

# Prosecutions policy

Version 2.0

VERSION HISTORY			
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## GENERAL PROVISIONS

### 1. Purpose

- 1.1. The Board has a function, set out at section 137(p) of the Plumbers, Gasfitters, and Drainlayers Act 2006, to institute prosecutions against persons for the breach of any Act or regulation relating to sanitary plumbing, gasfitting, or drainlaying. This policy sets out how the Board deals with such prosecutions.

### 2. Scope

- 2.1. This policy applies to breaches of any Act or regulation relating to sanitary plumbing, gasfitting, or drainlaying, including but not limited to offences set out in the Act at sections 76, 77, 94, 99, 113, 121-125, and 167.
- 2.2. This policy does not apply to any breach of section 89 of the Act.

### 3. Legislation and relevant policies

- 3.1. The following legislation is relevant to this policy:
  - a the Plumbers, Gasfitters, and Drainlayers Act 2006, and any relevant regulations made under that Act
  - b the Building Act 2004, and any relevant regulations made under that Act
  - c the Gas Act 1992, and any relevant regulations made under that Act
  - d the Criminal Procedure Act 2011 and any relevant regulations made under that Act.
- 3.2. The following policies are also relevant:
  - a the decision making policy;
  - b the official information and privacy policy; and
  - c the media policy.

### 4. Definitions

- 4.1. In this policy, unless the context otherwise requires:
  - a **Act** means the Plumbers, Gasfitters, and Drainlayers Act 2006
  - b **Board** means the Plumbers, Gasfitters and Drainlayers Board
  - c **Registrar** means the Registrar of the Plumbers, Gasfitters and Drainlayers Board appointed under section 140 of the Act.

## CORE POLICY PROVISIONS

### 5. Guiding principles

- 5.1. The following principles guide the Board in the exercise of its prosecution function:
  - a The Board takes prosecutions in accordance with its statutory function, and at all times acts to promote the Board's purposes to protect public health and safety by ensuring the competency of people engaged in providing sanitary plumbing, gasfitting and drainlaying services, and by regulating people who carry out sanitary plumbing, gasfitting and drainlaying.
  - b The Board takes a prosecution only where it is satisfied that there is sufficient evidence to provide a reasonable prospect of conviction, and prosecution is required in the public interest.

- c Prosecutions are conducted in a manner that is fundamentally lawful, fair, detached, and objective.
- d Prosecutions are dealt with promptly and efficiently and without causing unnecessary delays or expense, and the Board seeks to have cases resolved as early as is appropriate and on such terms as are appropriate.
- e In exercising its prosecution function, the Board is guided, as appropriate and relevant, by the *Crown Law Prosecution Guidelines* (1 July 2013) ("*Prosecution Guidelines*").
- f The Board takes appropriate action in respect of victims' rights.
- g The Board pursues an appeal only where it considers it has a reasonable chance of success and/or the appeal is otherwise in the public interest.
- h All media communications take into account the need to:
  - i avoid prejudice to a fair trial
  - ii support the administration of justice and the integrity of the justice system
  - iii respect the principles of open justice
  - iv recognise the public interest in receiving accurate information about prosecutions
  - v treat victims with courtesy and compassion and respect their dignity and privacy.

## **6. Delegations**

- 6.1. The Registrar is delegated the function, set out in section 137(p), to institute prosecutions against persons for the breach of any Act or regulations.

## **7. Decision to take a prosecution**

- 7.1. When the Board becomes aware of people doing things that may be in breach of an Act or regulation relating to sanitary plumbing, gasfitting, or drainlaying, it carries out an initial assessment of the information and decides whether or not to take any further action.
- 7.2. If it appears there are matters the Board needs to address further, it writes to relevant people setting out the issue and inviting comment.
- a If, on receiving comment or once the comment period has expired but no comment has been received, the Board has no further concerns, it advises relevant people and takes the matter no further.
  - b If, on receiving comment or once the comment period has expired but no comment has been received, the Board has further concerns, it decides what further action to take. One potential further action is to institute a prosecution. The Board does not pursue this avenue in the case of every potential breach and it may take some other action or no action instead, depending on the circumstances.
- 7.3. Where the Board is deciding whether to take a prosecution, it considers the matter at hand and makes a decision to prosecute only where it is satisfied that:
- a there is sufficient evidence to provide a reasonable prospect of conviction, and
  - b prosecution is required in the public interest.
- 7.4. In any case where a decision is being made about whether to prosecute, a lawyer conducts an assessment of evidence to decide the sufficiency of evidence.

