



3 April 2025

Tēnā koe

Official Information Act request

Thank you for your email of 10 March 2025, requesting information about the Ministry's fraud investigation process.

I have considered your request under the Official Information Act 1982 (the Act). Please find my decision on each part of your request set out separately below. I have also provided you with general information on the Ministry's approach to dealing with fraud, for your information.

If an overpayment debt is created for a client due to fraud, the Ministry must then decide whether or not to criminally prosecute.

Could you please advise:

- ***In the last 5 years, how many people has the Ministry prosecuted for fraud? And how many of those resulted in a conviction?***

The Ministry's overall approach is to intervene early when integrity concerns are raised, to make it easy for clients to do the right thing and avoid unnecessary overpayments and debt. The Ministry has a three-tier graduated model to respond to allegations of benefit and social housing fraud:

- early intervention – engaging with clients early to discuss any integrity issues raised, confirm obligations, and adjust entitlements where appropriate.
- facilitation – working more intensively with a client to assess their situation against their entitlements and adjust these entitlements where necessary. This could mean an overpayment for a client in some situations.
- investigation – gathering information and acting on serious client integrity issues, which could result in an overpayment and in the most serious cases prosecution. Prosecutions are considered in line with the Solicitor General's Guidelines, taking into account the full circumstances of each individual case.

The three-tier approach helps the Ministry better manage fraud activity. All allegations of potential fraud or abuse of benefit payments are responded to in a manner proportionate to the nature of the information received and the potential seriousness of offending.

Table 1: Number of benefit fraud prosecutions completed and successful in the previous five financial years.

Financial year	Completed	Successful
F2020	65	64
F2021	60	55
F2022	36	32
F2023	31	29
F2024	36	31
F2025 (YTD)	19	15

Notes for Table 1:

- Prosecutions may not be completed in the same financial year as the investigation on which it was based.
- The above figures do not include prosecutions related to COVID-19 Economic Support integrity activity.
- A prosecution is successful if there is at least one sentence or one of the court's findings is *S106 Discharge without conviction* under the Sentencing Act 2002.
- Since F2020, the Ministry's benefit investigation and prosecution numbers have been affected by the need to support the COVID-19 response, which included wage subsidy investigations.
- YTD is at of 31 December 2024.

COVID-19 Economic Supports Integrity Programme

The Ministry has also carried out extensive work to identify and investigate incorrect payments and possible wage subsidy fraud for the COVID-19 Economic Supports it administered, including the Wage Subsidy Schemes. These measures have included targeted payment reviews, investigations, and follow-up action on complaints.

The Ministry's first avenue for recovery of COVID-19 Economic Supports funds from those who should not have received and/or retained them is to seek voluntary repayment. Where that is unsuccessful, the Ministry has a number of enforcement actions available to it.

These options could include:

- taking civil proceedings against applicants in cases where they are not entitled to the subsidy and have not repaid it;
- commencing bankruptcy proceedings in respect of individuals, or liquidation proceedings in respect of companies;
- the restraint and forfeit of assets acquired or derived under the Criminal Proceeds (Recovery) Act 2009; or,

- taking criminal prosecution action against applicants where the evidential sufficiency and public interest tests for criminal prosecutions as set out in the Solicitor-General's Guidelines have been met.

Table 2: Number of COVID-19 Wage Subsidy prosecutions completed and successful in the previous five financial years.

Financial year	Completed	Successful
F2020	0	0
F2021	0	0
F2022	0	0
F2023	9	8
F2024	16	15
F2025 (YTD)	12	12

Notes for Table 2:

- Prosecutions may not be completed in the same financial year as the investigation on which it was based.
 - The above figures do not include prosecutions related to benefit integrity activity.
 - A prosecution is successful if there is at least one sentence or one of the court's findings is *S106 Discharge without conviction* under the Sentencing Act 2002.
 - YTD is as of 28 February 2025.
- ***What is the process for deciding whether or not to prosecute fraud? Particularly looking for internal policy on the Ministry panel that decides whether or not to criminally prosecute.***
- ***The internal resources and policy that the Ministry relies upon to determine whether or not to prosecute.***

Where an investigation has identified evidence of fraud, the Ministry applies the Solicitor General's Prosecution Guidelines (the Guidelines) to decide whether criminal proceedings should be commenced.

The Guidelines state that the test for prosecution is met if:

- the evidence that can be produced in court provides a reasonable prospect of conviction (the Evidential Test)
- prosecution is required in the public interest (the Public Interest Test).

The Guidelines can be found here: [Prosecution Guidelines » Crown Law](#)

At the same time the Ministry must apply its own Prosecution Policy, which includes the Ministry's statutory obligations and enforcement priorities and a (non-exhaustive) list of some key public interest factors that should be considered.

Attached is a copy of the Ministry's Prosecution Policy – please note the policy is currently under review as the Solicitor General's Prosecution Guidelines were updated in 2024.

At the end of an investigation the Investigator may make an initial prosecution recommendation, but it must be reviewed by a Ministry Lawyer before it can progress. Investigators are required to clearly document how they arrived at a decision, and the Lawyer may reject a prosecution recommendation or refer it back to the Investigator for further work until they are satisfied that the case meets the evidential standard required.

The case is then referred to the Ministry's Prosecution Review Panel, who make a final decision as to whether it is in the public interest to prosecute.

Prosecution is reserved for the most serious cases of fraud; an offence that meets the Evidential Test will not be prosecuted unless the Public Interest Test is also met.

Please find attached the following intranet resources, which help Investigators and other relevant Ministry staff determine whether prosecution action is appropriate.

- *Prosecutions – Doogle (8 August 2024)*
- *MSD External Fraud Prosecution Policy – Doogle (1 August 2023)*
- *MSD Prosecution Review Panel – Doogle (15 November 2024)*
- *Summary of investigation and findings – Doogle (9 August 2024)*
- *Prosecution process for investigators – Doogle (15 November 2024)*
- *COVID-19 Economic Supports enforcement and recovery decision-making framework (July 2022)*
- ***Which Ministry staff are on this panel and what is their position within the Ministry.***

The Ministry Prosecution Review Panel (the panel) is made up of staff from across the Ministry to help ensure that a range of perspective are considered when prosecution decisions are being made.

As of 10 March 2025, the panel had the following membership (although not all members will necessarily attend every panel meeting).

- Josie Smiler (Chair) – General Manager Integrity and Debt
- Michelle Johansen – Deputy Chief Legal Advisor
- Jacqui Kime – National Manager Client Service Integrity
- Brett Engert – Operations Manager Client Service Integrity
- Frances Busby – Area Manager Client Service Integrity
- Jo Meer – Area Manager Client Service Integrity
- Greg McGirr – Senior Advisor Integrity and Debt
- Jeremy Broughton – National Manager Integrity Intervention Centre, National Manager Client Support Debt Management
- Brett Davies – Team Manager Information and Advice
- Steve Bates – Manager Intelligence and Integrity Insights
- Diane Anderson – Manager Client Advocacy and Review
- Uiti Pelenato – Senior Ministerial and Executive Services Advisor
- Gloria Campbell – Regional Commissioner for Social Development
- Shalleen Hern – General Manager Communications and Engagement
- Felicity Drader – General Manager Service Delivery Communications
- Brian Smith – Manager Contact Centre Services
- Vaiula Roberts – Team Manager MSD Legal
- Alison Daly – Team Manager MSD Legal

- Kath Pierson – Regional Integrity Specialist.

For more information, please see the *Ministry of Social Development Prosecution Review Panel: Terms of Reference*, which can be found in the *Prosecution Policy* document (see page 7) already released to you.

I will be publishing this decision letter, with your personal details deleted, on the Ministry's website in due course.

If you wish to discuss this response with us, please feel free to contact OIA_Requests@msd.govt.nz.

If you are not satisfied with my decision on your request, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Ngā mihi nui

p.p. 

Anna Graham
General Manager
Ministerial and Executive Services

Prosecution Policy

Last Review Date:	May 2021
Next Review Date:	May 2023
Approved by:	Organisational Health Committee; May 2021
Owner:	General Manager Integrity and Debt

Purpose

1. The purpose of this policy is to record the Ministry of Social Development's (MSD) commitment to the core prosecution values identified in the Solicitor General's Prosecution Guidelines and to guide decision makers in the application of those guidelines when making prosecution decisions related to external client fraud, after investigation by MSD.

Policy Statement

2. MSD has a responsibility to protect the integrity of the benefit system.
3. Most clients are honest about their situation and want to do the right thing. MSD wants to make it easy for these clients to do this.
4. MSD works closely with clients as part of its day to day service, to help them towards independence. Effective, open communication helps ensure clients receive full and correct entitlement, while also supporting fraud prevention.
5. MSD's investigative resources are focused on responding to deliberate and intentional fraud.
6. Prosecution is reserved for the most serious cases of fraud.

Scope

7. This policy applies to all MSD employees involved in investigating fraud and making decisions on whether to prosecute for fraud. This includes Investigators, managers, lawyers and the Fraud Prosecution Review Panel.

Policy / requirements / principles

MSD's strategic goals and objectives

8. For MSD, prosecution decisions should also take account of MSD's Purpose and Strategic Direction, as well as legislative principles, particularly when considering the public interest in taking a prosecution.

MSD's Purpose and Strategic Direction

Purpose

- "We help New Zealanders to be safe, strong and independent."

