent evaluation report

November 2021

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Executive summary & key insights

Background

Fire and Emergency New Zealand's (FENZ) interim Behaviour and Conduct Office (BCO) has been providing oversight and coordination of complaints of bullying and harassment since March 2020.

Organisation-wide consultation on the proposed scope and functions of a permanent BCO began on 3 December 2020 and closed on 28 January 2021. The decision to proceed with a permanent BCO was shared with FENZ personnel in April 2021.

FENZ is currently in the process of transitioning from the interim BCO to a permanent BCO. A permanent BCO was scheduled to be established in October 2021, as a self-contained, permanent office accountable for managing, investigating and resolving all complaints of unwanted interpersonal behaviour.

The Board of FENZ, led by its Chair, was seeking an external assessment that the establishment of the permanent BCO will be operationally ready for successful implementation and has clear lines of accountability and leadership.

Scope

Our assessment considered whether the establishment of the permanent BCO addresses the following key questions:

1. Are the right safeguards in place for complainants, as well as all other parties involved?
2. Are processes and procedures lawful and consistent with the principles of natural justice?
3. Are processes and decisions regarding the consideration and resolution of complaints (including investigations) undertaken in a manner that is not susceptible to any bias or undue influence from the rest of the organisation, including the Board?
4. Does the BCO have clear lines of accountability and leadership?
5. Is the BCO operationally ready for successful implementation?

Out of scope

The scope of the external assessment excluded consideration of:

- Any specific matters that were the subject of the Coral Shaw Review
- Any assessment of the handling of any individual complaint
- Any assessment of the adequacy or otherwise of the consultation process regarding the establishment of the permanent Behaviour and Conduct Office - as these matters have already been the subject of separate processes.

Our approach

We applied the following approach to this engagement:

- Interviewed key FENZ personnel, both within and outside of the BCO.
- Reviewed and analysed key documentation related to the BCO, including historical information, process documentation, etc.
- Performed a walkthrough of the future BCO complaints management process to gain an understanding of the key steps and intended procedures.
- Used the five objectives from the 'Scope' section above to form the key questions that we address in our report. These are described in details in Section 'Detailed observations and insights'.
- Discussed our preliminary observations and improvement opportunities with key FENZ stakeholders.
- Collected feedback and finalised our report.

Executive summary & key insights

Purpose of the BCO

The key intention for the implementation of the BCO is to establish a centre of excellence for values-based conduct. In addition to developing and delivering a proactive learning and development capability, it must be able to address behaviour-related complaints in a way that is objective, impartial and consistent. It must be accessible, trusted by our people, and support cultural preferences (e.g. Tikanga Māori).

To support this purpose, we consider the BCO needs to meet the following criteria:



Trusted. Being capable to deal with complex and sensitive matters and independent to make fair and lawful decisions



Efficient processes. To provide timely resolution to staff complaints and effectively and efficiently use limited resources and capacity



Visible. To be known and visible to staff and other stakeholders



Lawful. To be compliant with relevant laws, regulations and internal policies

Brief history of the BCO

The following diagram highlights the key steps to establish the BCO.



Executive summary & key insights

Support from senior leaders



Operational support



Focus on proactive approach



Progress to date



Key strengths

We noted the following key strengths related to the way how FENZ approached the implementation of the BCO:

- **Support and commitment from senior leaders.**

There is an appropriate tone at the top and commitment from the FENZ Board and senior executives to a successful implementation of the BCO. Throughout our engagement, we have observed the focus that the BCO has at multiple levels of the organisation, including the Board and senior executives.

- **Operational support.** As a result of the above, the BCO has the appropriate level of operational support to complete relevant implementation activities, such as availability of resources, funding, recruitment and training. Significant amount of effort has already been put into the design and implementation of the BCO.

- **Focus on proactive approach** to behaviour and culture change. By design, the BCO will not only deal with complaints, but will have a strong focus on proactive activities, such as developing and setting behavioural standards, education and prevention. Such an approach will enable FENZ to proactively influence the overall organisational culture as opposed to only dealing with complaints.