- 7.5. If there is sufficient evidence, the Board turns to considering whether public interest requires a prosecution. The Board's public interest considerations include the Board's purposes as set out in section 3 of the Act.
- 7.6. If the Board makes a decision to prosecute, it informs the relevant people, such as alleged offenders, victims and complainants, and institutes the prosecution.
- 7.7. If, in any case, there is insufficient evidence, or it is not in the public interest, the Board decides not to prosecute. A decision not to prosecute should usually be conclusive, however if there are special reasons, the decision may be reconsidered, especially if the matter at question is serious. Special reasons include:
  - a reassessment that shows the original decision was wrong and should not stand
  - b cases stopped so that more evidence can be collected and prepared
  - c cases stopped because of a lack of evidence where more significant evidence is discovered.

## **8. Media**

- 8.1. All media communications come from the Chief Executive/Registrar or the Communications Advisor.
- 8.2. In dealing with media during a prosecution, the Board is guided, as appropriate and relevant, by the *Crown Law Media Protocol for Prosecutors* (1 January 2010).
- 8.3. All media communications are made taking into account:
  - a legal professional privilege
  - b contempt of court law
  - c any suppression orders
  - d statutory provisions relating to disclosure or publication
  - e defamation law
  - f anything else that is relevant.

### *Disclosure of victim's addresses or contact details*

- 8.4. The Board does not disclose victims' addresses or contact details without consent. If a media outlet wishes to contact a victim, the Board talks to the victim about whether or not to give the requested information to the media, and may pass on information to the media or advise the media that the victim will contact them if they so choose.

### *Comment prior to charge*

- 8.5. The Board does not usually make comment prior to a charging document being filed, as it would usually be inappropriate. In cases where any comment is to be made, it:
  - a should be limited to providing an explanation of the general issues raised
  - b should not address the particular case
  - c should be checked with General Counsel first.

### *Comment during proceedings*

- 8.6. Once charges have been made, it is vital the Board avoid doing or saying anything that could cause prejudice to a fair hearing. At this stage, the Board can usually provide information about the charges, the defendant, and the progress of the proceedings, as follows:

- a confirmation of the fact that charges have been laid and the general nature of the charges
  - b once the defendant has appeared in Court, their name, age and general place of residence, e.g. town not street address
  - c date and location of next Court appearance
  - d the type of hearing
  - e names of prosecution and defence representatives who have appeared in Court
  - f information about what has happened procedurally with the case.
- 8.7. The Board does not usually provide the following information:
- a any previous convictions
  - b personal information, address or telephone number of witnesses and victims unless there is express consent
  - c information concerning chambers hearings, if relevant
  - d personal opinions about a case, especially about the outcome of a hearing, guilt or innocence, or sentencing
  - e comment on any judicial decision other than to summarise or explain.
- 8.8. The Board refers requests for exhibits produced during a hearing to the Court for consideration.
- 8.9. The Board does not provide summaries of facts to media before the prosecution presents its submission in open Court. Where there is argument over the accuracy of the summary, the Board does not provide summaries of facts until the argument has been resolved.

*Comment after proceedings*

- 8.10. The Board may:
- a provide reasonable assistance to explain the law or procedure and ensure accurate reporting but may not express any opinion about the outcome of a case
  - b advise whether an appeal is being considered but may not comment on the likelihood of the outcome of the considerations
  - c following a hearing where a sentence is ordered by a Court, issue a press release about the prosecution.

*Responding to inaccurate information*

- 8.11. If the Board becomes aware of inaccurate information being published, it may offer factual explanations of relevant law or procedure to correct errors and inaccurate reporting, if appropriate, subject to the matters already addressed in this policy.

## **ADMINISTRATIVE PROVISIONS**

### **9. Owner**

- 9.1. The owner of this policy is the Registrar.

### **10. Responsibilities**

- 10.1. The Board is responsible and accountable for developing, approving, monitoring, and reviewing the policy.
- 10.2. The Registrar is responsible for administering the policy.