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New Zealand Defence Force
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New Zealand

OIA-2025-5350

15th May 2025

Dear [REDACTED]

I refer to your email of 14 April 2025 requesting, under the Official Information Act 1982 (OIA), a copy of the most recent New Zealand Defence Force (NZDF) policies from Defence Force Order (DFO) 3 on discrimination, bullying, and harassment, and making complaints.

The most recent NZDF policy on the subjects of your request is contained in DFO 3, Part 5, Chapter 3 and DFO 3, Part 13, Chapter 2. Copies of these Parts are provided at Enclosures 1 and 2 respectively.

You have the right, under section 28(3) of the OIA, to ask an Ombudsman to review this response to your request. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Please note that responses to official information requests are proactively released where possible. This response to your request will be published shortly on the NZDF website, with your personal information removed.

Yours sincerely

GA Motley

Brigadier

Chief of Staff HQNZDF

Enclosures:

1. DFO 3, Part 5, Chapter 3.
2. DFO 3, Part 13, Chapter 2.

Chapter 3: Discrimination, Harassment and Bullying

Overview

Introduction
5.3.1.

This Order prescribes NZDF policy on the prevention of discrimination, harassment and bullying and the resolution options available.

Contents
5.3.2.

This chapter contains the following sections:

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Section A: Background of the Order

Overview

Introduction
5.3.3.

This section promulgates the NZDF's policy for the prevention and management of discrimination, harassment and bullying.

Contents
5.3.4.

This section contains the following topics:

Topic	See page
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Scope of the Order

Application 5.3.5.	<p>This Order applies to all members of the NZDF and includes behaviour at work related social events. Nothing in this Order affects:</p> <ol style="list-style-type: none"> (1) the requirements of the Armed Forces Discipline Act (AFDA), s.102 (the requirement to investigate allegations), or (2) the provisions of the Defence Act, s.49 (the right of members of the Armed Forces to complain).
Cancellation 5.3.6.	<p>This Order cancels DFO 4, Chapter 27, <i>Prevention and Management of Discrimination and Harassment in the NZDF</i>, as of the effective date of this Order.</p>
Effective date 5.3.7.	<p>This Order is effective from 25 August 2010.</p>
Point of contact 5.3.8.	<p>The Director Wellbeing, DHR, is the point of contact for this Order.</p>
References 5.3.9.	<p>The following references apply to this Order:</p> <ol style="list-style-type: none"> (1) SADFO 10/2003: <i>The Privacy Act 1993 – NZDF Procedures and Practices</i> (2) The Defence Act 1990, s.45, s.49, s.59 and s.61 (3) The Armed Forces Discipline Act 1971 (AFDA) (4) the Human Rights Act 1993 (5) the Harassment Act 1997 (6) the Employment Relations Act (ERA) 2000, Part 9 (7) the Crimes Act 1961 (8) the Privacy Act 1993 (9) DFO 3, Part 12, Chapter 12: <i>Family Violence Prevention and Management</i>. (10) SADFO 06/2016 <i>Sexual Assault Disclosure and Response</i>.

Intent of the Order

Intent 5.3.10.

The intent of this Order is to maintain NZDF operational effectiveness by ensuring that NZDF workplaces are safe and free from discrimination, harassment and bullying and that an appropriate framework is in place to deal with any such allegations.

The impacts sought by this Order are:

- (1) compliance with legislation
- (2) unit effectiveness is maintained
- (3) NZDF is recognised as a good employer
- (4) unit and individual morale is maintained, and
- (5) discrimination, harassment and bullying are not contributing factors to attrition.

Principles to apply 5.3.11.

The following principles are to apply to this Order:

Principle	Definition
Trust and respect	Service and employment in the NZDF is predicated on the principles of trust and respect, which is the foundation of small group cohesion. Discrimination, harassment and bullying undermine trust and respect.
Valuing diversity	Differences are valued and respected. These differences help build a better workforce and contribute to organisational effectiveness.
Fairness	Decision making about individuals is transparent and fair, based on an individual's merit and performance.
Efficiency	Incidents of discrimination, harassment and bullying are dealt with sensitively, quickly and at the appropriate level, without being unnecessarily elevated.

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Intent of the Order, Continued

Command Guidance 5.3.12.

Elevating minor issues up the command chain unnecessarily can have disproportionate consequences in situations where an issue can otherwise be quickly resolved. Issues are often as a result of a person being unaware of how their behaviour affects others and education may be the appropriate remedy. It is therefore often in the interests of NZDF and the individuals involved in an allegation of discrimination, harassment and bullying for the matter to be resolved at as low a level as is appropriate (i.e. through the NZDF AHA network).

However, where the matter raised is serious or is part of an ongoing pattern of behaviour refer to the topic [Providing information to managers and commanders](#) in this Section.

Definitions

Definitions 5.3.13.

The following definitions apply to this Order.

Term	Description
Complainant	A complainant is a person who complains that they have been subjected to some form of discrimination, harassment, or bullying.
Respondent	A respondent is a person who has been named as having allegedly subjected another person, deliberately or unintentionally, to some form of discrimination, harassment or bullying.
Discrimination	Discrimination occurs when a person is treated less favourably than others in the same or similar circumstances. The Human Rights Act specifies prohibited grounds of discrimination which include discrimination on the basis of: <ol style="list-style-type: none"> (1) sex (2) marital status (3) religious belief (4) ethical belief (5) colour (6) race (7) ethnic or national origins (8) disability (9) age (10) political opinion (11) employment status (12) family status, and (13) sexual orientation. Statutory exemptions exist for all prohibited grounds of discrimination in certain circumstances.
Direct Discrimination	Direct discrimination occurs when personal characteristics irrelevant to a person's ability to do the job (such as sex or ethnic origin) are taken into account when making employment decisions.
Indirect Discrimination	Indirect discrimination occurs when policies, procedures and practices which appear to be fair in fact suit a particular group of people and disadvantage other groups.

