

Board Censure

The LINX board has a traditionally collaborative nature and the adoption of a Code of Conduct means it is in a better position to prevent significant dissension in the board but it would be prudent to ensure that the board have a formal procedure or process to handle a time when a board member (or members) breaks the Code of Conduct.

Matters of disagreement and difference of opinion can in most cases be resolved through normal board discussion, and in all circumstances we should expect that board members will work together to bring consensus of action, opinion, and decision making. However, it ought to be relatively clear cut when the Code of Conduct has been breached (or the Code of Conduct will need modification to be less ambiguous). As a board we would expect that once the matter is formally brought to the attention of the 'lead board member' (which will normally be the chairman of the board, or in their absence or where it is caused by the chairman, the vice-chairman), that initially they will speak directly and offline to the digressing board member to determine whether the matter can be resolved. It is expected that if the matter can be resolved, that the circumstances and the resolution be documented in a mail to the board list, and by a specific short agenda point in the next board meeting so that the matter is formally recorded.

Where in the opinion of the 'lead board member' the matter cannot be resolved informally, it shall be brought to the attention of the board at the next scheduled meeting within a specific agenda point. If, after discussion and consideration by the board at the meeting and for a period of at least 48 hours subsequently, in the opinion of the 'lead board member' the matter cannot be resolved, the 'lead board member' will offer the option of an independent review to the digressing board member. This independent review will be conducted by a single individual elected by email vote of a majority of the board. The independent review will speak to each side and decide solely on the matter of whether the Code of Conduct has been breached.

If the digressing member declines the option of an independent review, or the independent review decides in favour of the 'lead board member', the 'lead board member' will bring forward a call to the board to censure the digressing board member on a breach of the Code of Conduct. An announcement of the reasons why a censure is requested should be made to the next board meeting. The digressing board member should have been made aware that the issue was to be tabled at least 48 hours before the board meeting. The issue should be raised as the first substantive matter on the agenda, regardless of whether the board member can physically attend as it would be expected that they would make every effort to attend by video or audio conference. Adequate time is to be set aside in the board meeting for the affected board member to lay their case to the rest of the board and for discussion to take place. This discussion is centred around whether the matter is one for censure and specifically not on the original topic.

Once discussion has concluded, it is the decision of the entire board present whether to call for a vote or whether to consider the matter resolved, the decision being formally entered into the minutes of the meeting.

We operate a board of an appointed chairman, up to six non-executives and four executives. It is considered that the executive members of the board cannot be asked to vote on any matter of censure involving the non-executives because they should be required to maintain a status of neutrality for the betterment of the operating company. We do however feel that it is right that they should have a voice in the debate around the point at issue. By excluding the executive directors from voting (though not from the voting itself) potentially, we are left with an even number of voting parties, and the chance of a hung vote. Voting is conducted by open polling. We consider a hung vote to be favourable to the affected board member and therefore no further action of censure would be taken at this time. If the vote is majority in favour of censure then this is recorded in the minutes and a further vote is held to decide if the board wishes to make this censure public to the membership and if that is approved a further vote to decide whether the board wish to proceed to an EGM for the removal of the board member.

(Note here specifically that the 'lead board member' does not have any special second or casting vote in this particular set of circumstances as a deliberate departure from anything that may permit them special voting powers in the memorandum and articles)

If the decision was either not for censure (whether by majority or hung board vote) or was for censure and not for notification to the membership, the minutes record the censure for the attention of the board only. In all other circumstances the censure is recorded in the open minutes.

Where this is the second censure for the digressing board member in a period of 18 months the affected board member is immediately suspended from the board without pay and asked to leave the board meeting.

The proceedings and decision of the board during the dispute should be fully documented (including the casting of votes) by the normal board scribe, though they would be listed in italics in the board minutes (following the convention that italicised material is documented for the board only and not made available for the membership) where this has been outlined in the procedure above .

Where a decision has been made to inform the membership by voting of the board for a first censure, or because of a second censure, the 'lead board member' would be expected to make an email announcement to LINX staff and LINX membership about the censure of the board member, including generic details of the matter concerned. The text of this message should be agreed within the board by majority, authored by the 'lead board member'. Any discussion of the matter on the member mailing list should be directed to the next member meeting. Where required, the 'lead board member' will then call for an EGM (or as guided by corporate procedure) with the usual notice period (usually 21 days) unless a member meeting was already due within 28 days of the board meeting.

The generic information would be repeated at the next LINX member meeting. It is to be expected that there would be questions from the floor to the censured board member at that event and consideration needs to be given about how they should be answered by the 'lead board member'. Information and answers should keep to the breaches of the Code of Conduct rather than the topic which has caused the censure. Since we would consider the LINX meeting to be partially public it may be appropriate to say that they will be held over to the constitutional part of the meeting (when members are asked whether they wish non-members to be present) or at least they should be conducted 'in camera'.

The issuing of a second censure in an 18 month period is the start of a path to automatic removal proceedings so the 'lead board member' will state to the membership present at the meeting that this is a second censure in an 18 month period and bring forward a motion calling for the removal of the board member at the member meeting (subject to suitable notice beforehand to the membership etc). If this vote shows majority agreement (howsoever this be defined in the company papers), then the board member is formally removed from the board, with their stipend paid to the end of the month prior to their censure.

The now vacant board position is not required to be filled until the natural annual anniversary of the term of that board member, unless the board deem otherwise.

If the board member is not removed by the membership, then they return to the board (with pay reinstated) and we will have to consider whether other board members are able to continue forward in light of this.

It is expected that the platform of any board member standing for election should be endorsed with information on whether they have been subject to a censure (i.e. one that has been issued in their current term of office. For clarity there is no disclosure for censures from earlier terms of office). Such candidates should expect questions to be asked on why a censure was issued but save for those questions from members there shall be no other release of information on the nature of the censure in the hustings announcement. Board censures remain against the record of such candidates until their expiry at 18 months even where the membership has voted to retain them on the board.

It should be made clear that any censure or membership resolution to remove a board member is personal to the board individual and not directed to the board individual's member company.

There may still be clauses in the Articles that permit removal of a board member outside of this documented process which deals only with matters concerned with a breach of the Code of Conduct.

A breach of the Code of Conduct is raised

Simplified Flowchart of Censure Process

