

## Board Dispute Resolution Policy Resource Guide

### 1. Introduction

In accordance with their fiduciary duties to the organisation, board members<sup>1</sup> have a responsibility to implement good governance. The board is expected to operate collegially. Each board member brings to the boardroom their own particular skills, knowledge and experience, and has a duty to apply their skills, knowledge and experience, acting at all times in the best interests of the organisation.

An effective board seeks to stimulate the flow of ideas, identify key issues, consider alternatives and make informed decisions. To do so requires often-vigorous debate, which can sometimes turn into negative conflict. There are many more issues and situations outlined in section 2 below that can give rise to a board dispute. Such disputes must be dealt with as soon as possible, because if left unresolved, they can undermine the board's effectiveness and the organisation's performance.

**Please note:** The removal of a board member under 6.8 of this policy guidance is also only applicable to organisations whose constitution gives the board the power under its articles of association to remove a board member from the board. Nonprofit organisations who do not have this power in their constitution and are a registered company (e.g. CLG) can use Section 146 of the Companies Act 2014 which grants the power to remove a director by an ordinary resolution of the company's shareholders (members) at a general meeting.

### 2. Scope

This policy refers to disputes:

- Between board members;
- By a board member regarding a board policy, process or procedure; and
- By a board member regarding a resolution of the board.

There is a separate Carmichael policy guidance resource covering the removal of a board member not involving a board dispute.

The following are examples of the type of issues that may give rise to Board Dispute Resolution policy being applied.

#### Breach of Fiduciary Duty

- **Conflict of interest:** A board member fails to disclose a personal or financial interest in a decision being made.
- **Self-dealing:** There is a concern that a board member is using their position on the board to benefit themselves at the expense of the organisation.
- **Failure to act in the best interest of the organisation:** Making decisions that harm the organisation or favour a third party.

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<sup>1</sup> For the purpose of this policy guide the term 'board member' is also used to include both company directors and charity trustees.

## Misconduct or Unethical Behaviour

- **Harassment or discrimination:** Engaging in inappropriate behaviour toward staff, other board members, or stakeholders.
- **Dishonesty or fraud:** Misrepresenting facts, falsifying documents, or misusing organisational funds or property.
- **Violation of confidentiality:** Sharing sensitive board discussions or documents with unauthorized parties.

## Non-performance or Neglect of Duties

- **Chronic absenteeism:** Missing multiple board meetings without valid reasons.
- **Failure to participate:** Not contributing to discussions, decision-making, or committee work.
- **Ignoring legal or regulatory obligations:** Not ensuring compliance with laws or governance standards.

## Disruptive Behaviour

- **Undermining board cohesion:** Constantly challenging decisions in a non-constructive manner or creating conflict.
- **Bullying or intimidation:** Using aggressive tactics to influence decisions or silence other members.
- **Failure to uphold a collective board decision:** Undermining the authority and unity of the board by refusing to implement, support, or comply with a formally adopted board decision.
- **Refusal to follow board procedures:** Ignoring agreed-upon governance processes or acting unilaterally.

## Legal or Criminal Issues

- **Criminal conviction:** Being convicted of a crime that affects their ability to serve or damages the organisation's reputation.
- **Civil litigation:** Being involved in lawsuits that pose a conflict or reputational risk.

These are examples of issues and it is not an exhaustive list. The Board Chair (or Vice Chair) has the discretion to decide if an issue should be dealt with by applying the dispute resolution policy.

## 3. Policy objective

The Board of [Organisation name] is committed to reaching a prompt and fair resolution of any board disputes, conflicts, or disagreements that may arise from time to time, and that may threaten the functioning of the board.

This policy guide outlines the internal processes and best practice steps to be taken. It complements existing legal provisions for board member removal under the Companies Act 2014. If there is any conflict between this document and the company's constitution or relevant legislation, the constitution and/or the law will take precedence.

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Before, applying the policy in an actual board dispute situation, the board should consider if it should obtain professional advice on the specific nature of the dispute and application of the procedures in the policy, particularly, if informal resolution and/or mediation, see steps 1 & 2 below, fail to have the matter resolved.