Continued on next page

Definitions, Continued

Definitions
5.3.13.
continued

Term	Description
Harassment	<p>Harassment means any unwelcome direct or indirect comment, conduct or gesture that is intentionally or unintentionally perpetrated by one person or a group of people, and which is insulting, intimidating, humiliating, malicious, degrading, hurtful or offensive to the recipient. This includes behaviour that is unwanted by the recipient, even if the recipient does not tell the perpetrator that the behaviour is unwanted.</p> <p>Harassment might be repeated, or an isolated incident that is of such a significant nature that it has a detrimental effect on the member, their performance, job satisfaction, or their work environment. It can include physical, degrading, threatening or hostile behaviour, abuse of power, isolation, discrimination, sexual, gender-based or racial harassment.</p>
Sexual Harassment	<p>Any unwelcome or offensive sexual behaviour that is repeated, or is of such a significant nature to have a harmful effect, or which contains an implied or overt promise of preferential treatment or an implied or overt threat of detrimental treatment.</p> <p>Sexual harassment can involve spoken or written material, images, digital material or a physical act.</p> <p>Sexual harassment may be unintentional, and can occur even if the person being offensive is unaware of its effect. Sexual harassment includes, but is not limited to:</p> <ol style="list-style-type: none"> (1) offensive sexual remarks or jokes in the workplace; (2) unwanted comments or teasing about a person's sexual activities or private life; (3) offensive hand or body gestures; (4) physical contact such as patting, pinching or touching; (5) unwelcome sexual advances by a member of the NZDF; (6) persistent and unwelcome social invitations (or telephone calls or emails) from other members of the NZDF; (7) hints or promises of preferential treatment in exchange for sex; and (8) threats of differential treatment if sexual activity is not offered.

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Definitions, Continued

Definitions
5.3.13.
continued

Term	Description
Racial Harassment	Racial harassment is behaviour that humiliates, offends or intimidates someone because of their colour, race, ethnic or national origins.
Disability Harassment	Harassment on disability grounds includes playing practical jokes on and/or overbearing or abusive behaviour toward people with disabilities.
Gender Harassment	Gender harassment stereotypes a person according to their gender or sexual preference. It includes openly discussing views in which the other sex is portrayed as inferior or subordinate or using gender based or sexist, derogatory terms.
Bullying	Workplace bullying is unreasonable and/or repetitive behaviour directed towards an individual or group of people which creates a hostile environment or negative impact on them. This may include making them feel excluded, fearful or ashamed.
Offensive Behaviour	Behaviour that is intended to threaten, alarm, insult or offend, or the use of threatening or insulting words.
Indecent Assault	An assault with a clear sexual overtone that consists of or is accompanied by an act of indecency or carried out in circumstances of indecency.
Sexual Violation	An indecent assault becomes a sexual violation where there is sexual connection, or attempted sexual connection, without consent.
Unreasonable behaviour	Behaviour that a reasonable person would see as victimising, humiliating, undermining or threatening.
What is not harassment or bullying	Differences of opinion, conflicts and problems in working relationships are normal parts of working life and do not constitute discrimination, harassment or bullying. Professional and legitimate managerial actions such as workplace counselling and managing underperformance are likewise not discrimination, harassment or bullying.

Section B: The Policy

Overview

Introduction 5.3.14.

This section promulgates the NZDF approach to the prevention and management of discrimination, harassment, and bullying.

Contents 5.3.15.

This section contains the following topics:

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NZDF Policy on Discrimination, Harassment and Bullying

Policy statement 5.3.16.

NZDF is committed to providing an environment free from discrimination, harassment and bullying which NZDF recognises as having negative effects on both individuals and groups. The NZDF recognises the right of all members of the NZDF to enjoy a workplace free of discrimination, harassment and bullying and has a zero tolerance to this sort of behaviour.

All members of the NZDF have a right to expect that a genuine formal complaint of harassment, discrimination, bullying or other inappropriate behaviour will be dealt with in a timely, sensitive, impartial and thorough manner.

Resolution at the lowest possible level 5.3.17.

It is possible that some cases of discrimination, harassment or bullying may occur because the respondent does not recognise the impact of their actions on others. Often these cases can be successfully rectified by the behaviour being pointed out to the respondent. Formal processes are unnecessary in these cases and may unsettle the workplace more than is necessary. NZDF policy is to address issues at the lowest possible level.

Refer: resolution strategy guidelines under the [HR Toolkit](#) Section Anti Harassment.

Responsibilities

All levels of command have a duty
5.3.18.

Prevention of discrimination, harassment and bullying is a responsibility at all levels of command and management.

CDF
5.3.19.

CDF is responsible for setting the standards of acceptable behaviour and is accountable for ensuring the NZDF workplaces are free from discrimination, harassment and bullying.

Heads of Portfolios
5.3.20.

Heads of Portfolios share the CDF's responsibility to ensure NZDF is free from discrimination, harassment and bullying and are to:

- (1) ensure that processes and procedures are in place to deal with discrimination, harassment and bullying issues within their Services or Headquarters
- (2) ensure that a support infrastructure is in place to assist members of the NZDF with discrimination, harassment and bullying issues, and
- (3) provide six monthly reports on discrimination, harassment and bullying within their command.

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Responsibilities, Continued

Commanders and managers 5.3.21.

Commanders/managers are to:

- (1) ensure that NZDF standards of behaviour are applied within their area of command/responsibility
 - (2) take all practicable and reasonable action to ensure their workplace is free from any form of discrimination, harassment, bullying or other offensive behaviour
 - (3) respond promptly, seriously and with sensitivity to reports of unacceptable behaviour
 - (4) intervene if discrimination, harassment or bullying is observed
 - (5) take prompt and appropriate action to follow-up reports of discrimination, harassment or bullying
 - (6) ensure investigations of discrimination, harassment or bullying allegations are carried out in a fair and impartial manner without retribution
 - (7) ensure that all members of the NZDF they are responsible for are aware of this Order, the associated processes and procedures and know how to obtain advice, counselling and information
 - (8) maintain an environment where complainants, respondents and witnesses are confident they will receive support from their superiors
 - (9) ensure equity, discrimination, harassment and bullying awareness training is implemented
 - (10) take appropriate disciplinary or administrative action with respect to complaints within their area of responsibility
 - (11) support and promote the Defence Equity Network
 - (12) resolve allegations at the lowest possible level
 - (13) ensure all incidents of discrimination, harassment and bullying are reported (using form [MD1037](#), *NZDF Discrimination, Harassment and Bullying Report*)
 - (14) promulgate a list of current Anti Harassment Advisers (AHAs) within their area of responsibility
 - (15) ensure only those entitled to information about an allegation have access to that information, and
 - (16) nominate suitable members of the NZDF for the Equity Advisory Officer and Anti Harassment Adviser courses.
-

Responsibilities, Continued

Equity Coordinators
5.3.22.

