Report on Feedback on Mandatory Policy 3.12 – Disputes and their Determination

November 2021

At its meeting on 1 May 2021, the Board approved this policy in draft form for circulation to stakeholders for comment. This new policy, now adopted, also incorporates the old policy 4.16 on Resolution of Disputes, which has now been removed from the policy manual. At the close of the period for feedback, responses had been received from seven people. Six people made comments which did not impact on the policy wording. This report summarises feedback received and the Board's actions.

1. Concern was expressed that the Board would be in breach of the Constitution by extending the constitutional definition of a dispute (see rule 13 of the Constitution).

The Board does not agree that it is unconstitutional for its policy on disputes to extend the definition of a dispute. It is legitimate for the Board to have policies that go beyond the requirements of the Constitution and the Board is confident that the new policy on dispute resolution does not conflict in any way with the Constitution. Despite the formal definition of a dispute in rule 13 of the Constitution, the Constitution requires the Board to have a policy that "protects a party's right to be heard in relation to a dispute that is to be considered by the Board". This is one of a number of policies the Board is required to have which actually apply to stakeholders and clients and not just people who are formal members of the incorporated society. The Board of a modern disability provider like the RNZFB clearly has obligations to clients and other stakeholders. The new policy 3.12 provides a single comprehensive mechanism for dealing with all disputes.

1. A member noted that the new policy does not apply to any issues affecting contracts of employment or conditions of service for staff members which are handled in accordance with employment and human rights procedures and felt that this would prevent such matters as recruitment procedure, employee culture, bullying, etc. being brought to the Board’s attention.

First, this aspect of the policy has been in place for some time because the Board has formally delegated to the Chief Executive full responsibility for all matters relating to the management of staff. The Board feels it would seriously undermine the Chief Executive's authority if potentially all employment disputes could find their way to the Board. But the Board also accepts that there should be a way for employees to bring to the Board's attention information that might inform the Board that the organisation may not be functioning as it should. In response to this concern, the Board has agreed to give high priority to developing and adopting an effective "whistle-blowing" policy, to ensure there is a safe way for employees to bring matters of concern to the Board's attention.

1. It was felt that references to formal communication being in writing were in conflict with the intention that a party should be able to complain in the manner that is most appropriate for that party.

The intention of the policy is clearly that a party can raise a dispute in whatever way is appropriate for them. At the same time, the policy requires that all formal communication relating to a dispute be in writing, with the added requirement, inherent in the RNZFB anyway, that writing is in the client's choice of authorised accessible format. The Board has extended the wording to ensure that if a dispute was raised verbally or in some other non-written form, the formal written record of the complaint will reflect the client's intentions and will be communicated to the client for the client's confirmation. In addition, references to complaints being "written" have been removed from clauses 2.2 and 2.3.

1. A member commented that timeframes expressed in the policy are at odds and not consistent.

The Board did not agree that timeframes expressed in the policy are at odds, but for the sake of consistency, we have amended the wording to express all references to timeframes as a number of working days.

1. A member asked has the Board checked to ensure that when a complaint concerns an operational matter, are the timeframes in this policy consistent with the timeframes in the operational policies?

Yes, this was checked and there was no inconsistency with current operating policies. The Board notes that the Chief Executive's complaints policy refers to the complaints officer and complaints handled by other managers, whereas this Board policy refers to complaints to be handled by the Chief Executive. Such complaints are likely to take more time to resolve and the Board is comfortable with the existing requirement that the Chief Executive resolves complaints within 20 working days, unless there is a justified delay. However after further reflection, the Board has amended the policy so if someone does lodge a complaint with the Chief Executive, the Chief Executive must acknowledge that complaint within one working day. This is consistent with the Chief Executive's current operational complaints policy.

1. A comment was made that if a complaint is made to the staff member concerned or the manager of the service, then the complaint may never reach the ear of the Board or the Chief Executive. Thus, the Board may not be able to perform its primary role to guard the welfare and best interests of clients by collecting client information to help determine the value of its services and have the opportunity to improve the quality of services, and regularly monitor all complaints including number, subject, outcome, time frames and impact on policy.