## 4. Policy

The [Organisation name] board encourages board members to resolve any issues or concerns that they may have at the earliest opportunity. It is important that as issues do arise, they are dealt with in a fair and timely manner.

While some conflicts will be resolved by an informal discussion between the parties, others will need a process for successful resolution. The following three step approach is recommended.

1. Firstly, attempt informal resolution,
2. If this fails, consider offering mediation (see 5.7 below).
3. The final step, if steps 1 and 2 are not successful in having the matter resolved, is to bring the issue to the board for a decision (see 5.8 below)

## 5. Procedure

5.1 The dispute must be set out in writing and sent to the board chair<sup>2</sup>. The chair must acknowledge receipt of this document within five days. If the matter involves the chair directly, the matter can be sent to the vice chair<sup>3</sup> as an alternative.

5.2 The chair or vice chair will use his or her discretion to take one of the following actions;

- a. refer the matter to the vice chair or one of the chairs of board sub-committees or another board member not directly involved in the dispute if the dispute is between the board member and the chair;
- b. meet with the person(s) raising the dispute to see if the matter can be resolved informally.

5.3 If the matter cannot be resolved informally, the chair or the person to whom the matter was referred to, will use his or her discretion to take one of the following actions;

- a. bring the issue to the next board meeting or
- b. call an extraordinary meeting of the board.

5.4 When raised at the board meeting, all people involved in the dispute will be given the right to speak.

5.5 The chair or vice chair will call for a motion from the board, for example, to appoint an independent assessor<sup>4</sup>, seek mediation (see 5.7 below), call a special meeting of the board (see 5.8 below), or to dismiss the complaint. All board members present at the meeting will vote on the motion.

5.6 A board decision may be reviewed by the board in situations where:

- New information has emerged that was not available when the original decision was made.

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<sup>2</sup> The Board Chair may also directly initiate a board dispute procedure and communicate in writing the nature of the dispute to the relevant board member.

<sup>3</sup> If both the Chair and Vice Chair are parties to the dispute, the Board Chair can appoint a Chair of one of the board sub-committee or another member of the board who is not a party to the dispute to handle the dispute resolution process.

<sup>4</sup> See Appendix 1 for the procedure to appoint an independent assessor

- The board has become aware of an error in previous information that was used to make the decision.
- A board member did not feel able to present his or her case at the time the board made its decision.

### 5.7 Mediation

1. Where mediation is sought, the mediator must be:
  - a. a person chosen by agreement between the parties; or
  - b. in the absence of agreement, a mediator is appointed by the board.
2. A member of board can be a mediator, but may not be a member who is a party to the dispute.
3. The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
4. The mediator, in conducting the mediation, must:
  - a. give the parties to the mediation process every opportunity to be heard; and
  - b. allow due consideration by all parties of any written statement submitted by any party; and
  - c. ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.
5. The mediator must not determine the dispute. It is not the role of the mediator to determine the rights or wrongs of the situation or to adjudicate the outcome. The parties are the owners of the process. Any agreed outcome reached is their agreement and is merely facilitated by the mediator.
6. The mediation must be confidential and without prejudice.
7. If the mediation process does not result in the dispute being resolved, the parties may seek to resolve the dispute in the board.

### 5.8 Removal of board member if a dispute cannot be resolved by the board or by mediation

If the dispute cannot be resolved and it is felt that a board member is undermining the work of the board and/or is not complying with a decision of the board, the board can remove the board member from the board by taking the following steps;

- a. The chair or a board member gives at least 7 days advance notice to the person concerned that they will be formally proposing a motion seeking their removal as a board member. This gives an opportunity to the board member to resign from the board and not go through a removal from the board process. If the board member chooses not to resign within the 7 days advance notice period, then the remaining steps in the procedure are followed;
- b. The chair or a board member formally puts a motion seeking the removal of a board member on the agenda of a meeting of the board;
- c. The board member(s) who wishes to remove a board member must give 'extended notice' to the board members of at least 28 days before the board meeting at which the motion is to be moved;
- d. On receipt of the notice, the company secretary must send a copy of the resolution to the relevant board member;
- e. The relevant board member is entitled to make written representations to their fellow board members and to request that the company secretary communicates these representations

