

A GUIDE TO DISCIPLINARY PROCEEDINGS

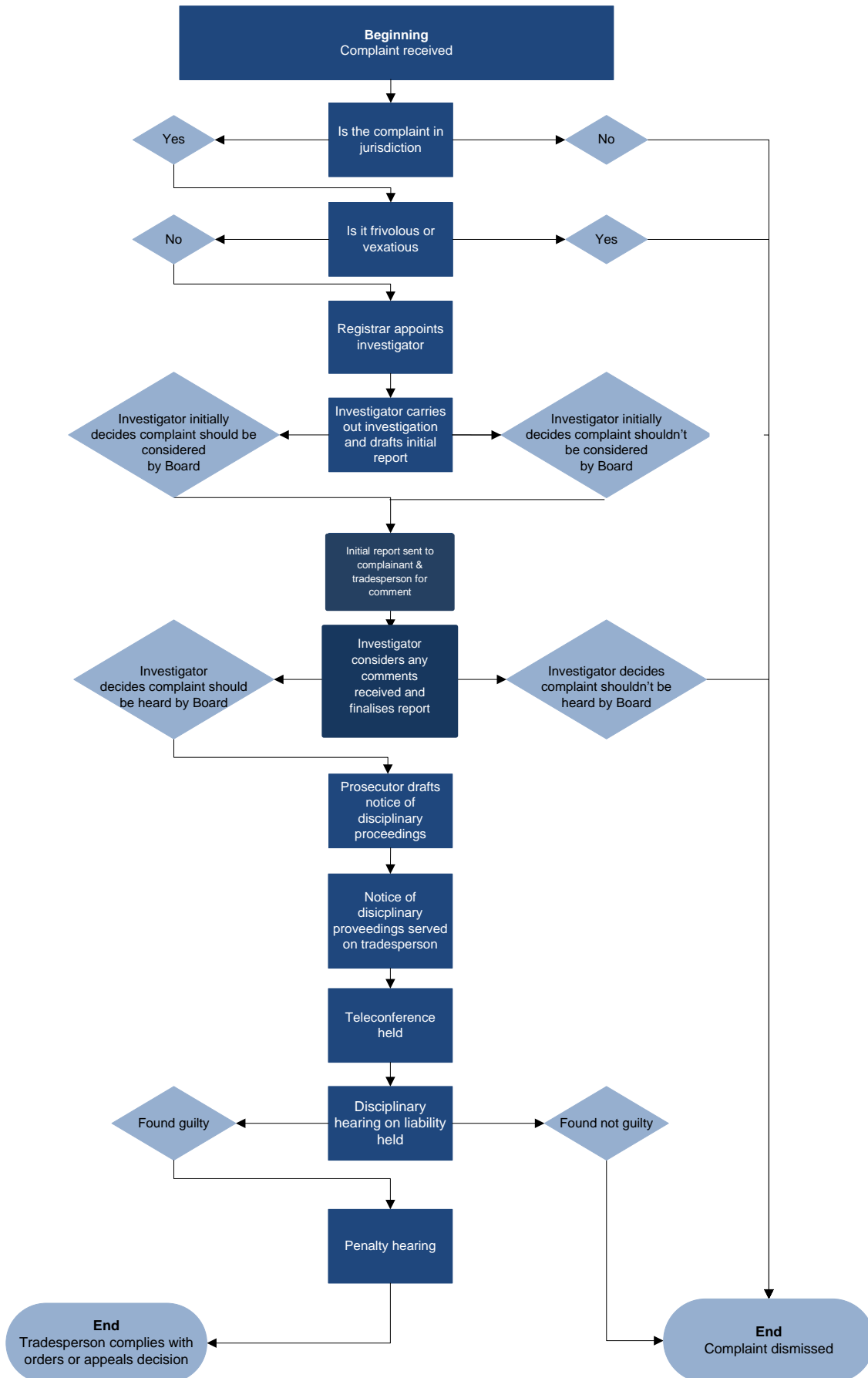
Introduction

The Plumbers, Gasfitters, and Drainlayers Board aims to protect public health and safety by making sure people who do sanitary plumbing, gasfitting, and drainlaying are competent.

Sometimes we receive complaints from the public about the conduct of registered plumbers, gasfitters, and drainlayers. This can lead to a disciplinary hearing.

This is a guide to the disciplinary process. It sets out information about what usually happens after we receive a complaint about a plumber, gasfitter, or drainlayer.