The Board accepted this point. It was noted that the Chief Executive's current complaints policy requires that no matter who receives a written complaint, all complaints must be directed immediately to the Complaints Officer. Therefore, remembering that clause 2.1 of this policy concerns complaints at the operational level, and it is not the function of this policy to direct how the Complaints Co-ordinator will deal with a complaint, the Board has amended this clause to similarly require all complaints to be forwarded to the Complaints Co-ordinator.

1. A member drew attention to the power imbalance that often exists when a complaint is made, particularly against the Chief Executive or the Board. It was felt that the policy should be strengthened to try to ensure that the parties agree on whoever is to be the decision-maker to settle the complaint.

The Board agreed with this point. One of the introductory principles in the policy is clause 1.3: a dispute will be investigated and determined in accordance with the principles of natural justice. Depending on whether the complaint is made to the Chief Executive or the Board, the Chief Executive or the Board may have to appoint an independent decision-maker to hear the complaint. The Board amended the policy wording to ensure that in both situations a reasonable effort will be made to find a decision-maker acceptable to all parties.

The policy as finally adopted is provided below for information. The Board welcomes feedback from stakeholders and thanks everyone for their contributions.

**3.12 DISPUTES AND THEIR DETERMINATION**

**Constitutional reference: Rule 13.0 Dispute Management**

This policy sets out how disputes, including complaints, are to be handled. For consistency with the Constitution, in this policy, the general term "dispute" is used. A complaint is a form of dispute so is covered by this policy. The term "complaint" may be more appropriate in situations where, for example, a client is dissatisfied with a service or upset in some way as a result of an action by an employee, a director or the Board. However, when interpreting this policy, no distinction is to be made between the terms "dispute" and "complaint".

The Board's primary role is to guard the welfare and best interests of clients, including the right of clients to complain without fear of personal negative effect. The Board needs client information to help determine the value of its services, and complaints are one such indicator. Therefore, the Board regards the resolution of complaints as an opportunity to improve the quality of services and as important feedback on the Board's policies. The Board will regularly monitor all complaints including number, subject, outcome, time frames and impact on policy.

This policy extends the provisions in rule 13 of the Constitution. Under this policy, the definition of a dispute is extended to include any situation in which someone is distressed as the result of an action or inaction by the RNZFB or anyone acting on behalf of the RNZFB and the right to lodge a dispute is extended to any person or group of persons.

Not all communications received by the Board fall into the category of disputes requiring resolution. The Board values submissions from stakeholders as informative feedback. Anyone wishing to make a submission to the Board that is not a complaint or dispute is referred to Policy 3.10 - Board Engagement and Communications with Stakeholders.

*Note: This policy does not apply to any issues affecting contracts of employment or conditions of service for staff members which are handled in accordance with employment and human rights procedures.*

1. **Fundamental principles**
   1. Disputes raised by clients may be expressed in any form appropriate to the client.
   2. Anyone raising a dispute has the right to be treated with dignity and respect.
   3. A dispute will be investigated and determined in accordance with the principles of natural justice.
   4. All formal communication regarding a dispute must be in writing. The RNZFB will ensure that all formal communication regarding a dispute involving a client will be in the client's choice of authorised alternate format. If a dispute was raised verbally or in some other non-written form, the formal written record of the complaint will reflect the client's intentions, and will be communicated to the client for the client's confirmation.
   5. All disputes will be handled confidentially and expeditiously and the parties will be informed about the progress of the dispute at intervals of not more than 20 working days.
   6. At the conclusion of the dispute, the Chief Executive or Board, as the case may be, will review all the relevant documentation and provide to the parties copies of those documents deemed appropriate to be shared.
   7. Clients have the right to be informed of the operational and Board procedures for handling disputes, and any relevant external complaints procedures.
   8. Anyone raising a dispute has the right to be represented by an advocate of their own choice and at their own cost. A client or their advocate may request BLVNZ to meet all or part of this cost. The Board or Chief Executive, as the case may be, may approve such a request if this is warranted, having regard to all the circumstances
2. **Complaints concerning RNZFB services and operations**
   1. Complaints will normally be received by the Complaints Co-ordinator, the staff member concerned or the manager of the service. Regardless of who receives a complaint, it must be directed immediately to the Complaints Co-ordinator.
   2. If a satisfactory resolution is not achieved, the client has the right to lodge a complaint with the Chief Executive. The Chief Executive will acknowledge in writing receipt of the complaint within one working day. The Chief Executive will take all reasonable steps to ensure that the complaint is dealt with thoroughly and impartially. If the investigation is to take more than 20 working days, the client will be so informed including the reasons for the delay.
   3. Clients still have the right to lodge a complaint directly with the Chair of the Board. This will be recorded by the Board and may be referred to the Chief Executive or a committee of the Board for further investigation, or dealt with by the Board.
   4. If a complaint has not been resolved by the Chief Executive to the client's satisfaction or if the complaint is about the actions of or a decision by the Chief Executive, the client has the right to appeal to the Board.
3. **Disputes dealt with by the Board**