Strategic Direction - Te Pae Tawhiti – our Future

- Mana Manaaki
 - A positive experience every time
- Kotahitanga

- Partnering for greater impact
- Kia Takatū tatou
 - Supporting long-term social and economic development

Te Pae Tata – Māori Strategy and Action Plan

Guiding principles:

- **Hoatanga Rangapū**
 - We will act reasonably, honourably and in good faith towards Māori
- **Tiakitanga**
 - We will recognise and provide for Māori perspectives and values and take positive steps to ensure Māori interests are protected
- **Whakaurunga**
 - We will enable and support Māori to actively participate in all matters that increase Māori wellbeing

Social Security Act 2018 Principles¹

Every person performing or exercising a duty, function, or power under this Act must have regard to the following general principles:

- a) work in paid employment offers the best opportunity for people to achieve social and economic well-being;
 - b) the priority for people of working age should be to find and retain work.
 - c) people for whom work may not currently be an appropriate outcome should be assisted to prepare for work in the future and develop employment-focused skills;
 - d) people for whom work is not appropriate should be supported in accordance with this Act.
9. In this context, MSD will consider a person's dishonest actions and balance those with their personal circumstances, and the effect a prosecution might have on their ability to be (and keep others) safe, strong and independent. Prosecution decisions need to be taken in the context of MSD's responsibilities under the Social Security Act 2018 and other legislation, to provide financial and other support to help people to support themselves and their dependents or to alleviate hardship.
 10. Clients will be treated with dignity and professionalism, regardless of any offending that may have been committed and MSD practices, processes and decisions will be objective, fair and consistent.
 11. MSD is committed to using Te Pae Tata and Te Tiriti o Waitangi principles to inform our approach to prosecution and the outcomes MSD wants to achieve, with wider MSD engagement with Māori.

¹ Section 3 - Social Security Act 2018

12. This includes building Te Ao Māori capability across Integrity and Debt to better understand and fulfil MSD's role as Te Tiriti partners. Integrity and Debt staff will develop both personally and professionally and this will reflect growth through how service is delivered and support sustainable outcomes for Māori.

Legislative compliance / Fiscal responsibility

13. There is legislation which requires MSD to manage and minimise the risk of abuse of the support systems it has responsibility for.
14. The Public Finance Act 1989 and the Public Service Act 2020 set out the responsibilities of Ministers and Chief Executives for effective and efficient fiscal management.
15. The Social Security Act 2018, imposes a duty on MSD to inquire into claims for benefit (s298), allows MSD to review entitlement to a benefit (s304) and provides powers to ask questions and to obtain information to carry out these functions (Schedule 6). The Education and Training Act 2020 and the Public and Community Housing Management Act 1992 set out similar provisions regarding MSD's responsibilities under those Acts.
16. The legislation also sets out criminal offences for those who deliberately withhold relevant information or provide false information, and penalties for those offences on conviction.
17. The investigation and prosecution of offences fits within this framework.

Solicitor General's Prosecution Guidelines

18. *The Solicitor General's Prosecution Guidelines* provide guidance to assist MSD (and other prosecuting agencies) to decide on prosecution action, and MSD makes prosecution decisions in compliance with the Guidelines.
19. The Guidelines emphasise several points of a prosecution system operating under the rule of law in a democratic society. The first is that the prosecutor must be free of pressure from sources not properly part of the prosecution decision-making process.
20. The second deals with the prosecution decision itself. Under New Zealand's common law adversarial system, a prosecutor must be satisfied of two things:
- that the Evidential Test is met, i.e. the evidence that can be put to the court provides a reasonable prospect of conviction, and
 - that the Public Interest test is met, i.e. that only those breaches of the criminal law where the public interest warrants a prosecution will proceed to that step.

The Evidential Test

21. The Evidential Test is fundamental. There must never be a prosecution without evidence providing a reasonable prospect of conviction. A lawyer must confirm that the Evidential Test requirements are met before a case can be considered further for prosecution.

The Public Interest Test

22. If the requirements of the Evidential Test are met, then consideration must be given to whether it is in the public interest to prosecute. *"It is not the rule that all offences for which there is sufficient evidence must be prosecuted. Prosecutors must exercise their discretion as to whether a prosecution is required in the public interest."*
23. As well as the expectations set out above, the Solicitor General's Prosecution Guidelines include factors to be taken into account in assessing the Public Interest aspect of the prosecution decision. This includes the statement that ... *"relevant considerations will include an agency's statutory objectives and enforcement priorities"*.

[Read the Solicitor General's Prosecution Guidelines](#)

The types of behaviour that may result in a decision to prosecute

24. Offences against legislation administered by MSD will generally be either where clients omit to tell MSD relevant information or provide false information to mislead MSD. The first and main response is to intervene early to make sure clients understand their obligations and to assist them to give MSD correct information so MSD can get their entitlements right.
25. Where evidence confirms that clients have failed to give the correct information, then an overpayment will be established and recovery of this money will be sought from the client. Where clients have deliberately and intentionally sought to defraud MSD, prosecution action will be considered, in addition to any overpayment established.

MSD's public Interest factors

26. Some key factors for and against prosecution are considered below. These lists are not exhaustive.
27. Factors favouring prosecution are:
- The gravity of offending, including the length of offending and the level of deliberate deception
 - acts of commission rather than omission
 - a history of non-compliance (not restricted to previous convictions)
 - the degree of non-compliance (e.g. the gravity of offending)
 - the amount overpaid (greater loss = more reason to prosecute)
 - organised and systematic attacks on the social assistance systems, (e.g. scams involving collusion between two or more people)
 - using false or altered documents
 - being untruthful to a member of MSD's staff
 - where a person has not taken clear opportunities to advise of a change in circumstances
28. Factors against prosecution are:
- a first offence where a warning may be more appropriate
 - the availability of effective alternatives to prosecution (e.g. where an offender has repaid the debt or made substantial efforts to do so)
 - where the offence is relatively minor, or the overpayment is small

- the impact of prosecution on the ability of the client to obtain / sustain employment that supports their long-term independence.
- where there may have been opportunities for MSD to have intervened, which potentially could have discouraged offending
- where the client (or their family) may be particularly vulnerable e.g. family violence, serious mental health issues.

Voluntary disclosures and their effect on prosecutions

29. MSD wants to encourage voluntary compliance and disclosure, if a client has made a full voluntary disclosure that was not prompted by the commencement of an investigation, this will be an important factor to be weighed in the consideration of whether to prosecute or not.

The choice of charges

30. MSD may prosecute criminal non-compliance in areas covered by legislation within it's administrative responsibility. However, charges under other Acts, e.g. the Crimes Act 1961, may be considered where this is more appropriate. This may occur for example, where the offending involves: the use of one or more false, stolen or borrowed identities; forgery or the use of false documents; collusion with others; or other aggravating factors.
31. The choice of charges depends on public interest factors and the evidence. A serious offence may be more suitably prosecuted under the Crimes Act 1961 rather than the Social Security Act 2018, Public and Community Housing Management Act 1992 or the Education and Training Act 2020.
32. Section 20(2) of the Criminal Procedure Act 2011 (CPA) provides for representative charges. This provision allows multiple offences of the same type to be included in a single charging document if the offending occurs in similar circumstances such that the defendant would be likely to enter the same plea to the charges if they were charged separately, and the number of offences would make it unduly difficult for the court to manage if charged separately but tried together. MSD will consider whether the facts of a case make representative charges appropriate.

Public statements

33. MSD may issue a public statement about prosecutions where there is significant public interest in doing so; including deterring future non-compliance, encouraging and reinforcing compliant behaviours and maintaining society's perception of the integrity of MSD payment systems. In doing so MSD will have regard to the "Media Protocol for Prosecutors" issued by the Solicitor-General.
34. MSD may respond to public/media interest in a case or may proactively comment.

Responsibilities

(Specific and general responsibilities of staff to ensure compliance with the policy)

Person/Party	Responsibilities
DCE, Service Delivery Chief Legal Advisor	<ul style="list-style-type: none"> Maintain oversight of policy
General Manager Integrity and Debt	<ul style="list-style-type: none"> Manage day to day implementation of the prosecution policy Ensure compliance with the policy by the Fraud Prosecution Review Panel Provide periodic reporting to the DCE Service Delivery and the Organisational Health Committee on application of the policy
National Manager Client Service Integrity Team Manager MSD Legal (Litigation)	<ul style="list-style-type: none"> Manage decisions on cases to be referred for consideration by the Fraud Prosecution Review Panel

Definitions

(Explanation of terms used in the policy and in fulfilling responsibilities in the policy)

Word/ phrase	Definition
Investigation	This involves investigation into a client's entitlement where MSD believes they may be committing fraud. The outcome in these cases could be an overpayment, the imposition of a penalty, or in the most severe cases, prosecution.

Related policies

No related policies

Appendix

- Fraud Prosecution Review Panel Terms of Reference

Appendix



MINISTRY OF
SOCIAL DEVELOPMENT
Te Manatū Whakahiato Ora

Ministry of Social Development Prosecution Review Panel: Terms of Reference

Purpose

1. The Ministry of Social Development (the Ministry) Prosecution Review Panel (the Panel) was established on 1 February 2018 to consider submissions where an investigation has identified fraud, to decide if a prosecution is the appropriate response to that fraud.

Responsibilities

2. The Panel has authority to make decisions on behalf of the Ministry in relation to cases of fraud considered for prosecution. Prior to referral to the Panel, cases will have been reviewed by a lawyer to ensure that the case satisfies the required Evidential Test.
3. The Panel will consider the facts and circumstances of each case to determine if it is in the public interest to refer the case for prosecution. This will include taking account of:

Ministry of Social Development Purpose

- “We help New Zealanders to be safe, strong and independent.”

Strategic Direction - Te Pae Tawhiti – our Future

- Mana Manaaki
 - A positive experience every time
- Kotahitanga
 - Partnering for greater impact
- Kia Takatū tatou
 - Supporting long-term social and economic development

Te Pae Tata – Māori Strategy and Action Plan

Guiding principles:

- **Hoatanga Rangapū**
 - We will act reasonably, honourably and in good faith towards Māori
- **Tiakitanga**
 - We will recognise and provide for Māori perspectives and values and take positive steps to ensure Māori interests are protected
- **Whakaurunga**
 - We will enable and support Māori to actively participate in all matters that increase Māori wellbeing

4. The Panel will comply with the Solicitor-General's Prosecution Guidelines and the Ministry's Prosecution Policy when considering cases for prosecution. Guidelines for the Panel including extracts from the S-G Guidelines and the prosecution decision making process are attached as **Appendix 1**

Membership

5. The Panel will be chaired by one of the following persons:

Panel Role	Position
Chair	General Manager Integrity & Debt
Deputy Chair	National Manager Client Service Integrity
Deputy Chair	Area Manager Client Service Integrity
Deputy Chair	Operations Manager Client Service Integrity

6. When not chairing a meeting, Deputies may instead attend as a Panel member.
7. The Panel will be set up to ensure that it, as a whole, has the skills, knowledge and ability to fulfil its purpose and properly discharge its roles and responsibilities. The Manager responsible for referring a case to the Panel, and the Investigator who prepared the referral to the Panel, will be available to the Panel and may attend Panel meetings as requested by the Chair to answer any questions that the Panel may have.
8. A quorum is required in order for the Panel to conduct business.
9. The requirement for a quorum will be met if 5 members attend and must include:

The Chair or a Deputy Chair; and

Integrity & Debt

At least one of the following Panel members from
Integrity & Debt:

Panel Role	Position
Panel Member	Operations Manager Client Service Integrity
Panel Member	Area Manager Client Service Integrity
Panel Member	Team Manager Information and Advice, Integrity & Debt
Panel Member	Senior Advisor (Integrity), Integrity & Debt

Legal

At least one Team Leader or Senior Lawyer from MSD's internal legal team

Senior Ministry Staff

At least one Senior Ministry staff member outside of Integrity and Debt.

