Report on Feedback on Mandatory Board Policy 3.12 – Complaints, Grievances and Their Determination

On 13 May 2019, the RNZFB Board sought feedback from stakeholders on a revised version of this policy. By the closing date for feedback, 26 June, responses had been received from 18 people. 14 people directly expressed agreement with the proposed draft. Four made either non-committal comments or comments that were not on point. Some suggestions for improvement were received from both groups.

The comments are summarised here, followed by the Board’s response.

1. Twice there is mention of communicating in writing. As this is a blindness organisation, surely it should be specified that a complainant will receive communication in their preferred format, even if this is in addition to “in writing”.

The Foundation's commitment to communicating with clients in accessible formats is already enshrined in the Constitution. The Board feels there is no need for this to be further spelled out in policies.

1. A minor matter, and sorry to be pedantic, but in the section “The Board uphold that” there are a number of sentences without full stops.

Full stops have now been added to the bullet points.

1. Before triggering formal processes under rule 13, I urge the Board to seek settlement of differences under a rewrite of the resolution of disputes policy 4.14, (July 2018).

Currently the policy on resolution of disputes that is referred to here is 4.16. The Board is working its way through section 4 of the Policy Manual and this policy should come up for our attention at the next meeting. The Board agrees that all but the most serious complaints should be settled under policy 4.16, but we will look at this more closely when that policy comes up for review.

1. Right to be represented by an advocate: legal costs are prohibitive for most individual blind people and thus, complaints and grievances are unlikely to be progressed by complainants irrespective of their merits. Hence, A power imbalance exists between complainant and the professional and legal resources available to Directors. The Board may consider costs of representation if deemed justified by the Board but this appears to be a post hoc approval and so unlikely to be taken up by a complainant.

The Board is aware of this problem, but hopes that anyone who feels their complaint is justified would not be afraid to ask for financial assistance to pursue their complaint. However when discussing this point, the Board agreed to strengthen the policy by amending the following point to state that a Complaint or Grievance will be investigated and determined in accordance with the principles of natural justice. This should ensure the Board will keep this in mind when assessing any request for assistance meeting the costs of an advocate.

1. I urge the Board to write into the mandatory policy a provision that confines its role to deciding whether a prima facie case of a complaint or grievance exists. Having decided a case exists, then an independent decision-maker or panel should be appointed to hear and decide the case, so avoiding any hint of bias or protectionism. Justice must be seen to be done. Before triggering rule 13, In practice, I urge Directors to devolve responsibility for resolving disputes involving Director(s), to an independent, experienced mediator(s) versed in disputes resolution hearings, current disability policy, the UNCRPD and fair outcome solutions, thus avoiding any perception of "group think", bias or protectionism.

It is felt that this comment is most relevant to complaints against the Board itself or against the Chair or a Director. Currently the policy requires that the Board Chair and Chair of the Governance Committee will decide the appropriate course of action in accordance with rule 13 of the Constitution. The Board agreed that this is sufficient and no change is required here. The Board has sought professional advice on handling complaints and is now working through that advice.

1. Guidelines to be observed: At the first bullet point I urge the Board to add the words - or influencing the process. The sub-clause to read: "The Director who is the subject of the grievance shall be excluded from making the decision or influencing the process."

The Board decided not to make this amendment. It is felt that this matter is already addressed by the recently added sentence which states: "the Director who is the subject of the grievance shall refrain from responding to or commenting on the matter until formally asked to provide the information as outlined in this clause". The Board feels the policy is already clear that any such complaint must be dealt with in a manner that is fair and transparent to both parties and upholds the principles of natural justice.

1. Experience tells me that rule 13 is not fit for purpose in a client-centred, member-driven organisation committed to continuous improvement and the well-being of vulnerable people. Use of professional disputes resolution processes would yield more constructive results.

The Board has already flagged rule 13 for attention when the Constitution is next reviewed. At this time, however, there is no timeframe for this review.

The policy as adopted is provided below for information.