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to the members of the board. The board member may also speak at the meeting on the motion concerning his or her removal;

- f. The board chair or board member(s) wishing to remove a board member may, if they so wish, make a written representation to the board members in advance of the board meeting;
- g. An ordinary resolution (i.e. '50 per cent plus one' of the votes cast) of the board members at the board meeting suffices.

If the motion to remove is passed, if relevant, the Charities Regulator, Companies Registration Office (CRO) and the Register of Beneficial Ownership of Companies (RBO) will be notified of the change of board membership. The organisation's website will be updated and the bank(s) will be notified if the board member was an authorised signatory for the bank account(s).

See Appendix 2 for a summary decision flow chart.

## 6 Roles and Responsibilities

It is the responsibility of the chair or vice chair to ensure that:

- Board members are aware of this policy and it is included the Board Governance Handbook;
- Disputes are handled respectfully, confidentially, and in accordance with natural justice
- That training for board members in dispute resolution if requested, is provided to board members.

## 7 Related Documents

- Board Governance Handbook
- Code of conduct policy.

## Appendix 1: Procedure for Appointing an Independent Assessor in a Board Dispute

The following steps will be taken by the Board Chair or Vice Chair<sup>5</sup> in a board dispute situation where it is deemed that the matter should be assessed by an independent assessor. In the case of appointing an independent assessor, their appointment should be made by a board majority decision whereby, the persons implicated in the dispute also have the right to vote on the appointment of the independent assessor.

### 1. Acknowledge the Dispute

- Document the nature of the dispute and the parties involved.
- Confirm that internal resolution mechanisms (e.g., mediation, board discussion) have been exhausted or are inappropriate.

### 2. Consult the Governing Documents

- Review [Organisation name]'s governance handbook or conflict resolution policy to ensure compliance with any existing procedures or requirements for dispute resolution.

### 3. Notify the Board

- Inform all board members of the intent to appoint an independent assessor.
- Provide a brief rationale to the board members for the decision and outline the proposed process.

### 4. Define the Scope of the Assessment

- Clearly outline:
  - The issues to be examined
  - The expected deliverables (e.g., report, recommendations)
  - The timeline
  - Any confidentiality requirements

### 5. Select an Independent Assessor

- Identify an individuals or a panel with:
  - No prior involvement with the board or dispute
  - Relevant expertise (e.g., governance, legal, mediation)
  - Impartiality and credibility
- Consider using a third-party organisation that specialises in governance or dispute resolution.

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<sup>5</sup> If it is not appropriate for the Board Chair or the Vice Chair to lead the dispute resolution process due to the fact they are one of the parties in the dispute, the board should appoint a board member not directly in the dispute to lead the resolution process or agree to appoint an independent person to oversee the process.

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## 6. Obtain Board Input

- Allow board members to suggest or vet candidates to ensure transparency and buy-in.
- Seek proposals and outline of any costs or fees
- Review proposal(s) and make recommendation on preferred assessor
- Obtain board approval, preferably by consensus, otherwise by majority decision.

## 7. Formal Appointment

- Issue a formal letter of appointment outlining:
  - The scope and objectives
  - Confidentiality expectations
  - Reporting lines
  - Compensation (if applicable)

## 8. Facilitate the Assessment

- Provide assessor with access to relevant documents and individuals.
- Ensure non-interference from board members during the process.

## 9. Receive and Share the Report

- The Chair/Vice Chair receives the final report and shares it with the full board.
- Consider holding a special board meeting to discuss findings and next steps or put item on agenda for the next regular board meeting.
- Agree with the board the course of action to be taken in relation to the assessor's findings.

## 10. Implement Recommendations

- If applicable, develop an action plan to address the findings.
- Monitor implementation and report progress to the board.