- **Progress made to date.** FENZ and the BCO have already made significant progress with the implementation of the permanent BCO. For example:
 - Appointed a new Positive Workplace Culture Programme Lead, who has significant experience in organisational culture change and complaints management. This position has greatly contributed into the design and implementation of the permanent BCO.
 - Established clear structure and reporting lines. The BCO is now reporting through the Office of the Chief Executive. This arrangement establishes a degree of independence for the BCO.
 - Developed core processes for managing complaints which support core principles of natural justice. The BCO applies the same processes for FENZ personnel and volunteers which ensures that all complaints are managed consistently.

Executive summary & key insights

Key challenges

The following matters may pose a risk to a successful implementation and operations of the BCO:

- **Stakeholder buy-in.** We noted that in April 2021 one of the key FENZ stakeholders, the NZ Professional Firefighters Union, advised its members not to engage or participate with the BCO. This situation:
 - increases the health and safety risks for FENZ as it may limit FENZ personnel's ability to raise and resolve issues
 - may impact the use of the BCO if staff don't choose to engage.
- **Current organisational change.** At the time of writing, FENZ has recently gone through another phase of its organisational restructure. This process may affect FENZ personnel, however it also creates an opportunity for a positive culture shift within FENZ.
- **Legacy perceptions.** FENZ and the BCO have had negative publicity and media attention in the past and there are still historical complaints that have not been fully resolved. These factors may still impact the perception of the permanent BCO.



Overall FENZ has made significant progress in designing and implementing the permanent Behavioural Conduct Office.

The BCO has appropriate support mechanisms, such as support 'at the top', appropriate prioritisation and planned resourcing levels to meet its intended objectives.

We identified several opportunities to further strengthen the BCO processes to ensure they fully meet the principles of natural justice, address staff and volunteers' complaints and help FENZ improve its organisational culture.

Executive summary & key insights

Key improvement opportunities

The table below provides a summary of opportunities that would help FENZ further strengthen the design and operations of the BCO.

More details are provided in Section Detailed Observations and recommendations, organised by the 5 key questions in our scope, together with management comments and action plans.

Ref	Description	Priority*
Q3	The BCO to hold the end-to-end oversight and ownership of the complaints management process.	High
Q3	The BCO needs to review the purpose of the BCO Panel. The refreshed BCO Panel should be involved in all key decisions related to the complaints management process.	High
Q3	The Panel should include an independent member(s).	High
Q5	Complete all planned implementation activities, such as recruitment, implementation of the interim Case Management System and finalisation of process documents.	High
Q1	The BCO processes should be reviewed to clarify: <ul style="list-style-type: none"> • How complainants will be kept safe from retaliatory action • How BCO staff members support all parties of a complaint, including witnesses • That BCO staff can not act as a support personnel to any party of a complaint. 	Medium
Q3	The BCO Panel should stop using anonymised information to manage potential conflicts of interest and ensure effective and efficient decision-making.	Medium
Q4	FENZ should give the Board, Audit & Risk Committee or proposed Positive Workplace Culture (PWC) Advisory Panel a stronger governance role over the BCO.	Medium
Q5	Establish Memoranda of Understanding with NZPFU and other unions (e.g. UFBA) to ensure support for the permanent BCO.	Medium

* - our priority ratings are based on a combination of relative importance of the recommendation to the overarching objectives and urgency of implementation

Detailed observations and insights

Q1: Are the right safeguards in place for complainants, as well as all other parties involved?

