

Dispute resolution procedures will be mandatory

Societies must have dispute resolution procedures in their constitution

Before drafting your constitution, you will need to decide what your dispute resolution procedures will look like for your society. Your society will need to have procedures for resolving disputes between members and officers as well as between members and the society. These dispute resolution procedures must be written into your society's constitution.

There are good reasons why the new Act has made it mandatory for all societies to have proper procedures for handling disputes. Disputes are damaging, expensive, and time consuming.

Having these procedures documented in your constitution means your members and officers know how to raise a complaint. They will also know how that complaint will be dealt with.

On this page:

- [What disputes are covered](https://is-register.companiesoffice.govt.nz/law-changes-for-societies/dispute-resolution-procedures/#disputes-covered)
(<https://is-register.companiesoffice.govt.nz/law-changes-for-societies/dispute-resolution-procedures/#disputes-covered>)
- [What dispute resolution procedures must look like](https://is-register.companiesoffice.govt.nz/law-changes-for-societies/dispute-resolution-procedures/#what-dispute-resolution-procedures-must-look-like)
(<https://is-register.companiesoffice.govt.nz/law-changes-for-societies/dispute-resolution-procedures/#what-dispute-resolution-procedures-must-look-like>)
 - [A template set of procedures is provided in the new Act](https://is-register.companiesoffice.govt.nz/law-changes-for-societies/dispute-resolution-procedures/#template-set-in-2022-Act)
(<https://is-register.companiesoffice.govt.nz/law-changes-for-societies/dispute-resolution-procedures/#template-set-in-2022-Act>)
- [Related resources](https://is-register.companiesoffice.govt.nz/law-changes-for-societies/dispute-resolution-procedures/#related-resources)
(<https://is-register.companiesoffice.govt.nz/law-changes-for-societies/dispute-resolution-procedures/#related-resources>)
- [How you can stay up to date](https://is-register.companiesoffice.govt.nz/law-changes-for-societies/dispute-resolution-procedures/#stay-up-to-date)
(<https://is-register.companiesoffice.govt.nz/law-changes-for-societies/dispute-resolution-procedures/#stay-up-to-date>)

()What disputes are covered

There could be a disagreement between different members or between different officers. There might also be disagreement between members and some, or all, of your society's officers.

A disagreement is defined as a dispute if it also relates to an allegation that —

- an officer or a member has engaged in misconduct, or
- a member's rights or interests have been damaged, or
- there has been (or is likely to be) a breach by members, officers, or the society of a duty under —
 - your society's constitution or its bylaws, or
 - the Incorporated Societies Act 2022.

()What dispute resolution procedures must look like

Your society could develop its own procedures, but they must be consistent with the rules of natural justice.



What does natural justice mean?

Natural justice means you must be treated fairly, and decisions affecting your rights are made using fair processes.

()A template set of procedures is provided in the new Act

There is a template set of dispute resolution procedures included in the new Act that your society could choose to adopt. If your society includes all 7 of these sections in your constitution, they will comply with the new Act.

1. How complaint is made

1. A member or an officer may make a complaint by giving to the committee (or a complaints subcommittee) a notice in writing that —
 - a. states that the member or officer is starting a procedure for resolving a dispute in accordance with the society's constitution; and
 - b. sets out the allegation to which the dispute relates and whom the allegation is against; and
 - c. sets out any other information reasonably required by the society.
2. The society may make a complaint involving an allegation against a member or an officer by giving to the member or officer a notice in writing that —
 - a. states that the society is starting a procedure for resolving a dispute in accordance with the society's constitution; and
 - b. sets out the allegation to which the dispute relates.

3. The information given under subclause 1b. or 2b. must be enough to ensure that a person against whom an allegation is made is fairly advised of the allegation concerning them, with sufficient details given to enable them to prepare a response.
4. A complaint may be made in any other reasonable manner permitted by the society's constitution.

