

PROBLEMS, COMPLAINTS OR DISPUTES

If you have a problem, a complaint or a dispute, then the Association and its members have some avenues, processes and suggestions which may be of help to you.

They include:

First Steps

If you are looking to enter into a Franchise as a Franchisee look for systems which are members of the Association. Why? Association members are required to undertake to comply with the Association's *Code of Ethics* and *Code of Practice*. These commit them to take various steps including requirements that:

- A process is followed referring prospective Franchisees to independent legal and accounting advice before they enter the franchise and requiring certificates to emphasise that requirement.
- They comply with certain standards as to how they conduct their business **and** that they supply you with copies of both *Codes*; and
- There is a 7 day "cooling-off period" for Franchisees to change their mind after signing; and
- The Agreements also contain dispute resolution provisions which seek to resolve matters as early as possible and require mediation before matters can be taken to litigation or arbitration;

Do you understand your role?

Very often problems arise because parties do not have a clear or accurate understanding of what their respective responsibilities and obligations actually are. To minimise future problems occur, these should be checked out first.

Often documents setting out obligations are quite technical, whether they are franchise agreements or operation manuals or something else. These documents do not stand alone, but need to be seen in a context where what they mean can be influenced by surrounding issues or other legal obligations. Remember that your objectivity may be clouded by being emotionally too close to the issue.

People to turn to, depending on the seriousness of the problem, may include other franchisees (if you are a franchisee), your Franchise Council (if there is one) for the system, or independent, experienced legal or other professional advisers.

The most important first step, unless it really is not practical in the circumstances, is to start by talking with the other party, franchisor or franchisee, as more often than not there is a very simple explanation of something which the other party has overlooked or not understood properly, or there has been a simple communications failure.

Independent Advisers

The Association has a variety of independent professional advisers, lawyers, consultants, and accountants among its members. They tend to have a far greater knowledge and understanding of franchising than those who are not Members of the Association. See elsewhere on this web site for more details.

When in doubt, check it out. For prospective Franchisees it cannot be too strongly emphasised that you should take proper independent legal and other professional advice from advisers who are actually knowledgeable and experienced in franchising **before** you enter a franchise agreement.

Mediation

The Association maintains a panel of mediators who are people with both an appropriate level of skill or training as mediators. They are either experienced in franchising, or have undergone familiarisation training in franchising issues and have experience in franchise disputes. Mediators on the panel are mostly (but not all) lawyers with this background. As affiliate members of the Association they are also both well aware of and obliged to observe the *Code of Ethics* and *Code of Practice*. They are also required to enter into a Mediation Agreement with the Association to record their commitment to abide by these obligations.

Mediation is a much cheaper, quicker, and less abrasive way of resolving disputes than litigation or arbitration. For this reason the *Code of Practice* requires that all member Franchise Agreements make it compulsory to undergo mediation before litigation or arbitration, in all but a few exceptional situations.

Complaints

If your complaint is against a member of the Franchise Association, then the Association has jurisdiction, under its Rules, to deal with complaints where those Rules, including the obligations under the *Codes*, have been broken or not observed. The Association **is not** able to deal with any matters that do not relate to its own members. If your complaint is against a person or organisation you believe to be a member and in breach of their obligations under the Rules or Codes then here are the steps to take:

- Contact the Association and check that the organisation is a member. All current members are listed on the Association's website at www.franchiseassociation.org.nz
- If it is, then send your complaint to the Association on the form you will find on the website, advising in particular
 - Your full name and contact details;
 - The circumstances which amount to a breach of the Rules and the *Codes* (and tell us what parts you believe have been breached);
 - Your advice that you wish the matter to be pursued as a formal complaint.
- To comply with the general law rules of procedural fairness, which are reflected in its own Rules, the Association can only proceed if, having received a formal complaint, it is then able to put the matter to the other party and allow that other party a proper and fair opportunity to put its side of the story with all the relevant details.

- The complaint will then be referred to a Complaints Panel established by the Board of the Association to determine whether or not the Rules or *Codes* have been breached and, if so, to recommend to the Board the action to be taken. The Board may then decide to impose sanctions on the member that may vary from a requirement to redraft documentation up to their removal from membership and publication of such removal.
- The parties are directly notified of the outcome of the process.

Note: The Association cannot act to enforce other legal rights a party in dispute may have or to help it select strategies to enforce them. Complainants must take their own separate and independent legal advice and should do so right away.

Some frequently asked Questions about the Complaints Process:

- ***FAQ 1 - Is my complaint confidential?*** Your initial enquiry will be kept confidential by the Association staff and the Complaints Panel members involved. However, if you wish the matter to proceed to a formal complaints process then, to comply with the rules of procedural fairness and the Rules of the Association, the party being complained about must be notified and given a full and proper opportunity to present their case. That will include the complainant's identity.
- ***FAQ 2 – What about Conflicts? I do not want someone who is connected with the party being complained about being involved in deciding my complaint?*** The complaint is dealt with by the Complaints Panel and all Members of the Panel are required to disclose a conflict of interest should one arise and would then be replaced for the hearing of that complaint.
- ***FAQ 3 – Some people involved in the Association (e.g. on the Board) may be my business rivals: I do not want them to know details of my business. How is that dealt with?*** Firstly, no person who would have such a conflict would be allowed to sit on the Panel formed to hear that complaint. Secondly, when the Complaints Panel makes its recommendation to the Board for action, this would be confined to the relevant issues of actions amounting to non compliance with the Association's Rules and Codes plus matters known publicly.
- ***Other Avenues.***

Franchising is a way of doing business involving relationships. There are advisers and consultants who may be able to assist in counselling and other techniques for assisting relationship problems.

It is often overlooked that the relationship is not two-way but multiple, it is not between one franchisee and a franchisor but between a franchisee, franchisor, and the other franchisees in the franchise system. The interests of them all need to be considered and they may also have a role to play in assisting to resolve disputes and difficulties.

Reference may also be had to Government agencies, in particular, the Commerce Commission. Finally, of course, there is litigation and/or arbitration. These are seen as only to be used as a last resort, if nothing else will work.