The term "Senior Ministry staff member" includes but is not limited to, Principal Advisors, Senior Advisors, Regional Commissioners, and Managers or Specialists with appropriate experience and expertise.

10. Each Panel member will hold office for 12 months with the option for membership to be renewed annually at the beginning of each calendar year. New Panel members may be added to the Panel to replace vacancies or otherwise as required, at the discretion of the General Manager Integrity and Debt.
11. The Panel may have external attendees on an ad hoc basis for specific purposes. These purposes may include, but are not limited to, providing specialist advice, key external government agencies or representatives from other Ministry business units. Attendance must be approved in advance by the meeting Chair.

Chair's responsibilities

12. The Panel Chair will:
 - (a) check with members to ensure:
 - i. that conflicts of interest are managed at every meeting
 - ii. they have completed appropriate training as needed
 - (b) report to Senior Management (Executive level) on Panel decisions as required.

Members' responsibilities

13. All Panel members will complete any training the Chair considers necessary.
14. Members will endeavour to attend all meetings they are invited to attend. If a member is unable to attend for any reason, they should decline an invitation to the meeting as early as possible.
15. All Panel members including the Chair will review relevant referrals in advance of Panel meetings and declare any conflicts of interest in advance of the meeting.
16. Members may also be required to perform tasks or accept responsibilities as required.
17. The Panel will meet weekly (by electronic calendar invitation) in person, by telephone or video conference facilities.
18. The Panel can be convened inter-sessionally in circumstances where an urgent case(s) requires a decision.

Decision making

19. The Panel will aim to make decisions by consensus. Where consensus cannot be reached a majority decision will apply. If the Panel vote is evenly split then the decision will be not to prosecute as a majority could not be reached.

Administration

20. The Panel Administrator will:

- (a) with the Chair, coordinate all the Panel business and administration, including scheduling meetings and forming and distributing agendas
- (b) attend Panel meetings and record and distribute meeting decisions within five business days after the meeting
- (c) circulate prosecution referrals for consideration by the Panel at least two business days before the next scheduled meeting
- (d) provide notice of cancellation at least one day before the scheduled meeting
- (e) maintain a register of current members.

21. Following meetings, the Panel Administrator will:

- (a) notify the referring manager of the Panel decision
- (b) add a note to the client's IMS record advising of the decision and attach the referral with the decision section completed
- (c) update the Prosecution Outcome spread sheet.

Disestablishment

22. The Panel Chair will notify and seek approval from the Deputy Chief Executive Service Delivery to disestablish the Panel.

23. Reasons for disestablishing the Panel may include that the purpose of the Panel has been revised or revoked.

Appendix 1



MINISTRY OF
SOCIAL DEVELOPMENT
Te Manatū Whakahiato Ora

Ministry of Social Development Prosecution Review Panel: Guidelines for Panel decision making

Introduction

1. These guidelines are to assist the Ministry of Social Development (the Ministry) Prosecution Review Panel (the Panel) in arriving at their decision as to whether a case should be forwarded for prosecution. Prosecutions have serious consequences for Ministry clients and the decision to prosecute should be made with full regard to the impact it could have on the client and their whanau. Prosecution is the option of last resort in terms of the way the Ministry responds to instances of fraud.
2. The Ministry determines cases for prosecution based on the Solicitor-General's Prosecution Guidelines. These guidelines have two tests that must be met: that the evidence which can be adduced in Court is sufficient to provide a reasonable prospect of conviction – the Evidential Test; and that a prosecution is required in the public interest – the Public Interest Test. The evidential sufficiency test has already been endorsed by a lawyer before the case is referred to the Panel. The Panel's task is to consider whether or not it is in the public interest to proceed with a prosecution.
3. As part of the Public Interest Test the Solicitor-General's Guidelines include that "*relevant considerations will include an agency's statutory objectives and enforcement priorities*". The Panel should take account of the Ministry's aims and consider how a prosecution might affect a client's ability to be or to become safe, strong and independent, including their potential to move into employment.
4. There is an extensive but non-exhaustive list of factors in the Solicitor-General's Prosecution Guidelines that the Panel should consider when deciding if a prosecution is in the public interest. The factors most relevant to Ministry prosecutions are noted below.
5. To assist the Panel, a template (refer to the *Decision to Prosecute Template* document) will be provided for each case, containing a summary of the known facts under four headings:
 - A profile of the client
 - The circumstances of the offending
 - The possible consequences of undertaking a prosecution
 - Factors in the client's favour

Background to Ministry Prosecutions

6. The Ministry administers the payment of benefits under the Social Security Act 2018 and the New Zealand Superannuation and Retirement Income Act 2001, student allowances under the Education and Training Act 2020, and income-related rents under the Public and Community Housing Management Act 1992.
7. The Ministry employs investigative staff with the role of investigating cases of suspected fraud on the part of people who have obtained financial assistance under schemes administered by the Ministry.
8. The Ministry has an in house Legal Services team who assess cases where prosecution is contemplated, and conduct those cases if prosecution is initiated.

Purpose and Principles

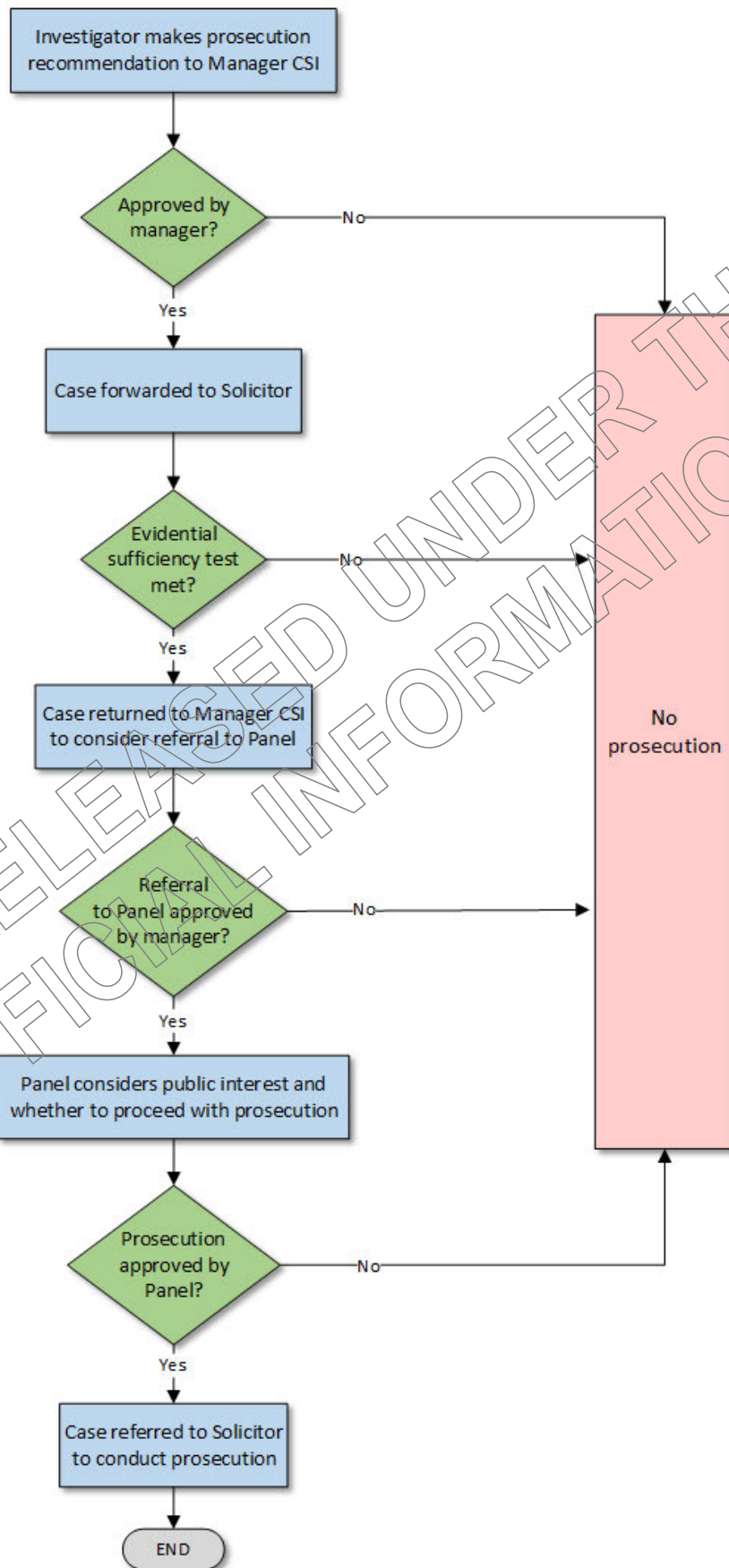
9. The Solicitor-General's Prosecution Guidelines recognise that the principles and practices as to prosecutions in New Zealand are underpinned by core prosecution values that aim to achieve consistency and common standards in decision making and trial practices.
10. Adherence to these values will result in prosecution processes that are open and fair to the defendant, witnesses and the victims of crime, and reflect the proper interests of society.