**3.12 COMPLAINTS, GRIEVANCES AND THEIR DETERMINATION**

*(Final version adopted by the Board on 6 July 2019 following consultation with stakeholders.)*

In this policy:

“**complainant**” means a member bringing a complaint or grievance,

“**complaint**” means a complaint or disciplinary procedure regarding alleged misconduct of a Member,

“**grievance**” means a grievance alleging damage to a Member's rights or interests as a Member or to Members' rights or interests generally, and

“**member**” includes client where appropriate.

It is the Board's role to guard the welfare and best interests of members, including the safeguarding of the right of Members to bring forward a complaint or grievance without fear of personal negative effect. In furtherance of this principle and to protect the privacy and dignity of members and staff at all times, all aspects of a complaint or grievance that involve the Board will be dealt with in committee.

The Board upholds that:

* A member bringing a complaint or grievance has the right to be heard.
* A member has the right to be treated with dignity and with respect.
* A member may bring a complaint or grievance in any form appropriate to that member.
* A member has the right to be represented by an advocate of the member’s choice and at the member’s cost. At the request of the member, the Board may consider meeting all or some of this cost if, having regard to all the circumstances, it deems such a course is warranted.
* a Complaint or Grievance will be investigated and determined in accordance with the principles of natural justice.
* there may be grounds for deciding not to progress a Complaint or Grievance and, in such circumstances, the complainant will be advised of the reasons.
* At the conclusion of the complaint, the Board will review all the relevant documentation and provide to the complainant copies of those documents the Board deems appropriate to be shared.

The Board wishes to receive information to help determine the value of its services and complaints and grievances are one such indicator. To this end, the Board frequently monitors complaints and grievances which are not brought before it.

Members also have the right to appeal to those who govern on their behalf. Accordingly, there is a process that Directors shall adhere to when receiving a complaint or grievance that the person bringing the complaint or grievance wishes the Board to be apprised of. The Director shall immediately notify the Board Chair who will adopt one of the following courses of action:

1. If the complaint or grievance relates to an operational matter and the complainant has not already sought resolution through the Chief Executive, the Chair will refer the matter to the Chief Executive who will attempt to resolve the matter in a timely manner and keep the member advised as to progress. The Chief Executive will notify the Board of the resolution of the complaint.

2. If the grievance relates to the Chief Executive, the Chair will place the matter before the Board for consideration as soon as practicable.

3. If the complaint or grievance relates to an operational matter and the complainant has already sought resolution through the Chief Executive but is still dissatisfied, the Chair will place the matter before the Board for consideration as soon as practicable.

4. If the grievance relates to governance of the Foundation, the Board Chair, in consultation with the Chair of the Governance Committee, will decide on the appropriate course of action in accordance with Rule 13 of the Constitution “Complaints and Grievances Procedures”.

5. In 2, 3 and 4 above the Board must first determine if a complaint or grievance should not be progressed. To this end, the Board may seek further information from the complainant and other parties relevant to the complaint. The Board will only dismiss a complaint or grievance at this step in the process if it is manifestly clear that the complaint or grievance is covered by one or more of the grounds listed in sub-rule 13.4.1 of the Constitution. In such a case the Board will clearly explain to the complainant the reasons for dismissing the complaint or grievance.

6. In any of the above cases, the Board’s response shall be communicated to the complainant in writing as soon as practicable.

7. Where the grievance relates to a particular Director, the following guidelines shall be observed:

* The Director the subject of the grievance shall be excluded from making the decision.
* The Board Chair and the Chair of the Governance Committee shall seek information from the complainant and the Director, who is the subject of the grievance, to assist the Board in determining if a grievance exists. If the grievance relates to the Board Chair then this task shall pass to the Deputy Chair; if the grievance relates to the Chair of the Governance Committee then the task shall pass to another Governance Committee member appointed by that Committee. The Director who is the subject of the grievance shall refrain from responding to or commenting on the matter until formally asked to provide the information as outlined in this clause.
* If it is deemed that a grievance exists, both parties will be given the opportunity to have their side of the case heard by an impartial decision maker as specified in Rule 13 of the Constitution.
* All parties will be advised in writing of the final decision.

*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.*