Equity Coordinators are to:

- (1) advise commanders/managers on the appointment of mediators/investigators
 - (2) provide advice to commanders/managers, and
 - (3) coordinate equity and discrimination, harassment and bullying issues within their Service.
-

Equity Advisory Officers
5.3.23.

Equity Advisory Officers (EAO) are to provide advice to commanders/managers.

All members of NZDF have responsibilities
5.3.24.

All members of NZDF have an obligation to:

- (1) foster good working relationships
 - (2) refrain from behaviour which does not contribute to the cohesiveness and discipline of their group, or is inconsistent with military ethos and values
 - (3) ensure that all complaints are reported promptly, and
 - (4) submit only legitimate complaints.
-

Crimes Act Offences

Introduction 5.3.25.

Any allegation raised that amounts to an offence against the Crimes Act or AFDA does not fall within the provisions of this Order and should be reported immediately to the appropriate police authority. Where guidance is required as to what constitutes an offence, the advice of a Legal Staff Officer should be sought.

Reporting serious offences 5.3.26.

Commanders/managers are to ensure that offences reported to either civilian or military police that fall within the definition of sexual, racial, gender or disability harassment and bullying and indecency offences are included in internal NZDF discrimination, harassment and bullying statistics.

Form: [MD1037](#): *NZDF Discrimination, Harassment and Bullying Report*.

Command Guidance 5.3.27.

Indecency offences include indecent assault with a clear sexual overtone, sexual violation where there is sexual connection, indecent exposure or similar.

Advice and Support Mechanisms

Introduction 5.3.28.

A person who believes that they have been subjected to discrimination, harassment or bullying is to be provided with all practicable and reasonable support. They must also have their options for further advice and support explained to them. These options include accessing the Defence Equity Network.

Defence equity network 5.3.29.

NZDF has set up and authorised the Defence Equity Network to support equity and diversity initiatives and to assist in the resolution of discrimination, harassment and bullying issues. The network is to consist of:

- (1) Equity Coordinators
- (2) EEO Advisory Officers (EAOs)
- (3) Anti Harassment Advisers (AHAs)
- (4) Equity Trainers
- (5) Anti Harassment Mediators, and
- (6) Anti Harassment Investigators.

Commanders/managers and members of the NZDF who have an issue related to discrimination, harassment or bullying are encouraged to contact an AHA/EAO in the first instance.

Refer: [HR Toolkit](#) section *Anti Harassment* for details of the various roles within the Defence Equity Network, and contact details for incumbent personnel.

AHA confidentiality 5.3.30.

Information provided by an individual to an AHA, commander/manager, supervisor or other support person is to be treated as staff-in-confidence. However, depending on the seriousness and potential effect on the work environment of the discrimination, harassment or bullying, AHAs are to advise individuals that the relevant commander/manager may be informed of the allegation.

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Advice and Support Mechanisms, Continued

Providing information to managers and commanders 5.3.31.

AHAs are to maintain the confidentiality of members of the NZDF, except when there is a need to disclose information to ensure that a risk of harm to any person or to operational effectiveness is avoided.

AHAs are to provide immediate detailed information to commanders/managers on a discrimination, harassment or bullying allegation where there is a risk of harm as a result of the incident. For the purposes of this chapter 'harm' shall include potential harm caused by reoccurrence if the behaviour is not addressed. These situations include:

- (1) if the harassment, discrimination or bullying issue threatens the safety of members of the NZDF or equipment
- (2) where an allegation could amount to a breach of the AFDA, Code of Conduct or New Zealand law
- (3) when there is potential for a detrimental effect on the individual's work performance and the workplace in general, or
- (4) where there may be a risk that the behaviour will reoccur if not addressed.

In all such cases AHAs are to inform the relevant commander/manager of the action they are taking. AHAs are to advise the individual that such information will enable appropriate remedial action to be taken. Wherever possible, the AHA should work with the complainant to bring the issue to command or management attention if the seriousness of the issue requires it. Consent of the member of the NZDF prior to disclosure is desirable but is not required. If there is any doubt whether the information should be disclosed, the AHA should disclose the information in order to provide the responsible commander or manager with all relevant information.

EOs are to answer questions, provide advice and alert commanders and managers on discrimination, harassment or bullying issues particularly if incidents have a pattern of reoccurrence.

Resolution Strategies

Resolution at lowest level 5.3.32.

The resolution of discrimination, harassment and bullying issues should be at the lowest level possible so as not to create issues that are disproportionate to the gravity of the complaint. There are a number of informal resolution strategies available including seeking assistance from the command chain or an AHA.

Refer: resolution strategy guidelines under the [HR Toolkit](#) Section Anti Harassment.

Requesting formal resolution of the problem 5.3.33.

If all internal informal resolution strategies fail, a complainant may request mediation or an investigation into the discrimination, harassment or bullying allegation through the command chain.

Members of the NZDF who believe they have been the subject of discrimination, harassment or bullying may request in writing that their commander/manager resolve the problem using either:

- (1) a mediation process, or
- (2) a formal investigation.

The commander/manager may either approve the request or not. If the request is declined, the member of the NZDF may take the matter further. Members of the Armed Forces may exercise their right to complain whilst members of the Civil Staff may take a personal grievance. All members of the NZDF may complain to the Human Rights Commission.

Refer: DFO 3, [Part 13: Suggestions and Complaints](#).

Where a commander/manager approves a request for mediation or a formal investigation, they must have sufficient financial delegation to cover the expenditure, or have obtained approval for such expenditure to occur.

Confidentiality

Requirements of the Privacy Act

5.3.34.

All information relating to an allegation of discrimination, harassment or bullying is to be kept staff-in-confidence. The Privacy Act does not preclude the disclosure of information within the NZDF.

Refer: to the topic [Providing information to managers and commanders](#) in this Section.