Prosecution Decision Making Process

11. The decision as to whether a person who has been the subject of an investigation by the Ministry is to be prosecuted will be made in a four-step process:
 - i) The Ministry investigator will make a recommendation to their Client Service Integrity Manager that the matter be referred to Legal Services to consider prosecution.
 - ii) The manager will consider the recommendation and decide whether to refer the matter to Legal Services to consider prosecution.
 - iii) If referred by the manager, Legal Services will review the file in accordance with the Solicitor-General's Prosecution Guidelines and decide whether the evidential sufficiency test is met. If Legal Services determine that the evidential sufficiency test is met, the matter will be referred to the Panel by the Manager Client Service Integrity.
 - iv) The Panel assesses the case and determines if the Public Interest test is met and if the case will be referred back to Legal Services to proceed with prosecution action.

Prosecution Decision Making Flow Chart

Last updated 28 October 2021



The Decision to Prosecute - the Public Interest Test

12. It is not the rule that all criminal offences for which there is sufficient evidence, must be prosecuted. The Panel must exercise discretion as to whether a prosecution is required in the public interest.
13. Broadly, the presumption is that the public interest requires prosecution where there has been a contravention of the criminal law. This presumption provides the starting point for consideration of each individual case. In some instances, the serious nature of the case will make the presumption a very strong one. However, prosecution resources are not limitless. There will be circumstances in which, although the evidence is sufficient to provide a reasonable prospect of conviction, prosecution is not required in the public interest.
14. The Solicitor-General's Prosecution Guidelines provide some generic illustrative lists of factors for and against prosecution that could be considered in determining whether in the particular case it is in the Public interest to proceed with prosecution.
15. The Solicitor-General's Prosecution Guidelines also allow us to consider particular organisational objectives. In this context other matters which could be considered from an MSD perspective could be the impact a prosecution may have on:
 - a client's ability to sustain or move into employment
 - the clients ability to support dependent children
 - the client's longer term ability to become sustainably independent of the benefit system.
16. The following two sections list some public interest considerations for prosecution which may be relevant and require consideration by the Panel when determining where the public interest lies in any particular case. The following list is illustrative only.

Public interest considerations for prosecution

1. The predominant consideration is the seriousness of the offence. The gravity of the maximum sentence and the anticipated penalty is likely to be a strong factor in determining the seriousness of the offence;
2. Where there are grounds for believing that the offence is likely to be continued or repeated, for example, where there is a history of recurring conduct;
3. Where the defendant has relevant previous convictions, diversions or cautions;
4. Where the defendant is alleged to have committed an offence whilst on bail or subject to a sentence, or otherwise subject to a Court order;
5. Where the offence is prevalent;
6. Where the defendant was a ringleader or an organiser of the offence;
7. Where the offence was premeditated;
8. Where the offence was carried out by a group;
9. Where the offence was an incident of organised crime;
10. Where there is any element of corruption.

The following section lists some public interest considerations against prosecution which may be relevant and require consideration by the Panel when determining where the public interest lies in any particular case. The following list is illustrative only.

Public interest considerations against prosecution

1. Where the Court is likely to impose a very small or nominal penalty;
2. Where the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by an error of judgement or a genuine mistake;

3. Where on any test, the offence is not of a serious nature, and is unlikely to be repeated;
4. Where there has been a long passage of time between an offence taking place and the likely date of trial such as to give rise to undue delay or an abuse of process unless:
 - the offence is serious; or
 - delay has been caused in part by the defendant; or
 - the offence has only recently come to light; or
 - the complexity of the offence has resulted in a lengthy investigation.
5. Where a prosecution is likely to have a detrimental effect on the physical or mental health of a victim or witness;
6. Where the defendant is elderly;
7. Where the defendant is a youth;
8. Where the defendant has no previous convictions;
9. Where the defendant was at the time of the offence or trial suffering from significant mental or physical ill-health;
10. Where the Ministry accepts that the defendant has rectified the loss or harm that was caused (although defendants must not be able to avoid prosecution simply because they pay compensation);
11. Where the recovery of the proceeds of crime can more effectively be pursued by civil action;
12. Where information may be made public that could disproportionately harm sources of information, international relations or national security;
13. Where any proper alternatives to prosecution are available (including disciplinary or other proceedings).
14. Cost is also a relevant factor when making an overall assessment of the public interest. In each case the Panel will weigh the relevant public interest factors that are applicable. The Panel will then determine whether or not the public interest requires prosecution.
15. Relevant consideration will include the Ministry's statutory objectives and enforcement priorities. The Ministry's purpose is to help New Zealanders to help themselves to be safe,

strong and independent, including improving employment outcomes for clients. The future employment prospects of a client and their ability to be independent of the benefit system are important factors for the Panel to consider.

16. As part of the Ministry's social investment approach, the Ministry will help more people get into work and live independent, successful lives. Reducing long-term welfare dependence is to enhance people's well-being through connecting more New Zealanders to the workforce. The Panel should consider the prosecution in the context of these organisational objectives.

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Prosecutions

The decision to prosecute is the most serious of the sanction actions. There should be no automatic presumption that any fraud matter will automatically proceed to prosecution. The decision to refer a matter for prosecution depends on sound, objective judgement to ensure that justice is served. All factors of the case must be considered. Follow the procedure below to assess all of the circumstances to enable you to exercise discretion and decide if a case is appropriate to refer to prosecution. You should use all of the information in the guidelines to determine the merits of your case.

If the prosecution is rejected by Legal Services you will need to consider whether a warning is appropriate.

For more information click the link below:

[MSD External Client Fraud Prosecution Policy - Doogue \(ssi.govt.nz\) \[https://doogue.ssi.govt.nz/helping_you/fraud_toolkit/fraud_investigation-support/fraud-prosecution/exercising-discretion-to-refer-for-prosecution.html#Procedure5\]](https://doogue.ssi.govt.nz/helping_you/fraud_toolkit/fraud_investigation-support/fraud-prosecution/exercising-discretion-to-refer-for-prosecution.html#Procedure5)

Content owner: [Client Service Integrity](#) Last updated: 08 August 2024

MSD External Client Fraud Prosecution Policy

These guidelines have been developed to assist fraud investigators to determine where a benefit fraud investigation is considered appropriate to refer to MSD Legal to prosecute. It's important that prosecution decisions are fair and consistent across investigators and Client Service Integrity (CSI) Teams and the Policy is intended to help you achieve that. These guidelines must be read in conjunction with the Policy itself.

On this Page:

Ministry of Social Development Prosecution Policy

Purpose

The purpose of the policy is to record the Ministry of Social Development's commitment to the core prosecution values identified in the Solicitor General's Prosecution Guidelines and to guide decision makers in the application of those guidelines when making prosecution decisions related to external client fraud.

Policy Statement

MSD has a responsibility to protect the integrity of the benefit system.

Most clients are honest about their situation and want to do the right thing. MSD wants to make it easy for these clients to do this.

MSD works closely with clients as part of its day to day service, to help them towards independence. Effective, open communication helps ensure clients receive full and correct entitlement, while also supporting fraud prevention.

MSD's investigative resources are focused on responding to deliberate and intentional fraud.

Prosecution is reserved for the most serious cases of fraud.

Scope

The policy applies to all MSD employees involved in investigating fraud and making decisions on whether to prosecute for fraud. This includes Investigators, managers, lawyers and the Fraud Prosecution Review Panel.

[Prosecution Policy \(Word 219.99KB\)](http://doogie/documents/helping-you/fraud-toolkit/fraud-investigation-support/20210526-prosecution-policy.docx), [\[http://doogie/documents/helping-you/fraud-toolkit/fraud-investigation-support/20210526-prosecution-policy.docx\]](http://doogie/documents/helping-you/fraud-toolkit/fraud-investigation-support/20210526-prosecution-policy.docx)

Exercising discretion to refer for prosecution

When considering a case for prosecution, you need to weigh up all the factors in terms of both evidential sufficiency and public interest.

A case will only be considered appropriate to refer to prosecution if the various factors - unique to that particular case - persuade you on balance to take that action.

You need to comply with Solicitor-General's Prosecution Guidelines and the Ministry's Prosecution Policy when considering cases for prosecution.

Determine firstly the evidential sufficiency test. If that is satisfied – then proceed to consider the public interest test. The weight of factors is not based on the number of factors, rather it is on how various factors relate to a specific unique offender and all the circumstances relating to that offender.

You have a duty to ensure that the exercising of the discretion to decide which cases will or will not be referred for prosecution is fair and consistent. The public and offenders have a right to know under what circumstances they can expect to be prosecuted for fraud.

You need to be mindful that a criminal prosecution may risk injustice. A crime may well have been committed, but in weighing the overall circumstances of the facts and the human being involved, referral to the criminal courts may not be warranted.

You need to be equally mindful that a decision not to prosecute may well invite criticism and condemnation from the public. The exercising of discretion must therefore be open to analysis and satisfy the scrutiny of all stakeholders.

Follow the procedure below to assess all of the circumstances to enable you to exercise discretion and decide if a case is appropriate to refer to prosecution. You should use all of the information in the guidelines to determine the merits of your case.

Commitment to Māori

In the past Māori have been disproportionately impacted by our fraud investigation and prosecution processes. As part of the review of the Codes of Conduct governing our information gathering powers (through the Rua i te Pupuke wānanga facilitated by the Māori, Community & Partnerships Team) we have committed to:

engaging with Māori over the next 12 months on the updated Schedule 6 Codes of Conduct for gathering information, and what our early intervention, facilitation and investigative practices mean for them

building Te Ao capability and confidence across the Integrity and Debt group to better inform our approaches and practices.

Mana Manaaki – A positive experience every time – we want to enable Māori to exercise and understand tino rangatiratanga over their own personal information and support it to be treated and identified as a taonga. We want to give Māori clients the tools to understand and articulate this when engaging in our Client Integrity responses, including investigations which may lead to prosecution.

Kotahitanga – Partnering for greater impact – we have committed to utilising the Te Pae Tata strategic objectives and Te Tiriti o Waitangi principles to form the basis of our engagement with Māori, including the principles of tino rangatiratanga, taonga, Kōtahitanga and Kia Takatū Tātou. We will work to integrate our approach, and the outcomes we want to achieve, with wider MSD engagement with Māori.

Kia Takatū Tātou – Supporting long-term social and economic development – our Client Service Integrity Future State Operating Model represents our shift towards the greater use of non-investigative approaches, which will support better and more sustainable outcomes for Māori.