Key expectations	Current situation	Improvement opportunity	FENZ response
<ul style="list-style-type: none"> The complainant should be protected from any further victimisation or retaliatory actions Staff who are tasked with resolving employment disputes must maintain neutrality Support options should be offered to all parties Relevant policies and procedures to support the above points exist and are supported by BCO processes 	<p>In our view, the BCO complaints process recognises that the physical and psychological safety of complainants must be considered. There are appropriate referral mechanisms in place, that take into account the support required in different situations.</p> <p>The process also recognises that, as an employer, FENZ has obligations to protect the rights of any employee or volunteer that is the subject of an investigation. Further to the legal obligations, the process also recognises that Subjects should be offered pastoral support through appropriate channels.</p> <p>The BCO Complaints team are knowledgeable in support available, including both internal and external options depending on who the party requiring support is. Offering support to people within the initial stages of contact with the BCO is part of BAU and ongoing offers are made through the process. The BCO is able to facilitate the support, not just provide the contact details.</p>	<ol style="list-style-type: none"> The BCO should make it explicit in its processes and communications with regard to how complainants will be kept safe from retaliatory action. This could include: <ul style="list-style-type: none"> Education for managers on what retaliation looks like and how to respond to it. As part of a wider campaign, a reinforcement message, reminding staff that retaliation is a form of bullying and will not be tolerated. Ensuring complainants understand their rights and know the process for communicating any concerns around retaliation. 	<ul style="list-style-type: none"> Education/training to be provided to people leaders across the organisation as part of a wider communication piece on the permanent BCO processes. The BCO will develop and provide to all complainants a 'Rights and Responsibilities' Information sheet. The Terms of Reference template for investigations will be reviewed to ensure that it is user friendly along with providing information on expectations of behaviour during an investigation process Support options are already facilitated for all parties to a complaint, this is an ongoing offer throughout the end to end process
		<ol style="list-style-type: none"> The BCO should develop guidance on support that other parties, such as witnesses, colleagues or line managers to complaints may require. While the primary focus should be on the complainant and Subject, the impact that an investigation can have on witnesses and other affected parties should not be overlooked. 	<p>The BCO is about to publish a series of "How Do I" guides which include:</p> <ul style="list-style-type: none"> How do I respond if I experience unwanted behaviour How do I respond as a leader/manager advised of unwanted behaviour How do I respond when I witness unwanted behaviour <p>The BCO is currently working on the following "How do I" guides – "How Do I":</p> <ul style="list-style-type: none"> Respond as an upstander when I witness unwanted behaviour Respond as a leader/manager advised of unwanted behaviour Respond if I am supporting someone who has experienced or witnessed unwanted behaviour Respond if you are told your behaviour is unwanted
		<ol style="list-style-type: none"> The BCO should establish a clear guidance for the BCO staff members who may be called upon to support complainants and Subjects. It is inevitable that on occasion, those involved in an investigation will reach out to the BCO staff for assistance. It is appropriate for the BCO staff to convey compassion and support to all parties. However, BCO should be clear that its staff can not act as a support personnel to any party of a complaint to ensure independence and not seen to be unfairly favouring one side over the other; or intimating that a particular outcome will be reached. 	<ul style="list-style-type: none"> The BCO has identified all of the appropriate and relevant support mechanisms available to anyone who accesses the BCO. The BCO is in the process of developing MOUs with Unions and Associations and other support networks e.g. Womens' Development and Whiria te Tangata. Professional Supervision is available to all BCO employees. The BCO Director is responsible for ensuring all BCO staff members are appropriately trained/qualified for their specific roles.

Q2: Are processes and procedures lawful and consistent with the principles of natural justice?

Key expectations	Current situation	Improvement opportunity	FENZ response
<p>Natural justice has three broad principles:</p> <ul style="list-style-type: none"> • The subject of an investigation must be advised of the allegations being made against them and be provided with a fair opportunity to respond. • Investigators and decisions makers must act without bias • Any conclusions or decisions should be justifiable and based on sound evidence. <p>Key findings from the Employment Relations Act 2000 and Employment court are as follows:</p> <ul style="list-style-type: none"> • Matters should be investigated and resolved in a timely manner • Appropriately qualified investigators should be used • Those involved in the process should be neutral • Those involved in an investigation are entitled to receive Independent advice and to have support during the process • Investigative findings should be fact based • Investigations must consider both inculpatory and exculpatory evidence • Investigations should be kept confidential and only disclosed to those who have a genuine need to be involved. 	<p>In our view the BCO complaints process can be broken down into three parts:</p> <ul style="list-style-type: none"> • Receiving complaints • Conducting investigations • Resolving complaints. <p>It is evident that considerable thought has been given as to how the BCO will receive and handle complaints.</p> <p>We are confident that the relevant legal and natural justice principles are met for this phase of the process.</p> <p>It appears there has been less focus on the actual investigation and the soundness of the ultimate decision making process.</p> <p>Case assessment documents are fact based, and follow a clear process for decision making. All decisions are recorded in file notes. No case information is shared with anyone in the organisation that does not have a direct reason to have the information.</p>	<p>Further consideration needs to be given to the governance around 'Conducting investigations' and 'Resolving complaints' phases of the process.</p> <p>For the BCO to achieve the aim of building trust and confidence within FENZ, it is crucial that investigations are conducted to the highest standard and that the ultimate decisions flowing off these investigations are justifiable and defensible.</p> <p>We describe relevant improvement opportunities in Section Q3 below.</p>	<ul style="list-style-type: none"> • Refinement, review and process development work in both the Complaints and Resolutions team is underway. • A Principal Investigation Specialist has been appointed and currently recruiting for 2 x Senior Investigation Practitioners • Updated, detailed process definitions and supporting Standard Operating Procedures and guides are planned deliverables in the Permanent BCO work plan.