2. Person who makes complaint has right to be heard

1. A member or an officer who makes a complaint has a right to be heard before the complaint is resolved or any outcome is determined.
2. If the society makes a complaint —
 - a. the society has a right to be heard before the complaint is resolved or any outcome is determined; and
 - b. an officer may exercise that right on behalf of the society.
3. Without limiting the manner in which the member, officer, or society may be given the right to be heard, they must be taken to have been given the right if —
 - a. they have a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and
 - b. an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
 - c. an oral hearing (if any) is held before the decision maker; and
 - d. the member's, officer's, or society's written statement or submissions (if any) are considered by the decision maker.

3. Person who is subject of complaint has right to be heard

1. This clause applies if a complaint involves an allegation that a member, an officer, or the society (the respondent) —
 - a. has engaged in misconduct; or
 - b. has breached, or is likely to breach, a duty under the society's constitution or bylaws or the Incorporated Societies Act 2022; or
 - c. has damaged the rights or interests of a member or the rights or interests of members generally.
2. The respondent has a right to be heard before the complaint is resolved or any outcome is determined.
3. If the respondent is the society, an officer may exercise the right on behalf of the society.
4. Without limiting the manner in which a respondent may be given a right to be heard, a respondent must be taken to have been given the right if —
 - a. the respondent is fairly advised of all allegations concerning the respondent, with sufficient details and time given to enable the respondent to prepare a response; and

- b. the respondent has a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and
- c. an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
- d. an oral hearing (if any) is held before the decision maker; and
- e. the respondent's written statement or submissions (if any) are considered by the decision maker.

4. Investigating and determining dispute

1. The society must, as soon as is reasonably practicable after receiving or becoming aware of a complaint made in accordance with its constitution, ensure that the dispute is investigated and determined.
2. Disputes must be dealt with under the constitution in a fair, efficient, and effective manner.

5. Society may decide not to proceed further with complaint

Despite the clause 'Investigating and determining dispute' above, the society may decide not to proceed further with a complaint if —

- a. the complaint is trivial; or
- b. the complaint does not appear to disclose or involve any allegation of the following kind:
 - i. that a member or an officer has engaged in material misconduct:
 - ii. that a member, an officer, or the society has materially breached, or is likely to materially breach, a duty under the society's constitution or bylaws or the Incorporated Societies Act 2022:
 - iii. that a member's rights or interests or members' rights or interests generally have been materially damaged:
- c. the complaint appears to be without foundation or there is no apparent evidence to support it; or
- d. the person who makes the complaint has an insignificant interest in the matter; or
- e. the conduct, incident, event, or issue giving rise to the complaint has already been investigated and dealt with under the constitution; or
- f. there has been an undue delay in making the complaint.

6. Society may refer complaint

1. The society may refer a complaint to —
 - a. a subcommittee or an external person to investigate and report; or
 - b. a subcommittee, an arbitral tribunal, or an external person to investigate and make a decision.

2. The society may, with the consent of all parties to a complaint, refer the complaint to any type of consensual dispute resolution (for example, mediation, facilitation, or a tikanga-based practice).

7. Decision makers

A person may not act as a decision maker in relation to a complaint if 2 or more members of the committee or a complaints subcommittee consider that there are reasonable grounds to believe that the person may not be —

- a. impartial; or
- b. able to consider the matter without a predetermined view.

()Related resources

The Government Centre for Dispute Resolution — a part of the Ministry of Business, Innovation and Employment — provides additional guidance on what good dispute resolution looks like that some societies may find useful:

Guidance on dispute resolution clauses

Ministry of Business, Innovation and Employment [↗](#)

[\(https://www.mbie.govt.nz/cross-government-functions/government-centre-for-dispute-resolution/dispute-resolution-tools-and-resources/guidance-on-dispute-resolution-clauses-in-contracts/\)](https://www.mbie.govt.nz/cross-government-functions/government-centre-for-dispute-resolution/dispute-resolution-tools-and-resources/guidance-on-dispute-resolution-clauses-in-contracts/)

See also — Schedule 2, Incorporated Societies Act 2022

New Zealand Legislation website [↗](#)

[\(https://www.legislation.govt.nz/act/public/2022/0012/latest/whole.html#LMS101242\)](https://www.legislation.govt.nz/act/public/2022/0012/latest/whole.html#LMS101242)

()How you can stay up to date

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