The decision to prosecute

The decision to refer a matter for prosecution depends on sound, objective judgement to ensure that justice is served. The fullest assessment of all relevant factors must be considered to ensure that cases referred for prosecution are appropriately identified and are able to withstand public scrutiny.

There should be no automatic presumption that any fraud matter will automatically proceed to prosecution. This means that the decision-making process cannot be reduced to a mathematical equation or the simplistic mechanical 'ticking off' of various criteria factors.

In many cases it will be obvious that fraud has been committed - but this is not the be-all and end-all of the matter. In the judicious exercising of discretion you must take into account the:

circumstances of the offender

particular circumstances of the offence

overall interests of the public

This all-encompassing approach makes it more certain that effective justice will be done.

An overarching principle is that the Ministry must endeavour to exercise consistency in its decisions to prosecute offenders. All fraud offenders must be treated equitably and fairly. There cannot be any bias or favour shown, or any irrelevant determinants used in arriving at the decision to refer for prosecution or not.

Legal Services will review the referral and decide on all the factors whether the prosecution should proceed.

[Staff and Client Safety during an investigation \[http://doogie/resources/helping-clients/policies-standards/integrity/nfiu/identifying-and-managing-safety-risks.html\]](http://doogie/resources/helping-clients/policies-standards/integrity/nfiu/identifying-and-managing-safety-risks.html)

[Solicitor-General's Prosecution Guidelines \[https://www.crownlaw.govt.nz/assets/Uploads/Prosecution-Guidelines/ProsecutionGuidelines2013.pdf\]](https://www.crownlaw.govt.nz/assets/Uploads/Prosecution-Guidelines/ProsecutionGuidelines2013.pdf)

Procedure

This procedure will assist you to assess all of the circumstances to enable you to exercise discretion and decide if a case is appropriate or not for referral to prosecution. Use all the information in the guidelines below to determine the merits of the case.

Stage	Steps
Evidential sufficiency	<p>1. The evidence gathered must be sufficient to provide a realistic prospect of gaining a conviction. That prospect must be reasonable in all the circumstances.</p> <p>The evidence establishing actus reus ("guilty act") and mens rea ("guilty mind") must be provable to the standard of beyond reasonable doubt.</p> <p>Witnesses must be unbiased, reliable and credible and able to give accurate evidence. The evidence gained must be admissible in Court. Inculpatory statements made by defendants are admissible.</p> <p>2. Weigh the following Evidential Sufficiency factors</p> <ul style="list-style-type: none">• There is evidence that an offence occurred to the required standard of beyond reasonable doubt.• The evidence which is capable of belief is able to be adduced.• The evidence is admissible.• Evidence obtained by search warrant was lawfully obtained.

Stage	Steps
	<ul style="list-style-type: none"> • Evidence obtained by Schedule 6.2 was lawfully obtained. • Admission/confession statements were lawfully obtained and admissible. • Witnesses: <ul style="list-style-type: none"> ◦ Are reliable and competent. They must not be liable to exaggerating or bias, or in any other respect demonstrate that they are unreliable. ◦ Are consistent in their evidence. ◦ Do not have a motive for telling an untruth or less than the whole truth. ◦ Are not affected by mental illness to the extent that their evidence is unreliable. ◦ Are able to stand up to robust cross-examination. ◦ Generally should not have previous convictions that are likely to weaken their credibility. • Where there might otherwise be doubts concerning a particular piece of evidence, there is independent evidence to support it. • There is clear evidence that the person responsible for the offence can be identified. • There is evidence available to support each element of the particular offence. • Where relevant, for example in relationship cases, the evidence covers the full period of the offending. <p>If you cannot meet these requirements of Evidential Sufficiency, Public Interest becomes redundant. Therefore no decision to prosecute can be made.</p>
Public Interest	<p>3. The public interest test is more complex and subjective. Public interest requires a balancing of factors for and against prosecution action and the particular weight that any single factor might provide in order to determine if prosecution is the most appropriate response in the circumstances of the case and the client.</p> <p>In line with the Prosecution Policy, we must consider a person's dishonest actions and balance those with their personal circumstances, and the effect a prosecution might have on their ability to be (and keep others) safe, strong and independent. Prosecution decisions also need to be taken in the context of the Ministry's responsibilities under legislation, to provide financial and other support to help people to support themselves and their dependents or to alleviate hardship.</p> <p>The Ministry must carefully exercise discretion in deciding whether a prosecution is in the public interest. The Courts may form an unfavourable view of the Ministry if matters being prosecuted are determined by the Judiciary to not be in the public interest. In broad general terms, the more serious the overall circumstances of the offending, the more likely a prosecution should proceed.</p> <p>4. Consider all of following factors</p> <p>Under the headings below we've listed factors that the Ministry needs to take into account when considering a matter for prosecution.</p> <ul style="list-style-type: none"> • You cannot necessarily focus on any one factor to assist you in arriving at a determination. Instead you must look at the sum totality of all the factors as they impact on a particular case. • There will be cases that have significant reasons justifying a decision to prosecute, but may have other compelling reasons why a prosecution is not in the public interest. <p>You must weigh up these factors and determine if the circumstances in totality give reason for us to prosecute.</p> <p>5. The following factors would lend weight to a decision to refer for prosecution</p> <ul style="list-style-type: none"> • On conviction, a significant sentence would be imposed • The evidence shows the offending was premeditated • The evidence shows the offending was sophisticated and not opportunistic • The offender's degree of culpability and responsibility was significant • The duration of the offending was extensive • The offender: <ul style="list-style-type: none"> ◦ used false or stolen identities ◦ has previous convictions for dishonesty offences (if known) ◦ is a recidivist fraudster (not necessarily with previous convictions) ◦ had opportunities to tell the Ministry the truth and cease the offending; but chose instead to lie and continue to defraud ◦ forged or altered documents ◦ was in a position of authority or trust and the offence was an abuse of that position (for example an employee of the Ministry)

Stage	Steps
	<ul style="list-style-type: none"> ◦ committed these offences while on bail or while facing other charges ◦ offended against other Government agencies to defraud the Ministry ◦ aided, abetted or counselled another person to defraud the Ministry • The offending involves multiple benefits • Without a prosecution, the offender is likely to reoffend • The quantum of the overpayment is significant • There is an element of corruption (for example an employee of the Ministry) • The evidence shows the offending was organised by two or more co-offenders • The type of offending albeit for small amounts is widespread (for example tenancy bond fraud) • The scale and scope of the offending could undermine public confidence in the welfare system • The public's confidence in the integrity of the welfare system will be served • Welfare fraud needs to be denounced to deter others • The prevalence of the type of offending requires deterrence <p>6. The following factors may lend weight to a decision NOT to refer for prosecution</p> <ul style="list-style-type: none"> • The Court is likely to impose a very small or nominal penalty. • The Ministry has contributed to the offending, for example by administrative failings. • Where the Ministry is responsible for any undue delay in investigating the matter or is responsible for any abuse of process. • Where the length of the investigation was unreasonable in the circumstances. • The circumstances of the offending are trivial. • The offender: <ul style="list-style-type: none"> ◦ is suffering from a terminal illness where death is imminent ◦ was suffering from serious physical and/or sexual abuse from a partner to the level of battered woman's syndrome (relationship matters) ◦ was coerced and driven to offending by another party ◦ has self-disclosed, co-operated fully or made full restitution ◦ has not previously offended ◦ is younger than 18 years of age or older than 75 years of age. ◦ Effective alternatives to prosecution are available and appropriate • The consequences of a prosecution and conviction would be significantly and disproportionately harsh or oppressive. • Where a prosecution is likely to have a detrimental effect on the physical or mental health of a witness. <p>7. These factors are generally irrelevant considerations, so should not influence your decision:</p> <ul style="list-style-type: none"> • The personal views of the Investigator (or others involved) in deciding to prosecute or not • After being discovered the offender offers to make restitution to avoid prosecution • The offender's race, ethnicity, religion, gender, sexual orientation, political association, occupation • The offender is a public figure
Make your decision	<p>8. Once you have weighed up and considered all the factors above it's time to make a decision about whether to refer for prosecution.</p> <ul style="list-style-type: none"> • Make a note of any significant factors that support or detract from a prosecution. If necessary, discuss the merits of the case with your Manager or MSD Legal Services solicitor. • It's an important principle in deciding cases for prosecution, that there should be independence of the prosecutor from the investigative arm of the Ministry. • After receiving cases from Client Service Integrity, Legal Services will independently review the evidence and make their determination on all the facts. The Ministry's lawyers are also Officers of the Court and must maintain independence in considering cases for prosecution. • Include a summary of the reasons for your decision in IMS – either to refer for prosecution or not. Your decision summary in IMS sets out the thought processes that led to you appropriately exercise the discretion to refer for prosecution or not.

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

MSD Prosecution Review Panel

The MSD Prosecution Review Panel is made up of staff from across different areas of the Ministry.

On this Page:

MSD Prosecution Review Panel

The MSD Prosecution Review Panel makes the final decisions on the appropriate response(s) to case(s) referred. There are two types of cases that the MSD Prosecution Review Panel makes decisions on:

BAU (welfare system)

COVID-19 wage subsidy scheme (WSS)

The Panel is chaired by the General Manager Integrity and Debt. Panel members include broad representation from across MSD as a way to ensure a range of perspectives are taken into account in any decision to prosecute.

This includes representation from:

Integrity and Debt

Legal Services

Regional Services

Contact Centre and Digital Services

Corporate and Service Delivery Communications

Ministerial and Executive Services (MaES)

Workplace Integrity.

Prosecution

We use the Solicitor-General's Prosecution Guidelines as the prime reference point when we are making a decision about prosecution. As a government agency, any criminal prosecution action brought by the Ministry must be in accordance with the 'Test for Prosecution' set out in the [Guidelines \[https://doogie.ssi.govt.nz/helping-you/fraud-toolkit/fraud-investigation-support/fraud-prosecution/exercising-discretion-to-refer-for-prosecution.html\]](https://doogie.ssi.govt.nz/helping-you/fraud-toolkit/fraud-investigation-support/fraud-prosecution/exercising-discretion-to-refer-for-prosecution.html).