THE COMPLAINTS AND DISCIPLINE PROCESS



The complaints and discipline process explained

The process begins when the Board receives a complaint. A complaint must be in writing, addressed to the Registrar, and not be anonymous. It must also be about someone the Board can hear complaints about. Complaints can be made about plumbers, gasfitters, and drainlayers who:

- are registered or were when they did the relevant work
- hold provisional licences or did when they did the relevant work
- are already subject to a Board order in relation to plumbing, gasfitting, or drainlaying work.

We only consider complaints about conduct that might be a disciplinary offence as set out in section 89 of the Plumbers, Gasfitters, and Drainlayers Act 2006. That conduct mainly relates to poor, unsafe, and improper or incompetent plumbing, gasfitting, or drainlaying.

The Complaints Officers may conduct some initial inquiries to obtain further information. The complaint is then reviewed and the Registrar decides whether the complaint is something the Board might be able to consider, meaning:

- it is a disciplinary offence of the type we cover, and
- it is not frivolous or vexatious.

If the complaint fits these criteria, the Registrar appoints an investigator. If the complaint does not meet the criteria for an investigation, it is dismissed.

The complainant and the tradesperson complained about receive letters informing them of the investigation. The tradesperson complained about will also receive a copy of the complaint and has the opportunity to give their side of what has happened to the investigator.

The investigation

The investigator's job is to decide whether the Board should consider the complaint at a disciplinary hearing.

The investigator investigates what has happened; collecting information by doing things like interviewing all the people involved, gathering relevant documents, and taking photographs. In some situations, they may also visit the work site.

The investigator then writes a preliminary report. The preliminary report is sent to the complainant and the tradesperson being complained about, and both are given 20 working days in which to make a response to it.

After the set time, the investigator considers any responses received from the complainant and the tradesperson complained about. Then the investigator finalises the report and this is sent to the tradesperson being complained about and the complainant. If the investigator recommends that the complaint should be taken further, the next step is to prepare for a

disciplinary hearing. The tradesperson complained about is formally notified of the hearing by the Board when he or she receives a notice of disciplinary proceedings.

If it is not recommended the complaint go any further, then that is the end of the complaints process. However the Registrar may do something else like organise for the tradesperson's competency to be formally reviewed, or send him or her a warning letter.

The investigation process is not short. It can take several months or even longer, depending on the circumstances of the case.

Disciplinary hearings

If the investigator recommends that the Board should consider the complaint, it goes to a disciplinary hearing. The hearing allows the parties, the investigator and the tradesperson, to appear before the Board. Sometimes the tradesperson and the investigator are each represented by lawyers. The hearing panel is made up of five Board members (including tradespeople and laypeople).

Other people who may be present at the hearing include a legal advisor who helps the Board with legal matters and procedure, and the hearings manager (or an assisting administrator) who organises administrative matters. All hearings are recorded.

Notice of disciplinary charges

At the beginning of the disciplinary process, the tradesperson complained about receives a notice of disciplinary charges. It tells them:

1. that the Board thinks there is good reason to hold a hearing
2. what the charges are
3. when the hearing is expected to be held
4. where the hearing will be held
5. that a teleconference will be held.

The tradesperson complained about is also sent a summary of facts which provides more detail about what the investigator says has happened and how it relates to the charges. The tradesperson complained about also receives a notice of pre-hearing teleconference which sets out matters which might be discussed at the teleconference such as when they can provide certain documents for the hearing, how many witnesses they intend to use and how long they think the hearing will be. The tradesperson must also complete and return a checklist prior to the teleconference.

At this stage it is advisable for the tradesperson complained about to consider getting a lawyer to represent them. They should act quickly to prepare properly for the hearing, as hearings are not often delayed.

In disciplinary proceedings the tradesperson complained about is often called "the respondent" or "the registered person".

The teleconference

Before the disciplinary hearing, a teleconference is held to make sure the hearing will run smoothly. The notice of pre-hearing teleconference is used in the discussion. The teleconference is recorded.

Who phones in to the teleconference?

1. the prosecuting lawyer (representing the investigator)
2. the registered person (and/or their lawyer, if they have one)
3. the Board's legal advisor (if necessary)
4. the hearings manager (leading the teleconference on behalf of the Board).

The registered person or their lawyer provide information needed to help the hearing run smoothly and can ask questions about how the hearing will run. The parties can agree on scheduled dates they will provide documents to the Board. The parties might also like to ask about how the Board makes orders, such as name suppression. Other matters covered could be:

- whether an agreed summary of facts can be filed
- whether the respondent is attending the hearing (highly recommended), and whether they will attend in person or by telephone
- who the lawyers are
- whether the respondent is defending the matter or pleading guilty.