When commanders/managers or AHAs are assisting any person who reports an incident of discrimination, harassment or bullying, or are dealing with a mediation procedure or formal investigation, the requirements of the Privacy Act are to be adhered to.

Refer: [DFO 10/2003](#): *The Privacy Act – NZDF Procedures and Practices*.

Provision of advice

5.3.35.

NZDF Chaplains, Psychologists, health personnel, welfare facilitators and social services staff are to adhere to the legislative requirements of their professional groups. Other members of the NZDF in the chain of command, who are providing advice to a complainant or respondent involved in an allegation of harassment or discrimination, are to adhere to the rules of confidentiality as outlined for AHAs.

Where a commander, supervisor or other support person is advising the commander/manager that an incident has taken place, they are to ensure that the privacy of the individual is maintained as far as possible.

Refer: anti harassment guidance under the [HR Toolkit](#) Section *Anti Harassment*.

Follow-up

Follow-up 5.3.36.

Follow-up contact by the AHA is to be made with the complainant at six weeks and then six months after the matter has been resolved to check that:

- (1) there has been no recurrence of the discrimination, harassment or bullying
 - (2) the individual has not been disadvantaged by requesting help from the command chain, and
 - (3) the complainant is no longer suffering discrimination, harassment or bullying in the workplace.
-

Use of Other Internal and External Mechanisms

Introduction 5.3.37.

All members of NZDF have the right to use other internal and external mechanisms to resolve discrimination, harassment and bullying incidents.

Complaints by members of the Armed Forces 5.3.38.

Members of the Armed Forces subjected to any form of harassment, discrimination or bullying may choose to make a complaint under the provisions detailed in these Orders, [Part 13: Suggestions and Complaints](#).

Complaints by members of the Civil Staff 5.3.39.

Members of the Civil Staff unhappy with the outcome of a formal investigation into their discrimination, harassment or bullying allegation may choose to take a personal grievance under the ERA.

Human Rights Commission 5.3.40.

A complainant is entitled to approach the Human Rights Commission where the allegation is in respect to prohibited grounds under the Human Rights Act.

Disciplinary and Administrative Actions

Disciplinary action against a member of the Armed Forces 5.3.41.

Where an allegation of discrimination, harassment or bullying is made against a member of the Armed Forces which amounts to an offence under the AFDA, then disciplinary action is to be instigated in accordance with s.102 of that Act. Advice from a Legal Staff Officer should be sought by commanders as to whether the actions of the respondent amount to offences under the AFDA.

Administrative action against a member of the Armed Forces 5.3.42.

Administrative consequences may be appropriate where an allegation against a respondent is upheld. These consequences could involve the respondent being:

- (1) censured
- (2) performance counselled
- (3) stood down from some responsibilities
- (4) subject to personnel reporting
- (5) required to attend training, or
- (6) transferred from their current position if the complainant feels unsafe or no longer feels comfortable in the work.

Command Guidance 5.3.43.

It is not best practice for the complainant to be relocated. However there may be circumstances where moving the complainant may be appropriate, such as where the complainant is near the end of their posting or where the complainant requests it.

Disciplinary action against members of the Civil Staff 5.3.44.

If, in the course of an investigation, evidence of a breach of the Civil Staff Code of Conduct is revealed, the internal or external investigator is to immediately report the details back to the commander/manager. The commander/manager must then act in accordance with the Civil Staff Code of Conduct.

False allegation 5.3.45.

When an investigation shows that an individual has made a malicious and/or false allegation of discrimination, harassment or bullying, then disciplinary action is to be taken against that individual.

Reporting Incidents of Harassment or Discrimination

Reporting an incident 5.3.46.

All commanders/managers, AHAs, Chaplains, Psychologists, social services staff, welfare facilitators, medical officers and HR managers are to report all incidents of discrimination, harassment or bullying brought to their attention. The NZDF Discrimination Harassment and Bullying Report ([MD1037](#)) is to be used and forwarded directly to the nominated EAO on the base, camp, ship or workplace. The detail submitted is to be brief and not identify the parties involved.

[MD1037](#) reports for the six months ended 30 June and 31 December are to be forwarded to the Equity Coordinators in time for a Service report to be prepared by 31 July and 31 January each year.

Discrimination, harassment or bullying by non-NZDF personnel 5.3.47.

If a member of the NZDF is discriminated against, harassed or bullied while carrying out duties by a person who is not an employee such as clients, customers, contractors or consultants of the NZDF, the NZDF still has a duty of care towards that member of the NZDF.

In these circumstances the NZDF is to take the complaint to the respondent's employer.

Contract documents 5.3.48.

Contracts for service are to:

- (1) note the illegality of discrimination, harassment or bullying, and
 - (2) contain reference to NZDF policies on diversity and equity, and harassment and discrimination prevention.
-

Chapter 2: Complaints

Overview

Introduction
13.2.1.

This Order prescribes policy for the fair, simple, speedy and efficient resolution of complaints by members of the Armed Forces.

Contents
13.2.2.

This Order contains the following sections:

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Section A: Background of the Order

Overview

Introduction 13.2.3.

This chapter provides direction and guidance on the complaints process for members of the Armed Forces. It also defines responsibilities in its application.

This chapter does not include:

- (1) the right of appeal, in relation to summary trial outcomes,

Refer: [Armed Forces Discipline Act 1971](#), s 124 *Right of Appeal*

- (2) appeals against Court Martial findings, or

Refer: [Court Martial Appeals Act 1953](#)

- (3) complaints relating to healthcare provided by NZDF health professionals.

Refer: [DHR 30](#), Part 1, Chapter 5 *Health-Complaints in the Provision of Healthcare*.

Contents 13.2.4.

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<http://ilp/InternetToDesktopChrome.html?externalUrl=legislation.govt.nz/act/public/1953/0100/latest/DLM1947602.html>

Scope of the Order

Application 13.2.5.	This Order applies to all members of the Armed Forces.
Cancellation 13.2.6.	DFO 4, Chapter 12, <i>Complaints by Members of the Armed Forces</i> is cancelled as of the effective date of this Order.
Effective date 13.2.7.	This Order is effective from 1 June 2014.
Point of contact 13.2.8.	The Director Human Resources Policy, Remuneration and Benefits (DIR HRPRB), DHR is the point of contact for this Order.
References 13.2.9.	<p>The following reference applies to this Order:</p> <ul style="list-style-type: none">(1) Defence Act 1990.(2) Deleted(3) Deleted

Intent of the Order

Intent of the policy 13.2.10.

