

Member feedback received 13 August 2025

Point 1

As discussed last night, can you give me the relevant rules that preclude elected Judicial and Appeal Boards?

Response:

Relevant Rules and Principles

The Incorporated Societies Act 2022 does not expressly prohibit elected Judicial or Appeal Boards. However, the principle of such committees undermines the purpose of the Act.

Under sections 41–44, society boards (officers) carry statutory duties similar to company directors. They must:

- Act in good faith, for proper purposes, and in the best interests of the society.
- Exercise reasonable care, diligence, and skill.
- Take legal responsibility for the management and oversight of all society activities.

Because these duties cannot be delegated, creating an independent Judicial or Appeal Board places the society at risk of liability without control. The board remains legally responsible for disciplinary outcomes but cannot lawfully “contract out” its responsibility to another elected body.

Why an Elected Judicial Committee Does Not Work Under the New Constitution

- **Liability Without Control:** If a Judicial Committee mishandles a disciplinary case, the board is still liable.

For example:

If a member is expelled without being given a fair hearing, the member could challenge the decision in court. Even though the Judicial Committee made the decision, the board carries the legal responsibility — an unacceptable governance risk.

- **Loss of Oversight:** An independent committee could act outside board supervision, conflicting with the Act’s requirement that the board ensures compliance and fairness.
- **Complexity and Conflict:** Elections, appeals, and disputes between committees create unnecessary cost and confusion.
- **Misalignment with the Act:** The Act modernises societies to mirror company-style governance, requiring one accountable decision-making body: the board.

Member Concerns

We acknowledge that concerns about removing an elected Judicial Committee often arise from members' desire for fairness, independence, and trust. Below are what we see as some common concerns — with responses:

1. Loss of Independence in Discipline

Concern: Without a judicial committee, discipline feels less impartial.

Response: The Act requires all procedures to follow natural justice (ss. 26–28). Independent advisors or panels can be used to support impartiality, but ultimate accountability must remain with the board.

2. Perception of Reduced Fairness

Concern: The board could act as “judge, jury, and executioner.”

Response: Constitutions must include clear disciplinary and appeal processes, guaranteeing members the right to be heard and to appeal. Fairness is safeguarded in law, not just by structure.

3. Fewer Checks and Balances

Concern: Removing a judicial body reduces oversight of the board.

Response: The Act imposes binding officer duties (ss. 52–55). Breaches can result in personal liability — a stronger safeguard than an elected committee.

4. Tradition and Trust

Concern: Judicial committees are part of club culture and member voice.

Response: Members still retain rights to:

- Vote on the constitution.
- Elect board members.
- Call special meetings and propose changes.

Member voice remains central — but accountability is aligned with the Act.

5. Fear of Concentrated Power

Concern: Too much power rests with the board.

Response: Members retain statutory protections:

- Use the dispute resolution process (s. 38).

- Remove board members through general meetings.
- Seek court intervention if duties are breached.

Summary

While the Act does not explicitly exclude elected Judicial or Appeal Boards, it makes them incompatible with modern governance. They create liability without control, undermine board accountability, and add unnecessary complexity.

The new Act instead gives members stronger protections through clear dispute procedures, officer duties backed by NZ law, and member rights to challenge or remove boards. This model is simpler, safer, and fairer for both boards and members.