Complaints Policy regarding Directors and potential Directors

Legislative Framework

The board's actions should be guided by:

- Co-operative and Community Benefit Societies Act 2014
- The Society's registered Rules (which form a contractual relationship between the Society and its members)
- Common law principles of natural justice and procedural fairness
- Data Protection Act 2018 and the UK GDPR
- Defamation Act 2013
- Where applicable, Company Directors Disqualification Act 1986 if a statutory disqualification exists.

Principles the Board Must Follow

A board decision will be most robust if it demonstrates that:

- the process was fair;
- the director knew the allegations;
- the director received all relevant evidence;
- the director had a reasonable opportunity to respond;
- the board considered any response objectively;
- the decision was based on evidence rather than opinion;
- detailed records were kept throughout.

The fact that a a member refuses to engage does not prevent the board from completing its investigation, provided the opportunity to participate was genuinely offered.

Recommended Process

Stage 1 – Investigation

The board should:

- appoint an impartial investigator or investigation panel;
- gather documentary evidence;
- interview relevant witnesses;
- maintain confidentiality;
- produce a written investigation report.

Stage 2 – Notice to the member

The member should receive:

- full details of the allegations;
- copies of the evidence relied upon;
- sufficient time to respond;
- the opportunity to provide written representations;
- the opportunity to attend a hearing if required.

If the member declines to engage, this should be recorded.

Stage 3 – Board Decision

After considering all available evidence, the board should determine:

- whether the allegations are substantiated;
- whether the conduct breached directors' duties or the Society's Code of Conduct;
- whether confidence in the individual's ability to act as a director has been lost;
- whether any sanction is appropriate.

The board's reasons should be clearly recorded in the minutes.

Stage 4 – Outcome Letter

The decision letter should include:

- the findings;
- the reasons for those findings;
- any sanction imposed;
- whether the board considers the individual unsuitable to continue as a director;
- any right of appeal provided under the Society's Rules.

If the member against whom a sanction was imposed and later Stands for Election

Unless the Society's Rules prohibit them from standing, a suspended or former director may still be legally eligible to seek election.

The board should not prevent a valid nomination unless the Rules expressly permit this.

However, members are entitled to receive material information relevant to their vote.

Accordingly, the board may issue a factual statement confirming:

- that an investigation took place;
- that the director was given an opportunity to respond;
- that the board found the allegations proven;
- that the board concluded the individual was unsuitable to serve as a director;
- that the board therefore does not support the individual's election.

Any statement should be factual, proportionate and evidence-based.

Matters to Avoid

The board should avoid:

- emotional or inflammatory language;
- speculation;
- unnecessary publication of confidential information;
- comments that cannot be supported by evidence;
- personal attacks.

Communications should distinguish clearly between factual findings and the board's recommendation.

Record Keeping

The Society should retain:

- investigation report;
- witness statements;
- correspondence;
- evidence bundle;
- meeting papers;
- board minutes;
- decision letter;
- proof that the director was invited to participate.

These records demonstrate procedural fairness if the decision is later challenged.

Practical Governance Position

A board that has:

- followed its Rules;
- completed a thorough investigation;
- allowed the director a fair opportunity to respond;
- considered all representations;
- recorded clear reasons for its decision; and
- communicated only accurate and necessary information to members,

will be in the strongest possible position to defend its actions if challenged.

The board's role is not to prevent members from exercising their democratic right to elect directors, but to ensure that members have accurate, relevant information on which to base an informed decision.