Q3: Are processes and decisions undertaken in a manner that is not susceptible to any bias or undue influence from the rest of the organisation?

Key expectations	Current situation	Improvement opportunity	FENZ response
<ul style="list-style-type: none"> Processes are clearly established and documented to ensure consistent application All personnel involved in key activities clearly understand their roles and responsibilities Personnel involved in decision-making are independent and free from bias There is appropriate segregation of duties throughout the process, so no single person can initiate, investigate and make a decision regarding a complaint The BCO has a 'line of sight' across all behaviour-related matters and decisions to act as a 'one stop shop' for complaints resolution. 	<p>Core BCO complaints management processes have been developed and documented.</p> <p>BCO complaints are assessed by a Panel to recommend a suitable complaint management approach, e.g. investigation, mediation, etc.</p> <p>We noted the following in relation to the Panel:</p> <ul style="list-style-type: none"> All Panel members are FENZ employees, which may create a perception of bias The Panel members do not have a clear understanding of their roles and responsibilities, which limits the ability of the Panel to make appropriate recommendations The Panel is not involved in reviewing the investigation results and decision-making, which further increases the risk of bias The Panel uses anonymised information, which limits its ability to properly manage conflicts of interest. <p>In the current process the BCO's role in the complaints management process finishes at the point where the investigation report, which does not contain any recommendations, is handed over to the decision maker, i.e. Line Manager.</p> <p>The BCO's role in the disciplinary process and closing the complaint is unclear from the current documentation and, according to our understanding, limited.</p> <p>This creates a situation where:</p> <ul style="list-style-type: none"> In the absence of oversight from BCO, decision-makers (Managers) may be perceived to 'sweep matters under the carpet' The BCO may appear to not fulfil their role in addressing and successfully resolving complaints, affecting the credibility of the BCO. 	<p>1. The BCO should hold the end-to-end oversight and ownership of the complaints management process, including investigation, decision-making and resolution.</p> <p>This falls into two distinct phases or two categories: ownership and oversight.</p> <p>The ownership role of the BCO is:</p> <ul style="list-style-type: none"> To be a 'one-stop shop', i.e. a place where the complainant only deals with the BCO. The BCO owns the entire process – from receiving the complaint, deciding what the appropriate response may be (e.g., an investigation), establishment of the facts and providing recommendation(s) to the decision-maker. The recommendation(s) may include a range of reasonable management responses to the established facts. <p>However, in order to be "end-to-end" process, the BCO should also have oversight of what is management's response to the established facts and the recommendations. This ensures that management does not minimise or diminish the organisational response.</p> <p>The BCO would include this type of information in its governance reporting.</p>	<p>We are currently developing Standard Operating Procedures to ensure that we clearly articulate the responsibilities of the BCO which includes identifying the BCO as having oversight and management of the entire complaint process.</p> <p>Our proposed high-level process, which clearly established the ownership and oversight role of the BCO, is presented in Appendix 1.</p>

Q3: Are processes and decisions undertaken in a manner that is not susceptible to any bias or undue influence from the rest of the organisation? (continued)