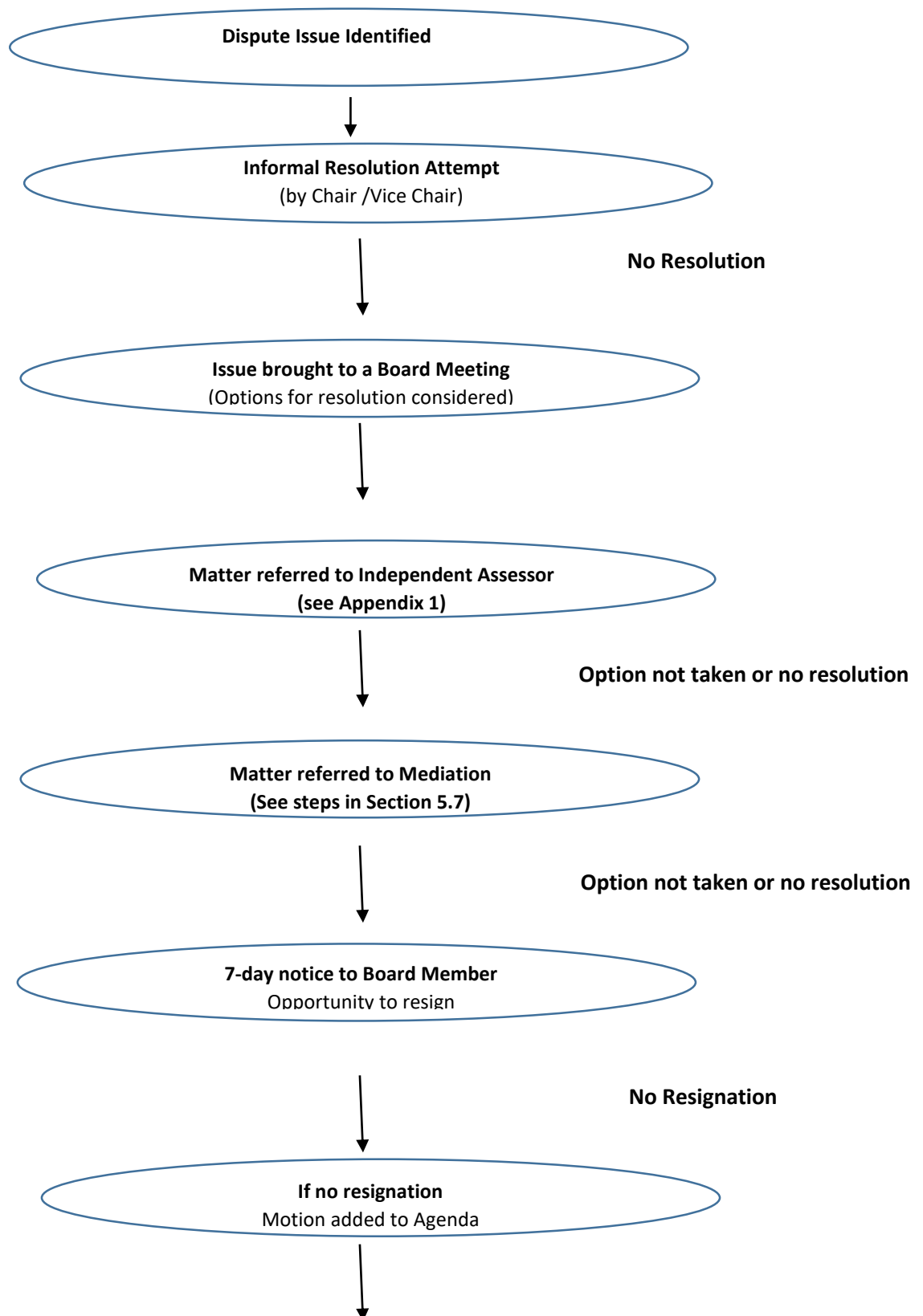
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Approved by the Board on DD/MM/YY