There are two factors to that test:

The 'Evidential Test' where the evidence gathered must be sufficient to provide a realistic prospect of gaining a conviction

The 'Public Interest Test' to determine if it is in the public interest to prosecute.

The Evidential Test is completed by a Solicitor and if the Solicitor is satisfied that the requirements of the Evidential Test have been met, then the MSD Prosecution Review Panel will consider the Public Interest Test and make the final decision on whether to prosecute.

While it will always be appropriate to prosecute some people due to the nature of their offending, we are conscious that prosecution can negatively impact clients and families who are already in a vulnerable and difficult situation. It is important that we make considered and sound decisions on which cases should be prosecuted.

The decision to prosecute is often a complex one. We must balance considerations of a client's dishonest actions against their personal circumstances and the effect a prosecution might have on their ability to attain independence and maintaining health and wellbeing.

The MSD Prosecution Review Panel approach to making prosecution decisions strengthens the process by making sure that responsibility for that decision is broadly shared. By having wide representation from around MSD, this approach helps to provide a broader view of "public interest".

BAU (welfare system) cases

The basic process is set out in this [flow chart \[http://doogie/documents/business-groups/helping-clients/service-delivery/fraud-intervention-services/prosecution-decision-flowchart-1-.docx\]](http://doogie/documents/business-groups/helping-clients/service-delivery/fraud-intervention-services/prosecution-decision-flowchart-1-.docx).

1.	Investigators need to complete the 'Referral Template' when they want to refer a case for prosecution. This could be done as part of their sanction decision making.
2.	When an Investigator believes that prosecution is the appropriate sanction to be applied, they must submit the case to the CSI Manager, with the completed Referral Template. The CSI Manager will decide whether this is a case that should be considered for prosecution.

3.	Where the CSI Manager approves prosecution referral, the Investigator will refer the case to the Solicitor in IMS. MSD Legal will then request a Criminal History Report.
4.	The Solicitor may reject the prosecution or refer it back to the Investigator for further work until they are satisfied that the case should proceed.
5.	Once the Solicitor is satisfied that the case meets the Evidential Test, they will note this in IMS and refer the case to the CSI Manager, noting in IMS that it is referred back to CSI.
6.	The Decision Template, the Summary of Facts and the Criminal History Report for the case need to be anonymised, then the CSI Manager will send all three documents to the Panel Administrator. The Panel Administrator will then confirm when the prosecution referral will be considered at the MSD Prosecution Review Panel.
7.	The Area Manager needs to be available for the MSD Prosecution Review Panel meeting when their referred cases are being considered. If the Area Manager is unavailable, a suitable substitute may attend on their behalf. Any changes in attendance are to be communicated to the Panel Administrator. The Area Manager may choose to have the Investigator available also, but the Area Manager and CSI Manager are expected to take responsibility for responding to enquiries from the MSD Prosecution Review Panel.
8.	The Panel Administrator will email the CSI National Manager, Area Manager, the referring CSI Manager, and MSD Legal leaders with the MSD Prosecution Review Panel's decision following on from the meeting. MSD Legal leaders must communicate the outcome of the case to the Solicitor. If prosecution has not been approved, the Solicitor will reject the prosecution in IMS. If the prosecution has been approved, the Solicitor will accept the prosecution and proceed with the case.
9.	The completed Referral Template, whether approved or not, is uploaded to IMS by the Panel Administrator. This is made non-disclosable due to legal privilege.

COVID-19 Wage Subsidy Scheme (WSS) cases

Where an applicant has had an integrity check or investigation completed and a refund has been requested but the applicant has failed to or refused to make a refund, consideration can be given to seek approval for civil proceedings to recover the money. Prosecution action may also be considered where there may be evidence of fraud.

Where an Investigator believes this is that either civil proceedings action, prosecution action or both should be considered, they will discuss this with their CSI Manager. If agreed, the Investigator will complete the first section of the [Referral Template](http://doogole/documents/business-groups/helping-clients/service-delivery/fraud-intervention-services/msd-prosecution-review-panel-covid-19-wss-referral-template.docx) [http://doogole/documents/business-groups/helping-clients/service-delivery/fraud-intervention-services/msd-prosecution-review-panel-covid-19-wss-referral-template.docx]. The CSI Manager then forwards the template to MSD Legal to complete the Evidential Test to determine if there is enough evidence to support civil recovery (on the balance of probabilities) and/or prosecution (beyond a reasonable doubt).

The Referral Template includes instruction on how to complete it. Copies of correspondence can also be included for the Panel to consider.

When MSD Legal have completed the Evidential Test and are satisfied that there is sufficient evidence, they will complete their section of the Referral Template and forward it back to the Investigator. The Investigator will consider and make any amendments before referring to their CSI Manager.

Post-Panel action

The appropriate responses will be one of the following for COVID-19 wage subsidy scheme (WSS) cases:

- (a) Prosecution;
- (b) Recovery of funds through a civil claim;
- (c) Restraint and/or forfeiture pursuant to the Criminal Proceeds (Recovery) Act 2009;
- (d) Adjourn the meeting to enable Client Service Integrity to obtain further information that the Panel required before making a decision; or
- (e) No further action.

When a decision has been made by the MSD Prosecution Review Panel, the Panel Administrator will advise the CSI National Manager, CSI Area Manager the referring CSI Manager, and MSD Legal leaders.

Where a decision has been made to refer for civil recovery proceedings, the Panel Administrator will email the decision to the CSDM WS Repayment team at: COVID19subsidy_overpayment@msd.govt.nz to update EES and then the Panel Administrator will make note of the decision in IMS. MSD Legal will instruct Meredith Connell to prepare the Civil Proceedings Repayment Letter.

Meredith Connell will issue the letter and bring-up will be added for 10 days, to check if payment has been received.

If payment has been made in full, or if a payment by instalment arrangement is in place, CSDM WS Repayment team will note in EES and advise the Panel Administrator who will update the weekly Panel report.

If the applicant has refused to make payment, failed to respond to the letter, not made a suitable arrangement or stopped making payments, CSDM WS Repayment team will notify Legal Services and the Panel Administrator. Legal Services will

instruct Meredith Connell to commence civil recovery proceedings and the Panel Administrator will update the weekly Panel report.

Meredith Connell will commence civil recovery proceedings and/or issue a statutory demand and liaise with CSI if required.

For more information on the COVID-19 Economic Supports Response and Recovery approach, please click on the following link:

[COVID-19 Economic Supports Response and Recovery - Doogie \(ssi.govt.nz\) \[https://doogie.ssi.govt.nz/business-groups/helping-clients/service-delivery/fraud-intervention-services/covid-19-economic-supports-response-and-recovery.html#ReferraltotheCOVID19EconomicSupportsRecoveryandResponsePanelCESRRP4\]](https://doogie.ssi.govt.nz/business-groups/helping-clients/service-delivery/fraud-intervention-services/covid-19-economic-supports-response-and-recovery.html#ReferraltotheCOVID19EconomicSupportsRecoveryandResponsePanelCESRRP4)

Referrals to the MSD Prosecution Review Panel

The purpose of the Referral Template is to fully inform the MSD Prosecution Review Panel. It is not to advocate for a decision to prosecute. All relevant issues should be included, and no relevant information should be withheld whether it supports the case for or against prosecution.

The Referral Template, the Summary of Facts and the Criminal History Report are the only information the MSD Prosecution Review Panel will have to base their decision on. It is important that we provide the MSD Prosecution Review Panel with all the information they need to make sound decisions. From reading these documents they should be able to easily identify all issues related to the case, to the client and others who may be impacted by a prosecution.

For BAU (welfare system) cases the Referral Template, the Summary of Facts and the Criminal History Report are submitted.

For COVID-19 WSS cases the Referral Template is sent, and the Criminal History Report for prosecution cases.

All MSD Prosecution Review Panel Referral Templates must follow the correct flow process, finalised Referral Templates are submitted to the Panel Administrator by the responsible Area Manager only.

Below are the Referral Templates for both BAU (welfare system) and COVID-19 WSS cases:

[MSD Prosecution Review Panel Referral Template - BAU \(welfare system\) \[http://doogie/documents/business-groups/helping-clients/service-delivery/fraud-intervention-services/msd-prosecution-review-panel-bau-welfare-system-referral-template.docx\]](http://doogie/documents/business-groups/helping-clients/service-delivery/fraud-intervention-services/msd-prosecution-review-panel-bau-welfare-system-referral-template.docx)

[MSD Prosecution Review Panel Referral Template - COVID-19 WSS \[http://doogie/documents/business-groups/helping-clients/service-delivery/fraud-intervention-services/msd-prosecution-review-panel-covid-19-wss-referral-template.docx\]](http://doogie/documents/business-groups/helping-clients/service-delivery/fraud-intervention-services/msd-prosecution-review-panel-covid-19-wss-referral-template.docx)

Content owner: [Client Service Integrity](#) Last updated: 15 November 2024

Summary of Investigation and Findings

At the conclusion of any investigation, an investigator must summarise their entire case and evidence about how they reached their decision. The summary must outline the evidence and provide an analysis of how the evidence gathered supports the investigator's decision. It is not sufficient to list evidence without providing an analysis. The analysis must show the investigator's thought process and how the evidence supports or refutes the alleged offending.

Summary of Investigation and Findings Template (Word 53.4KB) [<http://doogle/documents/helping-you/fraud-toolkit/fraud-investigation-support/fraud-investigation/draft-summary-template-may2023.docx>]

Decision

This is where the investigator documents their decision based on the evidence gathered and the analysis of the information received. This will often involve making a decision about the client's past and ongoing benefit entitlement and the period of review. The decision must fully justify how and why the decision was made and reference the relevant policy, case law and legislation.

In all cases resulting in an overpayment, an investigator must address Regulation 208 and where appropriate, Relationship Debt Sharing (RDS).

Sanction

Where fraud has been identified, an investigator must consider and apply both MSD's and Solicitor General's Prosecution Guidelines in determining an appropriate sanction.

In all cases, the type of sanction applied must be based on the individual circumstances of the case and the factors that have influenced the decision. The factors and the decision must be documented fully in IMS for each individual linked to the investigation.