Key expectations	Current situation	Improvement opportunity	FENZ response
<p>(repeated from previous page)</p> <ul style="list-style-type: none"> Processes are clearly established and documented to ensure consistent application All personnel involved in key activities clearly understand their roles and responsibilities Personnel involved in decision-making are independent and free from bias There is appropriate segregation of duties throughout the process, so no single person can initiate, investigate and make a decision regarding a complaint The BCO has a 'line of sight' across all behaviour-related matters and decisions to act as a 'one stop shop' for complaints resolution. 	<p>(repeated from previous page)</p> <p>Core BCO complaints management processes have been developed and documented.</p> <p>BCO complaints are assessed by a Panel to recommend a suitable complaint management approach, e.g. investigation, mediation, etc.</p> <p>We noted the following in relation to the Panel:</p> <ul style="list-style-type: none"> All Panel members are FENZ employees, which may create a perception of bias The Panel members do not have a clear understanding of their roles and responsibilities, which limits the ability of the Panel to make appropriate recommendations The Panel is not involved in reviewing the investigation results and decision-making, which further increases the risk of bias The Panel uses anonymised information, which limits its ability to properly manage conflicts of interest. <p>In the current process the BCO's role in the complaints management process finishes at the point where the investigation report, which does not contain any recommendations, is handed over to the decision maker, i.e. Line Manager.</p> <p>The BCO's role in the disciplinary process and closing the complaint is unclear from the current documentation and, according to our understanding, limited.</p> <p>This creates a situation where:</p> <ul style="list-style-type: none"> In the absence of oversight from the BCO, decision-makers (Managers) may be perceived to 'sweep matters under the carpet' The BCO may appear to not fulfil their role in addressing and successfully resolving complaints, affecting the credibility of the BCO. 	<p>2. A refreshed Panel with a clear mandate and clear roles and responsibilities should be involved in key decision points, e.g. triaging the complaints, reviewing the investigation reports, agreeing on appropriate recommendations and monitoring the resolution of complaints to ensure they are in line with BCO principles.</p> <p>3. We acknowledge that the Panel needs to have some representation from members with specific FENZ operational experience but in our view the overriding skillset required by the Panel is experience in handling employment disputes. We recommend that the majority of the Panel be made up of independent members (i.e. outside of FENZ) with relevant skills and experience, e.g. employment law, complaints management, bullying and harassment matters, culture and conduct, etc.</p> <p>4. BCO/Panel should stop using anonymised information in its decision-making to improve conflicts of interest management, decision-making and efficiency. BCO personnel involved in the complaints management process, including Panel members, will have full information about all parties to a complaint to declare, assess and manage potential conflicts of interest.</p>	<ul style="list-style-type: none"> We are reviewing the current Terms of Reference of the BCO Panel including membership of the Panel With the review of the panel, the BCO intends to include independent external panel members, we do however recognise that it is important to maintain knowledge of the FENZ operational context in which complaints and disputes arise. The BCO panel needs to ensure consideration of resolution as a route to early and constructive resolution is given sufficient attention, alongside the need for employment law and HR process options We accept that the majority of the BCO Panel should be external parties, and we will develop Terms of Reference to ensure there is clarity for roles for the BCO Panel, Fire and Emergency staff within the wider BCO and Fire and Emergency management. This will be considered given the revisions planned to the BCO Panel. There is an ongoing need to ensure confidentiality for participants to protect privacy and ensure case information is not inappropriately discussed. This has been a historic issue undermining confidence in the previous complaints processes. Clear protocols on how the Information is protected and securely held. The Conflict of Interest process is to be clearly documented.

Q4: Does the BCO have clear lines of accountability and leadership?