The intent of this Order is to ensure that complaints by members of the Armed Forces are dealt with fairly, quickly, and in a consistent and transparent manner, so that unresolved issues do not affect the operational effectiveness of units.

The following impacts are sought by this Order:

- (1) that all complaints by members of the Armed Forces are resolved within a reasonable period of time,
- (2) morale is maintained, and
- (3) operational effectiveness is maintained.

Principles to apply 13.2.11.

The following principles are to apply in the application of this Order:

Principle	Definition
Integrity	Complaints by members of the Armed Forces are treated seriously and investigated thoroughly.
Proportionality	Complaints are dealt with at a level that is proportionate to the seriousness of the allegation.

Definitions 13.2.12.

The following definitions apply with respect to this Order:

Term	Definition
Complainant	Member of the Armed Forces that raises a complaint.
Elevated complaints	Complaints that elevate up the chain of command until resolved.
Quantifiable loss	A loss that can be specifically identified and given a cash value.
Actionable in law	Where the matter would give rise to a legal remedy or obligation.

Section B: The Policy

Overview

Introduction 13.2.13.

A member of the Armed Forces is under obligation to obey all lawful commands by their superiors and for that reason Parliament has conferred the right to complain through s.49 of the Defence Act.

Any member of the Armed Forces who considers that they have been wronged has the right to make a complaint to their superiors. This statutory right reflects the nature of service in the Armed Forces.

Contents 13.2.14.

This section contains the following topics:

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Introduction

Right to make a complaint 13.2.15.

Any member of the Armed Forces is entitled to make a complaint if the member considers that they have been wronged in any matter, except where it relates to the legality or appropriateness of a conviction or sentence of the Court Martial.

Members of the Armed Forces who wish to complain regarding matters relating to the legality or appropriateness of a conviction or sentence imposed by the Court Martial are to be advised to appeal to the Court Martial Appeal Court.

Refer: [DM 69 \(2 ed\) Volume 2](#) *The Court Martial Handbook*.

Who may complain 13.2.16.

A member of the Armed Forces may complain at any time during their service. A member of the Armed Forces who has been discharged does not have the right to make a complaint except where the complaint was first submitted prior to discharge.

Complaints under this Order may only be made by the individual member of the Armed Forces who is affected and not collectively with other members of the Armed Forces who are affected.

Complainants not to be pressured 13.2.17.

Members of the NZDF are not to exert pressure on a complainant to pursue, not pursue or withdraw a complaint.

Members of the Armed Forces are not to be censured or penalised for making a complaint in the prescribed manner.

Managing Complaints

The complaints process 13.2.18.

The complaints process is to follow a prescribed chain of command.

A member of the Armed Forces who wishes to make a complaint is, in the first instance, to complain to the superior officer under whose immediate orders or supervision the complainant performs their ordinary Service duties, except where otherwise prescribed in this Order.

Complaints whilst attached to a host Service 13.2.19.

If a member of the Armed Forces makes a complaint whilst attached to a host Service, then the host Service is to investigate the complaint treating it as though the complainant was a member of that Service. The host Service is to notify the parent Service Chief of the complaint details at the time the initial complaint is made. The parent Service is to be kept informed of the progress and given an opportunity to comment before a final decision is reached.

Elevating a complaint 13.2.20.

Where a complainant is not satisfied with the handling of their complaint or the decision, the complainant may elevate the complaint, in succession, to:

- (1) each level of command subordinate to the complainant's Commanding Officer,
 - (2) the complainant's Commanding Officer,
 - (3) the Service Chief of the Service to which the complainant belongs or is attached, or COMJFNZ for those members of the Armed Forces on OE16 missions,
 - (4) the CDF, or
 - (5) the Governor-General, in the case of an officer who considers that they have been wronged in respect of their conduct as an officer, or who considers that their honour, integrity or professional standing has been impugned by the matter complained of.
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Managing Complaints, Continued

Complaints to a superior officer 13.2.21.

While complaints should normally be made to a complainant's immediate superior a complainant may, in exceptional circumstances, complain directly to the next superior officer in the chain of command.

Exceptional circumstances include:

- (1) complaints of a particularly personal or sensitive nature, or
- (2) complaints involving the personal conduct of a superior officer.

Verbal complaints 13.2.22.

Members of the Armed Forces also have the right to make a verbal complaint to:

- (1) an inspecting officer or other person in accordance with the customs of the Service
- (2) an officer of the day, or
- (3) an orderly officer.

Where complaints are made to one of the authorities above that officer is to investigate the complaint and provide redress where it is in their power to do so. Where it is not within their authority they are to refer the complaint to the Commanding Officer of the complainant.

Complaint about harassment or discrimination 13.2.23.

Members of the Armed Forces who wish to make a complaint regarding any form of discrimination, harassment or bullying may make a complaint in accordance with the procedures in this Order, or if they so wish, use the harassment complaint procedures detailed in DFO 3, Part 5, Chapter 3: Discrimination, Harassment and Bullying.

Refer: [DFO 3, Part 5, Chapter 3](#) *Discrimination, Harassment and Bullying*.

Complaint about the outcome of disciplinary processes 13.2.24.

In the case of a finding made by a disciplinary officer at a Summary Trial, the complainant must appeal to the Summary Appeal Court of New Zealand pursuant to Part 5A of the AFDA.

In the case of a finding by the Court Martial, the complainant must appeal to the Court Martial Appeal Court pursuant to the Court Martial Appeals Act.

Refer: [Armed Forces Discipline Act 1971](#).

Other Avenues of Complaint

Using other agencies 13.2.25.

While members of the Armed Forces have the right to address complaints to other agencies or their Member of Parliament, they should be encouraged to use Service complaint procedures in the first instance.

Where members of the Armed Forces choose to use other agencies to seek redress for their complaints, they are not to be censured or penalised for doing so.

Agencies to complain to 13.2.26.