The hearings manager cannot make any orders during the teleconference – requests for orders are sent to the Board for a decision. The teleconference is also not a time to make arguments about guilt or otherwise; this will be covered at the hearing.

After the teleconference is finished, the hearings manager writes up a brief record of the teleconference.

Public hearings

Hearings are normally held in public. If the registered person wants a hearing to be held in private or wants to have their name suppressed, they can make an application to the Board. The investigator is informed of any such application and can make a submission about it.

A defended hearing

A defended hearing is when the registered person wants to defend, or argue against, the charges alleged in the notice of disciplinary proceedings. The Board makes sure that the parties have an opportunity to be heard and any relevant statement, document, information or matter can be considered. The Board has to decide if the disciplinary charges have been proven on the balance of probabilities.

The usual process is:

1. The prosecutor makes an opening statement, which is where they talk about why they say the registered person has committed a disciplinary offence. After that statement, they call on their witnesses to give evidence.
2. The registered person (or their lawyer) has a chance to question each of the investigator's witnesses after the prosecutor has questioned them; and the prosecutor can in turn question them again, but only on matters raised by the registered person's lawyer.
3. Then it is the registered person's turn to make an opening statement about why he or she has not committed the disciplinary offence and to call witnesses. The prosecutor can then question the registered person's witnesses; and the registered person can in turn question the witnesses again, but only on matters raised by the prosecutor.
4. The Board may ask witnesses questions.
5. The parties from both sides make their final statements saying why they think the disciplinary offences have been committed, or have not been committed.
6. The Board then considers the matter and makes its decision.

If the registered person is found guilty, the Board makes a decision about whether to impose a penalty on the registered person, and, if so, what that penalty is. The registered person and the prosecutor are able to make penalty submissions before the Board decides what penalty to order, if any.

If an immediate decision is made, the registered person is told verbally but the Board always provides a written decision as well. It can take up to two months for a written decision to become available.

Undefended hearing

If the registered person agrees with the notice of disciplinary proceedings, and an agreed summary of facts has been submitted to the Board, the registered person can choose to have an **undefended hearing**. This means that evidence does not need to be called. The registered person may choose to plead guilty. The Board still needs to be satisfied that the offence is proven.

If the parties agree the Board can convene an undefended hearing where the registered person and his or her lawyer usually join the hearing by telephone. The Board makes a decision on whether offences have been committed based on documents filed by the parties in advance such as the agreed summary of facts, submissions from the parties on what would be an appropriate penalty, and legal advice on procedure from the Board's legal advisor. The Board usually hears and considers penalty on the same day.

Formal proof hearings

If the registered person chooses not to take part in the hearing process, the prosecutor has to call evidence to prove each charge. This is called a **formal proof hearing**. There is no cross-examination of the witnesses as the registered person is not at the hearing. The Board considers the charges and decides whether they are proven.

Penalties and costs

The Board is able to order the following penalties if a guilty verdict is reached:

- a. cancelling, suspending, or restricting the registered person's registration and/or practising licence, or provisional licence
- b. restricting the registered person from doing certain plumbing, gasfitting, or drainlaying work
- c. formally reprimanding the registered person (called a "censure")
- d. requiring the registered person to do some training
- e. fining the registered person up to \$10,000.

The Board cannot order a registered person to fix any substandard work, or pay reparation to anyone. Penalties are described in full in section 106 of the Act.

The Board may also order the registered person to pay an amount towards the costs and expenses of having the hearing. The Board provides the registered person with a schedule of costs before the penalty hearing, which sets out the costs of the investigator's investigation of the complaint, the prosecution, and the Board hearing.

Publication

It is possible for details of the Board's decisions to be published in the *Gazette* or news media, or for the Board's decision to be made available to the public.

In addition, the Board publishes information about the last three years of disciplinary proceedings on its public register.

Appeal

The registered person has the right to appeal a disciplinary decision in the District Court.

How long does it take?

The complaints and discipline process is often lengthy. As a general guide, it takes up to a month from receipt of the complaint to the appointment of an investigator, and another 3 months for the investigator to complete the investigation. If the complaint proceeds to a disciplinary hearing, this is usually held within 12 months of receipt of the complaint. In some cases, more complex complaints may take longer to be processed.

Further information

This guide summarises what happens before, at, and after a disciplinary hearing. If you have any further questions, please talk to your lawyer. You may also discuss the complaints and investigation process with a complaints officer, or the disciplinary hearings with the Manager of Disciplinary Hearings. Call 0800 743 262.