Key expectations	Current situation	Improvement opportunity	FENZ response
<ul style="list-style-type: none"> • There is a clearly defined mandate and vision for the BCO • The BCO is sufficiently supported by the organisation to enable successful operations • BCO reporting lines have been clearly established • The established reporting lines help the BCO maintain an appropriate level of independence from the rest of the organisation. 	<p>The establishment of the permanent BCO forms a part of the FENZ-wide Positive Workplace Culture programme. The programme is one of the key focus areas for FENZ Board and management.</p> <p>Key personnel and leadership demonstrate a high level of commitment to the success of the BCO and the desire to address the underlying issues. Sufficient funding and other support has been provided to BCO.</p> <p>There is a strong understanding of the progress of the interim BCO across the Executive Leadership Team and the Board Audit & Risk Committee, and progress reporting is provided on a regular basis.</p> <p>The reporting line of the permanent BCO will be through the Office of the Chief Executive branch of FENZ.</p> <p>We noted that there is an intention to review the reporting line in 18 months to consider whether the BCO should report through the People Branch. This could be seen as a backwards step.</p>	<p>FENZ should consider giving the Board Audit & Risk Committee or proposed PWC Advisory Panel a stronger governance role over BCO.</p> <p>This could be in the form of a 'dotted' or indirect reporting line which would be in addition to the reporting line through the Office of the Chief Executive branch.</p> <p>Reporting of key activities, key matters, risks and issues on the activities related to the permanent BCO should be provided to that forum on a regular basis.</p> <p>This will further promote the independent and unbiased nature of the BCO, especially if combined with our previous recommendations in section Q3.</p>	<ul style="list-style-type: none"> • The Board has recently established a People and Culture Committee, and we anticipate that this committee will have a strong governance role over the BCO. • The BCO will continue to report through the Office of the Chief Executive

Q5: Is BCO operationally ready for successful implementation?

Key expectations	Current situation	Improvement opportunity	FENZ response
<ul style="list-style-type: none"> • An Implementation plan is in place that clearly explains key implementation activities • Core processes have been implemented and documented • Core roles have been filled to enable effective operations • BCO staff have received appropriate training to fulfil their roles • Relevant technology and tools are in place to enable effective operations • Key stakeholders support implementation. 	<p>The interim BCO is currently in operation. Complaints are triaged within the interim BCO with oversight from the Panel. Investigations are currently managed using key personnel from the People Branch. From October 2021, the investigation function will be managed from within the BCO.</p> <p>The following key activities that are critical for successful implementation are currently in progress:</p> <ul style="list-style-type: none"> • Implementation of a Case Management System (CMS). The CMS is key to providing the end users with confidence that information is kept secure and to maintain confidentiality. FENZ plans to be ready with an interim solution in October, while waiting for the implementation of a new entity-wide Enterprise Resource Planning (ERP) system. • The BCO target organisational structure has 11.5 FTEs, with the aim to recruit and onboard the vast majority of roles as soon as possible. There has been significant activity regarding recruitment, and FENZ is confident that the core roles for the permanent BCO will be filled soon, including the role of the BCO Director. • Process documents and procedures we reviewed were in draft/work in progress status. Several key matters, such as classification and prioritisation of complaints, criteria to involve external investigators, what constitutes a conflict of interest, etc. have not been defined. FENZ plans to finalise the key documents prior in the near future. <p>We also noted that in April 2021 one of the key FENZ stakeholders, NZPFU, advised its members not to engage or participate with BCO. This situation increases the health and safety risks for FENZ as it may limit FENZ personnel's ability to raise and resolve issues and may impact the use of the BCO if staff don't choose to engage.</p> <p>We have reviewed the key concerns expressed by NZPFU and believe that if our recommendations are successfully implemented, the BCO will address these matters.</p>	<ul style="list-style-type: none"> • Planned activities should be completed: <ul style="list-style-type: none"> – Implementing an interim case management system – Recruitment, on-boarding and training for core BCO personnel, in particular the BCO Director and Investigations personnel – Finalising process documents, taking into account our recommendations from previous sections. • Engage with NZPFU to provide them confidence that their key concerns will be addressed through the implementation of the permanent BCO. FENZ may seek to establish Memoranda of Understanding with NZPFU and other unions (e.g. UFBA). 	<ul style="list-style-type: none"> • Permanent core BCO personnel have been recruited and on-boarded, including the management structure. • An interim case management system has been implemented • Key policies are being finalised. • Process documents are underway for the Complaints, Investigation and Resolution teams. • Improvements are in process to provide interim tracking and management of Investigation and Resolution cases, for capacity analysis and performance tracking. • We are working closely with Unions and Associations to establish MOUs with the BCO.