The Solicitor General's Prosecution Guidelines provide guidance to assist MSD (and other prosecuting agencies) to decide whether criminal proceedings should be commenced. The guidelines state that the test for prosecution is met if:

the evidence that can be produced in court provides a reasonable prospect of conviction (The Evidential Test);
prosecution is required in the public interest (The Public Interest Test).

In all cases, where an overpayment has resulted from an investigation, an investigator must address and meet the evidential test before considering the public interest test. Not all offences that meet the evidential test must be prosecuted. Investigators must exercise their discretion as to whether a prosecution is required in the public interest.

The public interest considerations listed in the Solicitor general's Prosecution Guidelines are not comprehensive or exhaustive. They may vary from case to case and include an agency's statutory obligations, purpose, strategic direction, and enforcement priorities. These are listed in the Ministry's prosecution policy.

Where prosecution action is not appropriate, investigators must demonstrate they have considered the full range of sanctions available i.e. warning, penalty or prosecution. It is expected the sanction is completed at the time of the summary but in some cases it may be prudent to get legal advice or create a paper based debt first. In these instances the sanction can be delayed as long as the notes clearly show the chronological order of events.

An investigator must clearly document their thought process as to how they arrived at the final sanction decision including the reason for their decisions to prosecute / not prosecute.

NB. CSI Manager's sign off is required for all cases where the investigation results in an overpayment and the decision made not to prosecute.

For more information on The Evidential Test and the Public Interest Test please click the link below:

[MSD External Client Fraud Prosecution Policy - Doogle \(ssi.govt.nz\)](https://doogle.ssi.govt.nz/helping-you/fraud-toolkit/fraud-investigation-support/fraud-prosecution/exercising-discretion-to-refer-for-prosecution.html#Procedure5) [<https://doogle.ssi.govt.nz/helping-you/fraud-toolkit/fraud-investigation-support/fraud-prosecution/exercising-discretion-to-refer-for-prosecution.html#Procedure5>]

Prosecution process for investigators

Investigators should use this process to manage a prosecution.

[Criminal Procedure Act 2011 Overview and guidelines \[http://doogles.ssi.govt.nz/helping-you/fraud-toolkit/fraud-investigation-support/fraud-investigation/criminal-procedure-act-2011-sep23.pptx\]](http://doogles.ssi.govt.nz/helping-you/fraud-toolkit/fraud-investigation-support/fraud-investigation/criminal-procedure-act-2011-sep23.pptx) (PowerPoint)

	Stage	Steps	Tools & Forms
1.	Decision to prosecute	<p>For help with Sanction refer to:</p> <p>Exercising Discretion to Refer for Prosecution [https://doogles.ssi.govt.nz/helping-you/fraud-toolkit/fraud-investigation-support/fraud-prosecution/exercising-discretion-to-refer-for-prosecution.html#Exercisingdiscretiontoreferforprosecution2]</p> <p>Relationship debt sharing [https://doogles.ssi.govt.nz/helping-you/fraud-toolkit/fraud-investigation-support/fraud-investigation/relationship-debt-sharing.html]</p> <p>Once Summary and Sanction Decision is complete confirming decision to prosecute seek manager approval.</p> <p>Complete Technical Officer Instructions.</p> <p>Complete Sanction screen in IMS.</p> <p>If the decision to prosecute is confirmed the debt must be 100% quality checked by a QAO. This must occur prior to the letter being sent to the client. Any further changes to the debt should result in another QAO quality check.</p>	<p>Staff and client safety during an investigation [https://doogles.ssi.govt.nz/helping-you/fraud-toolkit/fraud-investigation-support/fraud-investigation/identifying-and-managing-safety-risks.html]</p>
2.	Prepare for evidential sufficiency check	<p>Review Prosecution Process Map</p> <p>Transcribe subject audio statements.</p> <p>Request criminal history using letter in CMS.</p> <p>Complete the Prosecution Referral Sheet [http://doogles.ssi.govt.nz/documents/helping-you/fraud-toolkit/fraud-investigation-support/fraud-investigation/prosecution-referral-sheet.docx].</p> <p>Draft the charging documents [https://doogles.ssi.govt.nz/documents/business-groups/helping-clients/client-service-integrity-who-we-are-charging-document-template.docx] using correct template [https://doogles.ssi.govt.nz/business-groups/helping-clients/client-service-integrity-who-we-are/ingredients-of-offences.html].</p> <p>Complete the Summary of Facts.</p> <ul style="list-style-type: none"> • Benefit template [https://doogles.ssi.govt.nz/documents/helping-you/fraud-toolkit/fraud-investigation-support/fraud-investigation/20230912-sof-template.docx] • Benefit and housing template [https://doogles.ssi.govt.nz/documents/helping-you/fraud-toolkit/fraud-investigation-support/fraud-investigation/20230912-sof-benefit-and-housing.docx] • Relationship debt sharing template [https://doogles.ssi.govt.nz/documents/helping-you/fraud-toolkit/fraud-investigation-support/fraud-investigation/20230912-sof-relationship-debt-sharing.docx] • Under-declared income template [https://doogles.ssi.govt.nz/documents/helping-you/fraud-toolkit/fraud-investigation-support/fraud-investigation/20230912-sof-with-under-declared-income-option.docx] • Supplier fraud template [https://doogles.ssi.govt.nz/documents/helping-you/fraud-toolkit/fraud-investigation-support/fraud-investigation/20230912-exemplar-supplier-pawn-sof.docx] <p>Prepare a list of witnesses and exhibits.</p> <p>Create a 'Prosecution Evidence' note in IMS as per Paperless Office Guidelines.</p> <p>The Summary of Facts, Charging Document(s), Witness List and Exhibit List filenames must contain the word DRAFT and be saved into the Prosecution Evidence note.</p> <p>Ensure that the note is indexed in line with the Evidential Sufficiency Checklist [http://doogles.ssi.govt.nz/documents/helping-you/fraud-toolkit/fraud-investigation-support/fraud-investigation/evidential-sufficiency-checklist.pdf].</p> <p>Attach all documentation.</p> <p>Follow the reparation guidelines [https://doogles.ssi.govt.nz/helping-you/fraud-toolkit/fraud-investigation-support/fraud-prosecution/seeking-reparation-orders.html].</p>	<p>Evidential Sufficiency Checklist [http://doogles.ssi.govt.nz/documents/helping-you/fraud-toolkit/fraud-investigation-support/fraud-investigation/evidential-sufficiency-checklist.pdf]</p> <p>Prosecution Process Map [https://doogles.ssi.govt.nz/documents/helping-you/fraud-toolkit/fraud-investigation-support/fraud-investigation/prosecution-process-map-updated.xlsx]</p> <p>Example Exhibit List [http://doogles.ssi.govt.nz/documents/helping-you/fraud-toolkit/fraud-investigation-support/example-exhibit-list.docx]</p> <p>Example Witness List [http://doogles.ssi.govt.nz/documents/helping-you/fraud-toolkit/fraud-investigation-support/example-witness-list.docx]</p>

		Complete the reparation recovery report [https://doogie.ssi.govt.nz/helping-you/fraud-toolkit/fraud-investigation-support/fraud-prosecution/seeking-reparation-orders.html]. (if applicable).	
3.	Refer prosecution to MSD Legal	<p>Discuss with Team Manager MSD Legal to determine who will deal with the referral.</p> <p>Enter charges into IMS Prosecution tab.</p> <p>Enter Prosecution Details into IMS Prosecution tab.</p> <p>Refer the prosecution in IMS to the appropriate solicitor for evidential sufficiency test.</p>	
4.	Review prosecution	<p>If required, meet with MSD lawyer and the CSI Manager to review and discuss the prosecution.</p> <p>Follow up on any further inquiries requested by the MSD lawyer.</p> <p>If Legal approve the evidential sufficiency check, then the finalised Summary of Facts, Charging Document(s), Witness List and Exhibit List can be entered into the IMS Prosecution Tab. The original DRAFT copies remain on the prosecution evidence note.</p>	
5.	MSD Prosecution Review Panel	<p>After an investigation has met the evidential sufficiency test and been approved by MSD Legal, the investigator/MSD Legal complete a Panel Referral template which provides anonymised and full information about the client, their offending, and their personal circumstances. An independent Panel comprised of managers from areas across MSD determine whether prosecution should proceed under the Solicitor-General's Prosecution Guidelines.</p> <p>There are two factors to the test whether prosecution should proceed:</p> <ul style="list-style-type: none"> The 'Evidential Test' where the evidence gathered must be sufficient to provide a realistic prospect of gaining a conviction. The 'Public Interest Test' to determine if it is in the public interest to prosecute. <p>The decision is complex with the balancing of factors to be considered. The decision made is final as to whether criminal charges can be laid and proceedings can commence.</p>	<p>MSD Prosecution Review Panel Referral Template - BAU (welfare system) [http://doogie/documents/business-groups/helping-clients/service-delivery/fraud-intervention-services/msd-prosecution-review-panel-bau-welfare-system-referral-template.docx]</p> <p>MSD Prosecution Review Panel [http://doogie/business-groups/helping-clients/service-delivery/fraud-intervention-services/prosecution-review-panel.html/msd-prosecution-review-panel.html]</p>
6.	If approved by Prosecution Panel file charging Document(s)	<p>Inform the client of prosecution action using appropriate CMS letter.</p> <p>Consider updating risk assessment.</p> <p>File the charging documents at the relevant District Court with a cover letter (if applicable).</p> <p>The 'CSI Joinder of Charges' letter should be used when the investigator is filing category two and three charges in respect of one defendant and is asking the court to have all charges heard together.</p> <p>It should also be used when the investigator wishes to have charges in respect of two or more defendants heard together.</p> <p>MSD Legal will update IMS when the charging documents are received with the date of hearing and the CRI number. MSD Legal will advise. A copy of the charge should also be attached to IMS.</p>	
7.	Serve Summons and Initial Mandatory Disclosure	<p>Prepare the Summons to Defendant and Initial Mandatory Disclosure consisting of:</p> <ul style="list-style-type: none"> Initial Mandatory Disclosure Receipt Summary of Facts Criminal Conviction History, and A copy of each Charging Document <p>Positively identify the client and serve them the Summons and Initial Mandatory Disclosure.</p> <p>Enter the dates the Summons and Initial Mandatory Disclosure is served to the client in the Summons section of the Prosecution Screen in IMS.</p> <p>Complete the Statement of Service. Scan and attach a copy onto the Prosecution screen in IMS and give the Solicitor the original before the first call.</p> <p>Note: If service proves to be problematic a summons can be left at defendant's place of residence with a member of the defendant's family who is over 18 years however NOT the Initial Mandatory Disclosure. This must be provided to the defendant within 15 working</p>	<p>Summons to Defendant [http://doogie/documents/helping-you/fraud-toolkit/fraud-investigation-support/summons-to-defendant.docx]</p> <p>Summons to Defendant with Statement of Service [https://doogie.ssi.govt.nz/documents/helping-you/fraud-toolkit/fraud-investigation-support/summons-to-defendant-with-statement-of-service.docx]</p> <p>Initial Mandatory Disclosure Receipt template [https://doogie.ssi.govt.nz/documents/resources/helping-clients/forms-templates/ssis/integrity-services/nfiu/initial-mandatory-disclosure-receipt.doc]</p> <p>Visiting clients and witnesses as part of an investigation [https://doogie.ssi.govt.nz/helping-you/fraud-toolkit/fraud-investigation-support/fraud-investigation/identifying-and-managing-safety-risks.html]</p>