Policy will be reviewed every three years or earlier if required. The date of the next scheduled review of the policy is DD/MM/YY

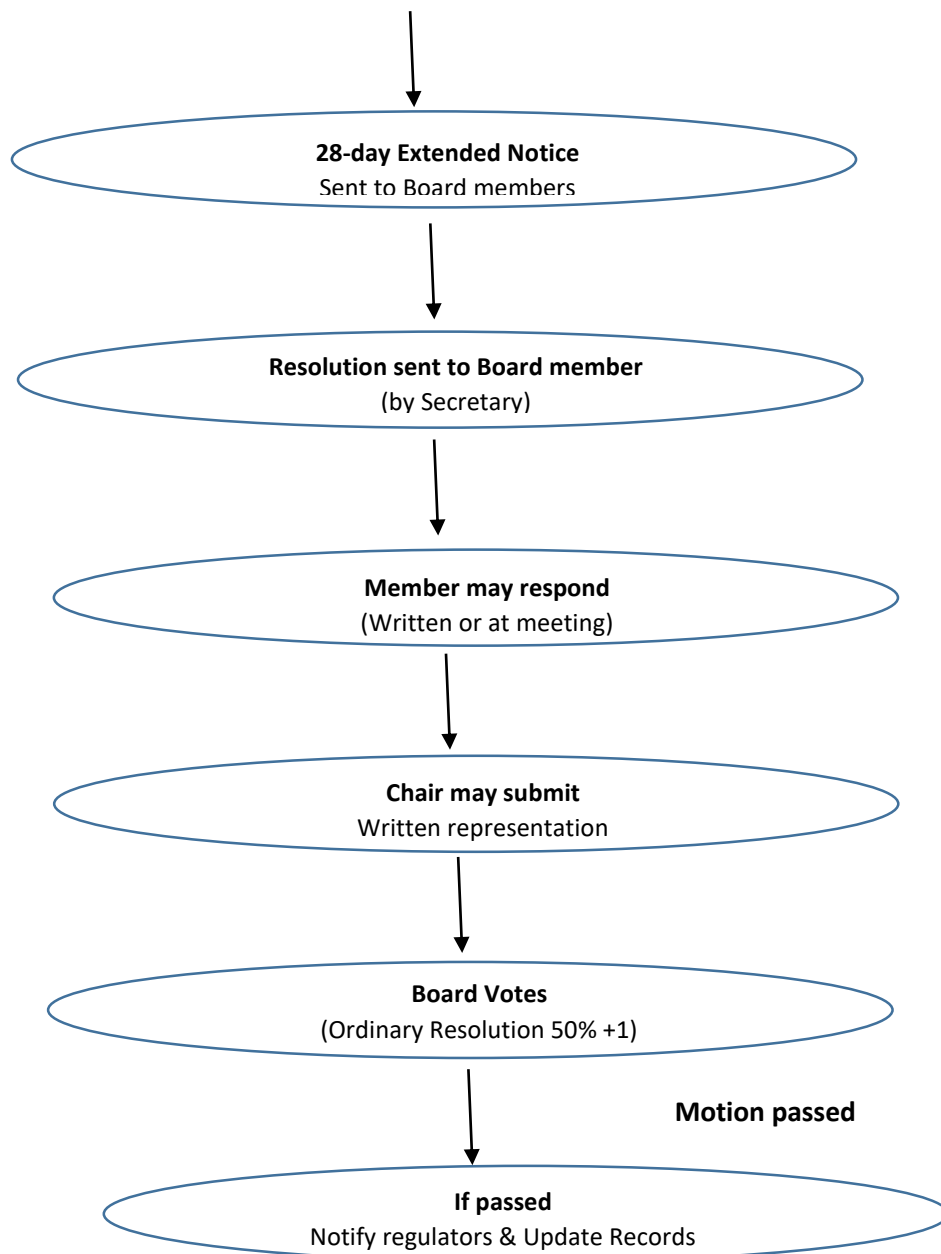
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**Appendix 2: Board Member Dispute Decision flowchart**



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