Other agencies to which members of the Armed Forces may address complaints include the following:

Agency	Nature of complaint
Member of Parliament	Any matter
Human Rights Commission	Unlawful discrimination
Privacy Commissioner	Breaches of privacy
Health and Disability Commissioner	The provision of health and disability services
Government Actuary	Any matter relating to the operation of a superannuation scheme to which the member of the Armed Forces belongs.

Ombudsmen 13.2.27.

Ombudsmen have no jurisdiction to investigate complaints relating to current or former members of the Armed Forces when the matter complained of relates to:

- (1) the terms and conditions of that member's service, or
- (2) any order, command, decision, penalty or punishment given to or affecting the complainant during service.

Making a Complaint

Introduction 13.2.28.

Complaints may be either verbal or in writing, although where possible, complaints should be in writing.

Where complaints are made in writing the complainant still retains the right to verbally state their complaint, in full or part, to any of the authorities within this Order. In such a case:

- (1) a written summary of what was stated is to be prepared by the authority hearing the complaint as soon as practicable, and
- (2) a copy is to be sent to the complainant to verify that the summary reflects accurately their complaint prior to further consideration of the complaint.

Form [MD1727](#) *Military Complaint Form* may be used to make Commanding Officer-level complaints. If a complainant chooses to make a Commanding Officer-level complaint verbally or written (but not on an MD1727), the Commanding Officer (or superior officer next in the chain of command) who receives it is required to record it on an MD1727.

Refer: [HR Toolkit](#) section *Complaints (Military)*.

Framing the complaint 13.2.29.

A complainant is free to determine how they wish to frame a complaint. Any complaint, however, must clearly specify the following:

- (1) the wrong complained of,
- (2) the relevant facts giving rise to the wrong complained of, and
- (3) the redress sought.

Complaints to be respectful 13.2.30.

Complaints are not to be couched in disrespectful or insubordinate language.

Complaints which contain disrespectful or insubordinate language are to be returned to the complainant who is to be informed that the complaint will not be considered further until such language is removed. If the language equates to an offence against the AFDA, disciplinary action is to be taken.

What not to include 13.2.31.

A complaint is not to include any statement which, to the knowledge of the complainant, is untrue.

Complainants are not to use information in their complaint that breaches another person's privacy. In many cases such information will have come to the complainant's attention as part of their duties, and to use such information in a complaint is, in most cases, a breach of that person's privacy.

Where such information is integral to a complaint, the other person's consent should be obtained.

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Making a Complaint, Continued

**Right to amend
the complaint**
13.2.32.

A complainant may at any time during the investigation of the complaint, or when requesting that the complaint be forwarded to the next superior officer, provide additional information concerning the complaint or change the redress sought.

**Withdrawing a
complaint**
13.2.33.

A complainant has the right, at any time and without explanation, to withdraw all or part of a complaint. Where a complainant withdraws a complaint the officer who is considering the complaint should seek to ensure that the complainant has not been pressured in any way to withdraw the complaint.

**Vexatious
complaints**
13.2.34.

Where a complaint is found to be vexatious or malicious in nature then disciplinary action against the complainant is to be pursued if the behaviour of the complainant constitutes an offence under the AFDA.

Providing Assistance to the Complainant

Assistance in preparing a complaint 13.2.35.

The Commanding Officer of a complainant is to appoint an officer (other than a legal officer), warrant officer, or non-commissioned officer to assist the complainant if at any time the complainant requests assistance in preparing their complaint.

Where the complainant requests the assistance of a particular person from their unit (other than a legal officer), the Commanding Officer is to appoint that person to assist the complainant, if possible.

Note: *the complainant may be assisted by a member of the Civil Staff if they request this and the member of the Civil Staff agrees.*

The Commanding Officer is to offer assistance to the complainant if they consider it to be in the interests of the complainant, or the speedy and efficient investigation of the complaint. The complainant is not required to accept this assistance. Any person assisting the complainant under this paragraph may accompany the complainant to any verbal presentation or investigation of the complaint.

The accompanying person may speak for, or make written submissions on behalf of, the complainant if the complainant wishes.

Legal representation 13.2.36.

A complainant may obtain legal services from private legal counsel at their personal expense. A complainant is not entitled to legal services from Defence Legal Services.

The NZDF has no obligation for any costs incurred by a complainant for legal services, at any stage of the complaints process prescribed in this order.

Investigating Complaints

Duty to investigate 13.2.37.

It is the duty of any person receiving a complaint made in accordance with this Order to investigate it, or have it investigated, as soon as practicable and to take such steps for redressing the complaint as appear to that officer to be necessary.

Investigating complaints 13.2.38.

To ensure that complaints are resolved as quickly as possible, a person receiving a complaint is to conduct an initial investigation to identify whether the complaint is capable of redress by any Service authority eg disputes with government agencies such as the Inland Revenue Department are not capable of redress by any Service authority.

Complaints not able to be redressed 13.2.39.

If an officer receiving a complaint considers that the complaint is incapable of redress by any Service authority, the officer is to advise the complainant of this. This advice, including reasons, is to be in writing, and be forwarded to the complainant within five working days of receiving the complaint. The officer is also to advise the complainant of any other agency considered capable of redressing the complaint, and where appropriate, to assist the complainant to refer the complaint to the agency that can deal with the complaint.

Investigation timeframes 13.2.40.

Where practicable, investigations are to be commenced within five working days upon receipt of the complaint. Where the investigation is likely to take longer than five working days to conclude, the investigating officer is to inform the complainant and the officer who appointed them as early as possible.

Conduct of investigation 13.2.41.

Anyone investigating a complaint may speak to, or obtain statements from, any person who is in possession of information relevant to the complaint.

Privacy to be maintained 13.2.42.

Investigating officers are to make every effort to ensure that the privacy of the complainant and third parties is protected during an investigation. This includes limiting the private information accessed and used to the minimum required for the investigation of the complaint, and ensuring that information is not disclosed to individuals who should not have access to it.

Continued on next page

Investigating Complaints, Continued

Verbal statements 13.2.43.

The complainant is to be interviewed by the investigating officer and given the opportunity to make a verbal statement at every level of command at which the complaint is investigated. If the complainant declines to give a verbal statement at any stage throughout the process, this decision is to be recorded in writing and signed by the complainant.