3.1 A dispute for the attention of the Board should be lodged with the Chair. If a Director is notified of a dispute that the person raising the dispute wishes to be passed on to the Board, the Director will immediately notify the Chair. If there is any doubt about the intentions of the person or people lodging the dispute, the Chair will confirm their intention is that the dispute be handled under this policy.

3.2 If the dispute is a complaint relating to an operational matter and the complainant has not already sought resolution through the steps outlined in section 2, the Chair will refer the matter to the Chief Executive who will attempt to resolve the matter according to section 2. The Chief Executive will notify the Board of the outcome.

3.3 In the following steps, the term "decision-maker" means the Board, a sub-committee of the Board or an external decision-maker as determined in accordance with rule 13.3.1 of the Constitution. The RNZFB will meet the cost of an external decision-maker if one is required.

3.4 If the dispute relates to an operational matter and the complainant has already sought resolution through the Chief Executive but is still dissatisfied, or if the dispute relates to the Chief Executive, the Chair will place the matter before the Board to act as decision-maker as soon as practicable.

3.5 If the dispute relates to the Board as a whole, the Board Chair, in consultation with the Chair of the Governance Committee, will appoint the decision-maker. In this case, the Board or a sub-committee of the Board shall not be the decision-maker.

3.6 If the dispute involves one or more particular Directors, the Board Chair, in consultation with the Chair of the Governance Committee, provided either or both are not a party to the dispute, will determine the decision-maker. If the Chair of the Governance Committee is a party to the dispute then the task will pass to another Governance Committee member who is not a party to the dispute, appointed by that Committee. If the Board Chair is a party to the dispute, then this task will pass to the Deputy Chair. But if the Deputy Chair is also a party to the dispute, then this task will pass to the Board excluding all directors who are a party to the dispute.

3.7 When appointing a decision-maker under clause 3.5 or 3.6, the Directors making this appointment will liaise with the parties to the dispute and make reasonable efforts to find and appoint a decision-maker agreeable to the parties.

3.8 A Director who is a party to the dispute shall not participate in the decision-making process and shall refrain from responding to or commenting on the matter until formally asked to do so by the decision-maker.

1. **The decision-making process**

4.1 To protect the privacy and dignity of the parties, all aspects of a dispute will be dealt with in Committee.

4.2 The decision-maker must first invite the parties to participate in a voluntary process in which the decision-maker will attempt to facilitate constructive communication between them and use reasonable endeavours to resolve the dispute by mutual agreement. The decision-maker will ensure the well-established rules and conventions of alternative dispute resolution are followed throughout this process. In the interests of fairness and natural justice, the decision-maker will take particular care to ensure any party to the dispute is not impacted by a significant power imbalance between the parties. A party to the dispute can refuse to take part in or withdraw from this process at any time without prejudice. This process must be completed within 20 working days of receiving the dispute.

4.3 If the dispute still remains unresolved, the decision-maker will determine if the dispute should not be progressed. To this end, the decision-maker may seek further information from the parties to the dispute. The decision-maker will only dismiss a dispute at this step in the process if it is manifestly clear that the dispute is covered by one or more of the grounds listed in sub-rule 13.2.1 of the Constitution. In such a case the decision-maker will clearly explain to the parties the reasons for not progressing the dispute.

4.4 If the dispute is to be progressed, the decision-maker must ensure all parties to the dispute are heard. In this respect, the decision-maker will have regard to the provisions of rule 13.5.2 of the Constitution, but the decision-maker must in any case take all reasonable steps to fully understand all the important aspects of the dispute from the point of view of each party before a final decision is made.

4.5 The final decision will be communicated to all parties in writing as soon as practicable.