		days of serving the summons. Alternatively a Process Server can be considered.	
8.	Disclosure	<p>Requested Disclosure</p> <p>Investigators should begin preparing disclosure files as soon as the charges are laid.</p> <p>At any time after criminal proceeding commenced, if requested in writing by the defendant or their Solicitor you must provide disclosure under s12(2) of the Criminal Disclosure Act 2008 [https://www.legislation.govt.nz/act/public/2008/0038/latest/DLM1378863.html]</p> <p>Disclosure upon 'not guilty' plea</p> <p>When a defendant enters a "not guilty" plea you must provide full disclosure as soon as is reasonably practicable under section 13 of the Criminal Disclosure Act 2008 [https://www.legislation.govt.nz/act/public/2008/0038/latest/DLM1378865.html]. No request is required.</p> <p>NOTE: You will need to request and disclose transcripts of any audio statements/recordings that have not yet been transcribed e.g. witness statements, VERINT calls.</p>	<p>Disclosure training [https://dooggle.ssi.govt.nz/documents/helping-you/fraud-toolkit/fraud-investigation-support/fraud-investigation/disclosure-training-presentation.ppt]</p> <p>Disclosure Index [https://dooggle.ssi.govt.nz/documents/helping-you/fraud-toolkit/fraud-investigation-support/fraud-investigation/disclosure-index.xlsx]</p>
9.	Prosecution completed	<p>MSD Legal will update IMS with the prosecution outcome.</p> <p>MSD Legal transfer the investigation back to the investigator and the investigator closes the case in IMS.</p> <p>The following steps must be completed 28 days after sentence (appeal timeframe):</p> <ul style="list-style-type: none"> • Return all original documentation to the source (where applicable) • Advise Police that any search warrant exhibits can be released (where applicable) • Delete unredacted text messages stored in IMS. This includes any copies held in disclosure/exhibit files/S and C Drives (where applicable) • Add a note to IMS documenting why you have deleted the unredacted text messages (where applicable) • Ensure witness expenses have been paid (where applicable) • Notify Client Support Debt Management and send a Reparation Letter to the client if a reparation order was made • Ensure relevant legal files are scanned and attach to IMS once returned. This may be completed by legal. <p>Low Trust Client Management (LTCM) should be considered once sentencing is complete to ensure duration is correct.</p> <p>A client's duration in LTCM, is based on the seriousness of the conviction and/or if a fraudulent overpayment has occurred.</p> <p>The duration groupings are as follows:</p> <ul style="list-style-type: none"> • Received a sentence of Imprisonment/Home Detention for benefit fraud – permanent • Received a conviction for benefit fraud (sentenced to anything other than Imprisonment or Home Detention) – two years from date of entry to the service • Overpayment for benefit fraud – 12 months from date of entry to the service. 	<p>Authority to pay witness expenses [https://dooggle.ssi.govt.nz/documents/helping-you/fraud-toolkit/fraud-investigation-support/fraud-investigation/authority-to-pay-witness-expenses.doc]</p>

COVID-19 Economic Supports enforcement and recovery decision-making framework

1 Initial decision-making

Client Service Integrity (CSI) team

Includes integrity checks/reviews through to investigations. Cases may originate from allegations, integrity checks, data matching and/or other teams.

- Identify repayment as the result of a review or investigation and issue repayment demand letter
- Criminal prosecution, proceeds of crime and civil debt recovery cases are conducted by Investigators and recommendations are made to the COVID-19 Economic Supports Response and Recovery Panel (**step 2**)
- **Requested repayments** are referred to Client Support Debt Management (CSDM). Where debt recovery processes are unsuccessful, these are returned to CSI to proceed with a recommendation for civil debt recovery
- Investigations may result in no recommendation to take enforcement action (see **No enforcement action**)
- Investigations in progress may include referrals to the Police Asset Recovery Unit (see **ARU referrals**)
- Investigation cases may be requested by the Serious Fraud Office (see **SFO referrals**).

2 Recommendation report to Panel

CSI team

All recommendations to take prosecution and/or civil debt recovery and/or proceeds of crime action are made to the COVID-19 Economic Supports Response and Recovery Panel (the Panel). CSI will have regard to Panel guidance when preparing their recommendation. The report is only referred to the Panel if MSD Legal and/or Crown Solicitors agree the evidential sufficiency test is met (see **Legal review**), otherwise CSI will undertake further investigation (and/or the case may result in **no enforcement action**).

3 Panel decision

The COVID-19 Economic Supports Response and Recovery Panel will consider any recommendations made to it in line with the *COVID-19 Economic Supports Response and Recovery Panel: Terms of Reference* and Solicitor-General guidelines.

4 Enforcement

Legal proceedings commence:

- MSD instructs lawyers and lays charges and/or
- MSD instructs lawyers and commences civil proceedings.

Requested repayment process

Managed by the CSDM team. Refer to the *COVID-19 Economic Supports debt recovery approach*. Cases may still be recommended for civil debt recovery or criminal proceedings if repayment is not made (see step 2).

No enforcement action

Any investigation that results in a debt being established, but no recommendation to take enforcement action, requires approval by the responsible CSI Area Manager in conjunction with Legal. If the Area Manager supports the Investigators recommendation to close, they will complete a *Case Closure Referral* form for consideration and approval by MSD Legal. Any unpaid debts may be referred by CSDM to CSI to make a recommendation to take enforcement action.

ARU referrals

Where an investigation that is underway requires a search warrant and/or consideration of the seizure of assets, CSI will engage with the Police Asset Recovery Unit (ARU). Approval to engage with the ARU on a case-by-case basis is given by the responsible CSI Area Manager. ARU will assess the case against their criteria, investigate as necessary and file in Court. Investigations completed by CSI may be referred to the Panel for consideration of prosecution.

SFO referrals

The National Manager CSI will engage with the Serious Fraud Office (SFO) on cases indicating a high-level of complexity and/or offending. Initial discussions are based on high level case criteria. The SFO will issue a section 9 (SFO Act 1990) request for any cases that they determine meet their criteria to investigate.

Legal review

All legal reviews of recommendation reports to the Panel are facilitated by MSD Legal. The legal review will address evidential sufficiency and any legal issues raised by CSI.

Post-panel decision communications

Following agreement by the Panel to take civil recovery action, MSD Legal and/or Crown Solicitors will issue a letter to the recipient providing one last opportunity to make repayment prior to commencing civil proceedings.

Post-Panel communications where the decision to take prosecution action has been made will be considered on a case-by-case basis by the Panel.

Notifying the Companies Office

Where prosecution charges result in a sentence, the Integrity and Debt Information and Advice team will notify the Companies Office of any individual sentenced on relevant charges. The Companies Office is responsible for applying directors' prohibitions under section 382 of the Companies Act 1993.

Guidance and criteria for Panel in Step 3

The panel is tasked with determining what action to take. Set out below are key indicia of when each type of action may be appropriate.

Criminal prosecution (may be together with proceeds of crime recovery or civil recovery)

Prosecution is likely to be appropriate when:

- Evidential sufficiency for criminal charges has been confirmed by legal (if not, consider appropriateness of civil recovery or proceeds of crime recovery)
- Dishonest conduct is present
- No entitlement to funds and no basis to believe they were entitled
- No engagement with MSD/no genuine engagement about whether/how they need to repay
- Public interest criteria met (to be determined by the Panel)
- No minimum value: any COVID-19 Economic Supports funds fraud could be considered for prosecution.

Proceeds of crime recovery process (may be together with criminal prosecution)

Proceeds of crime action is likely to be appropriate when:

- An underlying offence is present and evidential sufficiency on the balance of probabilities has been confirmed by MSD Legal and/or Crown Solicitors
- Charges have been filed or are contemplated (though of course charges are not necessary, but simply an indication that proceeds of crime action may be appropriate)
- Value exceeds minimum threshold of \$30,000 (or a reason exists to go lower).

Civil debt recovery (may be together with criminal prosecution)

Civil recovery action is likely to be appropriate when:

- Evidential sufficiency for civil recovery action on the balance of probabilities has been confirmed by MSD Legal and/or Crown Solicitors
- Initial application appears to have been made in good faith i.e. no overt dishonesty (civil debt recovery can still be appropriate in cases involving dishonesty, but the absence of dishonesty often suggests that civil debt recovery, as opposed to prosecution, will be appropriate)
- No charges will be laid (although civil debt recovery does not preclude criminal prosecution, and proceedings may be concurrent)
- Any dispute or refusal to repay is based on genuinely held beliefs or objective evidence (as above, disputes based on dishonesty do not mean civil action is not appropriate, and it may give rise to concurrent proceedings)
- No minimum value: any COVID-19 Economic Supports funds fraud could be considered for civil recovery action.

Alternatively: In some cases it may be appropriate to pursue all three avenues of enforcement action. Such cases may involve multiple parties with different types of conduct/culpability, a high value of funds obtained or other complexities.

Alternatively: No action necessary.