Refer: DFO 3, Part 13, Chapter 2, paragraph [13.2.50](#) *Verbal Submissions* to CDF.

Adverse effects on third parties 13.2.44.

Where an investigation reveals information that adversely affects the character or Service reputation of a third party the officer who considers the report is to ensure that the third party has the opportunity to comment on that information before they make a decision on the complaint.

Where the investigation reveals information that adversely affects the character or Service reputation of a member of the Armed Forces superior in rank to the investigating officer then the investigating officer is to immediately advise the officer who appointed them. That officer is then to decide whether a new investigating officer is to be appointed.

Disclosure and opportunity to comment 13.2.45.

Once the investigation is complete, the investigating officer must disclose any investigation report, and all material collected or produced during the investigation that is permissible to disclose to the complainant. The investigating officer must ensure that all material disclosed to the complainant may validly be released.

The following material must not be disclosed to the complainant:

- (1) legal advice subject to legal professional privilege, including summaries of privileged legal advice;
- (2) any personal information about an identifiable individual (who is not the complainant) subject to disclosure limitations established in the Privacy Act 1993; and
- (3) any information for which the disclosure would breach NZDF security orders, or prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand.

Where disclosure of information is declined, material is withheld, or there is doubt as to disclosure, legal advice from Defence Legal Services must be sought.

After disclosure has occurred, the complainant must be expressly afforded the opportunity to comment on the investigation report, and any material collected or produced during the investigation. The complainant must be afforded a reasonable time frame to provide comment. A complainant is not compelled to provide comment, and may decline the opportunity.

Continued on next page

Investigating Complaints, Continued

**Disclosure and
opportunity to
comment**

13.2.45.
Continued

If the complainant's comments raise substantive issues or argument not considered in the investigation report, those new substantive issues or arguments must be investigated. At the conclusion of the investigation of the new substantive issue or argument, the disclosure procedure must be repeated. The complainant is to be again afforded the opportunity to provide final comment on the investigation report concerning the new substantive issues or arguments, and any materials collected or produced during the investigation.

After the complainant has provided final comment, if any, the investigating officer is to forward all of the complainant's comment with the investigation reports, and all materials collected or produced during the investigation, to the officer considering the complaint. If the complainant provided comments, the officer considering the complaint must consider those comments when determining the complaint.

Monetary Redress

Seeking redress 13.2.46.

Where a quantifiable loss arises due to the wrongful conduct of the Service, compensation or an ex-gratia payment may be sought by the member of the Armed Forces as a means to redress the complaint.

Any monetary redress should:

- (1) reflect the level of wrongdoing on the part of the Service, and
- (2) the degree to which the wrongdoing contributed to the loss.

Complaints where a non-quantifiable loss occurs, such as stress or humiliation, are to be remedied by way of apology and/or the referral to other professional welfare and/or medical services.

Where monetary redress is considered the advice of Director Defence Legal Services (DDLS) is to be sought as to whether the proposed redress is lawful and appropriate.

Ex-gratia payments 13.2.47.

A quantifiable loss that is not actionable at law, but for which there exists a moral obligation and payment should be made without the giver recognising any liability or legal obligation, may be redressed by an ex-gratia payment.

An ex-gratia payment for the redress of a complaint may only be made with the approval of the CDF. This payment is subject to a maximum of \$30,000 per claim.

Compensation 13.2.48.

A quantifiable loss that is actionable at law may be redressed by way of compensation.

The payment of compensation for the redress of a complaint may only be made with the approval of the CDF, or their delegate, and is subject to a maximum of \$150,000 per claim.

Legal advice from Defence Legal Services must be sought on any compensation being considered which is less than \$75,000. Certification from the Director of Defence Legal Services must be received before payment of compensation of less than \$75,000 is made.

Any compensation being considered for \$75,000 or more, must be referred to Defence Legal Services, so that Defence Legal Services may either confirm an existing court judgement or instruct Crown Law Office for advice, before approval for payment may be given.

Complaints to the CDF and the Governor General

Complaints to CDF

13.2.49.

The CDF is the forum of last resort for most complaints. Complaints either forwarded to or made to the CDF will normally be referred by CDF to the Judge Advocate General (JAG) or Deputy Judge Advocate General (DJAG) who will act as an independent investigative agent.

Verbal submissions to CDF

13.2.50.

As at all levels of the complaint process, the complainant has the right to verbally state their complaint to the CDF. In such cases, it is customary for the JAG's investigating officer to be present. A written summary of what was said is to be prepared as soon as practicable and a copy sent to the complainant prior to further consideration of the complaint. Following this meeting, CDF may choose either to uphold the complaint or refer it to the JAG for investigation.

JAG investigation

13.2.51.

In accordance with their independent status, the JAG is responsible for determining their own method of investigation. In investigating a complaint, the JAG will not be subject to any restrictions and, in particular, may at their discretion:

- (1) interview and seek statements or written answers to questions from any member of the NZDF (this should normally be arranged through command channels);
- (2) have access to all documentation relevant to the complaint;
- (3) seek information pertaining to the complaint from sources outside the NZDF; and
- (4) interview the complainant.

JAG advice to CDF

13.2.52.

On completion of the investigation of the complaint, the JAG will advise whether they consider that the complaint should be upheld or not and recommend to the CDF what redress, if any, should be granted. If the JAG does not consider that the CDF is capable of redressing the complaint, additional advice as to whether or not the complaint should be referred to an appropriate external agency is to be provided to the CDF.

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Complaints to the CDF and the Governor General, Continued

CDF to decide outcome 13.2.53.

Once the CDF has considered the report of the JAG, including any recommended redress, the CDF will then:

- (1) personally decide whether the complaint is to be upheld or not upheld;
 - (2) personally decide what, if any, steps should be taken for redressing the complaint;
 - (3) inform the complainant verbally and/or in writing of the decision and the reasons for it (a copy of the JAG report will normally be enclosed with this letter); and
 - (4) inform the relevant Service Chief of the decision.
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Complaints to the Governor-General 13.2.54.