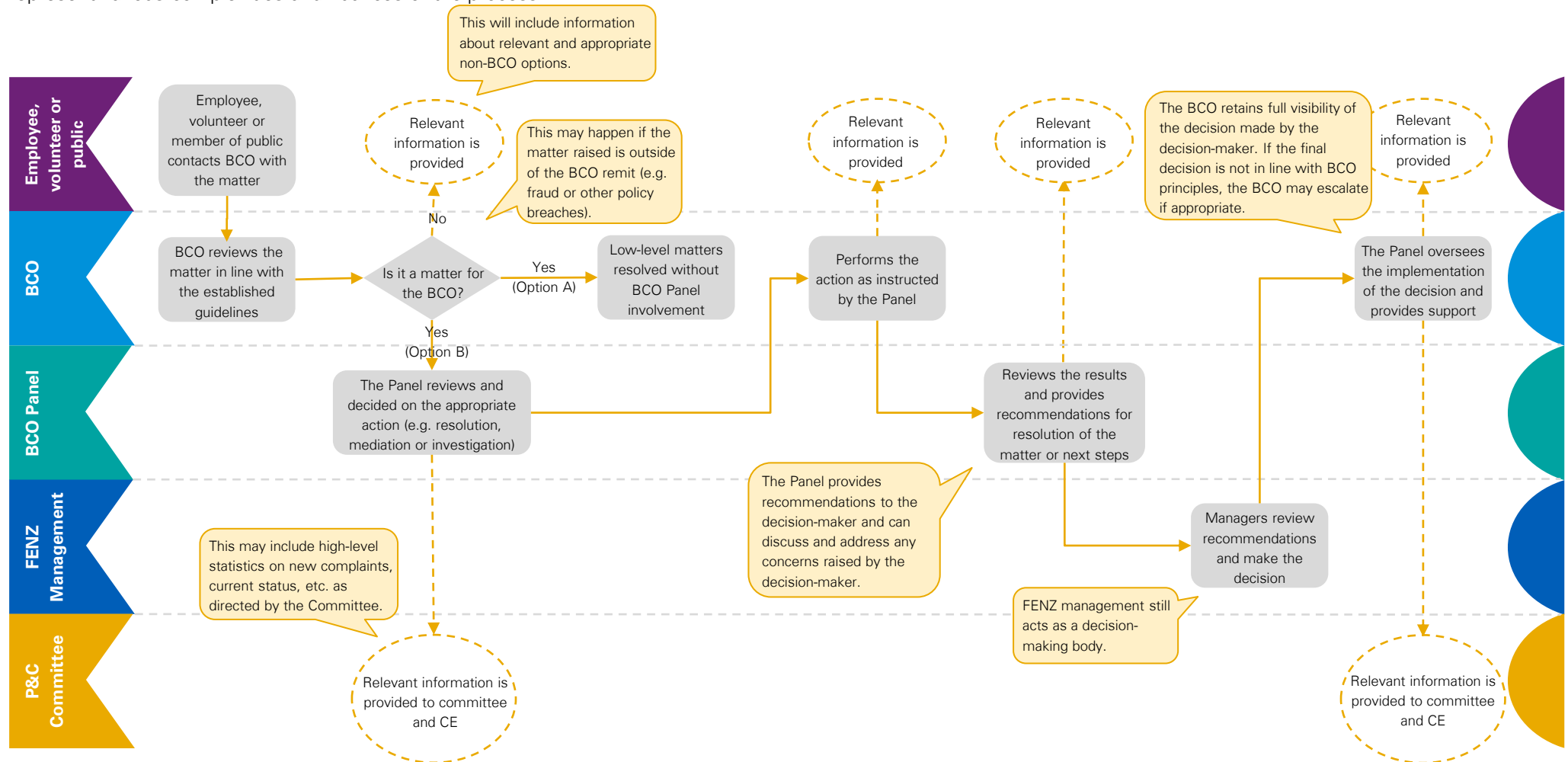
Appendix 1

High-level process flowchart

High-level process flowchart

High-level process flowchart

The flowchart below is a simplified overview of the BCO complaints management process. The purpose of this flowchart is to highlight the key interaction and handover points, including key roles. It is not intended to represent various complexities and nuances of the process.



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