Where the complainant is an officer the CDF is to advise the complainant that if they consider that they have been wronged in respect of their conduct as an officer, or that their honour, integrity or professional standing has been impugned by the matter complained of, the complainant is entitled to request that the complaint be forwarded to the Governor-General. However, if such a request is to be made the complainant is to clearly specify how the wrong complained of impugns their honour, integrity or professional standing or bears upon their conduct as an officer.

Role of the Governor-General 13.2.55.

Before a complaint is finally referred to the Governor-General, the CDF is to determine whether the wrong complained of impugns the complainant's honour, integrity or professional standing or bears upon their conduct as an officer. If the CDF considers the wrong complained of does not do this, the CDF is to advise the complainant of this and that no further action will be taken on their complaint.

In constitutional terms the Governor-General's role in investigating complaints is exercised personally rather than on advice of a responsible Minister. Complaints forwarded, or made, to the Governor-General will be investigated by:

- (1) the Governor-General personally, or
 - (2) a commissary appointed by the Governor-General for the purpose.
-

Promulgation

Members to be made aware of rights
13.2.56.

Members of the Armed Forces are to be made aware of their right to make a complaint and all recruits are to be given instruction on the prescribed manner for making a complaint. Instruction is also to be included in the syllabi of appropriate officer and non-commissioned officer courses.

Routine orders
13.2.57.

The following notification is to be published every six months in ships' daily orders, weekly orders and unit routine orders.

**COMPLAINTS BY MEMBERS OF THE
ARMED FORCES**

It is the right of any member of the Armed Forces, regardless of rank, to make a complaint if they feel they have been wronged on any matter. The complaint may be verbal but will preferably be written. It is normally to be made initially through the member's usual chain of command to their immediate superior. It is the responsibility of the immediate superior to investigate, or have investigated, the complaint as soon as practicable.

DFO 3, the NZDF HR Manual, contains the complaints policy. Guidelines for framing a complaint and Process Maps detailing the investigation process can be viewed on the NZDF HR Tool Kit. Both are on the intranet.

Commanding Officers may add additional information pertaining to the processing of complaints in their command.

Complaints Register

Maintaining a register 13.2.58.

All units are to maintain a register that records all complaints received and investigated below Commanding Officer level.

The People Capability Portfolio (PCP) is to maintain a register that records all complaints received at Commanding Officer level, and complaints forwarded to Single Service Chiefs and COMJFNZ for consideration.

The register is to include:

- (1) the service particulars of each complainant,
 - (2) the date each complaint was received,
 - (3) the subject of each complaint,
 - (4) the redress sought by each complainant,
 - (5) the current status of the complaint,
 - (6) the time taken to investigate each complaint,
 - (7) difficulties encountered, if any, in investigating the complaint, and
 - (8) the redress, if any, granted to the complainant.
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Audit requirements 13.2.59.

The PCP complaints register is to be audited by the Director HR Service Delivery (Dir HRSD) during the month of July, for the year ending 30 June.

Following the annual audit of the PCP complaint register, the Dir HRSD is to provide a report through to the Chiefs of each Service to the CDF by 31 August each year, on complaints made at the Commanding Officer level (and above) by members of their Service during the preceding year ending 30 June.

The report to the CDF will contain the following for each Service:

- (1) the number of complaints investigated during the reporting period;
 - (2) the nature of the complaints e.g. training, conditions of service, promotion, remuneration, personal reporting, career management etc.;
 - (3) the number of complaints upheld, partially upheld, not upheld or withdrawn;
 - (4) the average time taken to investigate a complaint; and
 - (5) trends in respect of the nature of the complaints.
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Responsibilities

**Chiefs of
Service and
COMJFNZ**
13.2.60.

Service Chiefs and COMJFNZ are to ensure that all members of the Armed Forces serving under their respective command are aware of their right to complain, or to withdraw a complaint, at any time.

JAG
13.2.61.

The JAG is to investigate all complaints made or forwarded to the CDF. In investigating complaints the JAG will:

- (1) interview and seek statements or written answers to questions from any member of the NZDF (normally arranged through command channels); and
 - (2) seek information pertaining to the complaint from sources outside the NZDF.
-

**Commanding
Officers**
13.2.62.

Commanding Officers are responsible for ensuring that:

- (1) members of the Armed Forces under their command are aware of their right to make a complaint;
 - (2) recruits are instructed on the right to make a complaint and appropriate instruction is also included in the syllabi of officer and non-commissioned officer courses;
 - (3) a complaints poster (MD 202A) is permanently and prominently displayed in all ships, establishments, camps and bases;
 - (4) the complaints notification is to be published at least every six months in ships' daily orders and unit routine orders;
 - (5) they appoint an Investigating Officer for those complaints elevated to their authority and issue the Investigating Officer with Terms of Reference using paragraph [13.2.64](#) for guidance;
 - (6) they keep their respective Superior Commander informed of all complaints under investigation within their command;
 - (7) they record all complaints received by them or referred to them in the PCP complaints register in accordance with the prescribed procedures; and
 - (8) a complaints register is maintained within their unit, recording all complaints received and investigated below Commanding Officer level.
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Continued on next page

Responsibilities, Continued

Officer in receipt of a complaint 13.2.63.

Officers within a Command who are in receipt of a complaint are to:

- (1) conduct an initial investigation to identify whether:
 - (a) the complaint is capable of redress by any Service authority,
 - (b) they can redress the complaint, and
 - (c) it is necessary to refer it to the Commanding Officer for investigation;
 - (2) investigate it, or have it investigated, as soon as practicable and advise the complainant of their actions;
 - (3) take such steps as they see necessary to redress the complaint; and
 - (4) ensure that the complainant's Commanding Officer is kept simultaneously informed of developments.
-

Investigating Officers 13.2.64.

Investigating officers have considerable discretion as to how they conduct investigations. Much will depend on the nature of the complaint and the matters to be investigated. However, investigating officers are to:

- (1) undertake their duties fairly, impartially, and without having prejudged the issue,
 - (2) take complaints seriously and thoroughly investigate,
 - (3) document all information relevant to the complaint,
 - (4) ensure the complainant has the opportunity to comment on the investigation report, and the information collected and produced during the investigation,
 - (5) treat complaints as a priority and complete investigations as quickly as possible, and
 - (6) regularly keep all parties to the complaint up to date with the progress of the process.
-