

PROSECUTION POLICY

Introduction

- [1] The purpose of this policy is to outline the factors that Housing New Zealand Corporation (Housing New Zealand) will consider when taking a decision to commence a prosecution. It does not set out, nor is it relevant to, the decision-making processes for any other decisions taken by the Corporation.
- [2] Decisions are made in accordance with the principles set out in this policy to ensure that a consistent, fair and transparent outcome is reached.
- [3] This policy is intended to adopt the Solicitor-General's Prosecution Guidelines and should be read in conjunction with those Guidelines¹.

The test for prosecution

- [4] Prosecutions should only be initiated where the Test for Prosecution is met.
- [5] The Test for Prosecution is met if:
 - **the evidence which can be adduced in Court is sufficient to provide a reasonable prospect of conviction ('the Evidence Test');** and
 - **prosecution is required in the public interest ('the Public Interest Test').**
- [6] Each aspect of the test will be separately considered and satisfied before a decision to prosecute is made. The Evidence Test must be satisfied before the Public Interest Test is considered. The decision-maker must analyse and evaluate all of the evidence and information in a thorough and critical manner.

The Evidence Test

- [7] The first step is to consider whether the evidence provides a reasonable prospect of conviction.
- [8] A reasonable prospect of conviction exists if there is credible evidence which Housing New Zealand can adduce before a Court and upon which an impartial Judge or Jury, properly directed in accordance with the law, could reasonably be expected to be satisfied beyond reasonable doubt that the person prosecuted has committed a criminal offence.
- [9] The table below examines key elements that need to be examined, although these are not exhaustive.

¹ http://www.crownlaw.govt.nz/artman/docs/cat_index_13.asp



Description	Explanation
Is there an identifiable individual?	<p>There will often be cases where it is clear that an offence has been committed but there is difficulty identifying who has committed it. A prosecution can only take place where the evidence sufficiently identifies that a particular person is responsible. Where no such person can be identified, and the case cannot be presented as joint liability there can be no prosecution.</p>
Is there credible evidence?	<p>Credible means the evidence is capable of belief. The credibility of evidence impacts on the prospect of a conviction. If the evidence can reasonably be relied on then the evidence must be taken into account.</p> <p>Does the witness have motivation to lie? Is the witness plainly at risk of being so discredited that no Court could safely rely on the proposed evidence?</p> <p>Only evidence which is available and legally admissible can be taken into account when reaching a decision to prosecute. Consideration should be given to whether it is foreseeable that certain evidence could be excluded, including the general inadmissibility of hearsay evidence.</p> <p>To establish that evidence is capable of belief, it may be necessary to question a witness before coming to a decision as to whether the evidence of that witness could be accepted as credible. It may be that a witness is plainly at risk of being so discredited that no court could safely rely on his/her evidence. In such a case it may be concluded that there is, having regard to all the evidence, no reasonable prospect of obtaining a conviction. If, however, it is judged that a Court in all the circumstance of the case could reasonably rely on the evidence of a witness, notwithstanding any particular difficulties, then such evidence is credible and must be taken into account.</p> <p>It may be necessary to make an assessment of the quality of the evidence. Where there are substantial concerns as to the creditability of essential evidence, criminal proceedings may not be appropriate as the evidential test may not be capable of being met.</p> <p>Where there are credibility issues, it is appropriate to look closely at the evidence when deciding if there is a reasonable prospect of conviction.</p>
Is there evidence which the prosecution can adduce?	<p>Only evidence which is or reliably will be available and legally admissible can be taken into account in reaching a decision to prosecute.</p> <p>Consideration should be given to whether it is likely that evidence will be admitted or excluded by the Court. For example, is it foreseeable that the evidence will be excluded because of the way it was obtained? If so, consideration should be given to whether there is sufficient other evidence for a reasonable prospect of conviction.</p>



Reasonable prospect of conviction	What is required is that there is an objectively reasonable prospect of a conviction on the evidence. The cogency and credibility of the evidence is not a mathematical science, but a matter of judgement. The possible defences should be anticipated and taken into account. The evidence available must be capable of reaching the high standard of beyond reasonable doubt.
Beyond reasonable doubt	The evidence available must be capable of reaching the high standard of proof required by the criminal law.
Evidence establishes the commission of a crime	This requires that careful analysis is made of the law in order to identify what offence or offences may have been committed and to consider the evidence against each of the ingredients which establish the particular offence.

Public Interest Test

- [10] Once satisfied that there is sufficient evidence to provide a reasonable prospect of conviction, the next consideration is whether the public interest requires a prosecution. It is not the rule that all offences for which there are sufficient evidence must be prosecuted. Housing New Zealand must exercise its discretion as to whether a prosecution is required in the public interest.
- [11] Broadly, the presumption is that the public interest requires a prosecution where there has been a contravention of the criminal law. This presumption provides a starting point for consideration in each individual case. In some instances the serious nature of the case will make the presumption a very strong one. However, there will be circumstances in which, although the evidence is sufficient, the offence is not serious and prosecution is not required in the public interest.
- [12] The table below lists some public interest considerations which may be relevant and require consideration on a case by case basis. The considerations are not exhaustive or comprehensive and are to be read in conjunction with the factors set out in the Solicitor-General's Guidelines. The public interest considerations which may properly be taken into account will vary from case to case.

Public interest factors in favour of prosecution

Description	Explanation
Seriousness of the crime	The predominant consideration is the seriousness of the offence. Where a conviction is likely to result in a significant penalty then there is a strong public interest for a prosecution. Community based and custodial sentences are considered significant penalties. These are likely where the loss is greater than \$5000.
Degree of premeditation	The degree of planning and premeditation is relevant to the level of culpability.



Conspiring	If the offence was carried out by a group or pursuant to a plan in pursuit of organised crime, or one involving violence, this will support the public interest for prosecution.
Prevalence of the crime (by type or location)	If crimes are prevalent (by type or location) and there is a need to deter the particular type of offending in the community, this will favour a prosecution.
Risk of repeat behaviour	Where the defendant has previous convictions, diversions or cautions which are relevant or 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

Public interests against prosecution

Description	Explanation
Extent of loss caused	Where the loss or harm can be described as minor (for example, a loss of less than \$1000) and was the result of a single incident, particularly if it was caused by an error of judgement or a genuine mistake;
Impact on customer's health (if known)	In most cases, a prosecution will have some impact (regardless of existing health). The assessment is focused on whether there would be serious detrimental effects on a customer's health situation.
Other customer impacts	Some factors that may need to be taken into account are: <ul style="list-style-type: none"> • Where the customer is elderly • Where the customer is a youth • Serious or significant impact on family • Other actions taken by the Corporation (e.g. tenancy termination)
Customer rectified loss	Reparation can be an indicator of remorse and the customer accepting responsibility. Consideration needs to be given towards whether prosecution is necessary in cases where there is genuine remorse evidenced by actions to remedy the wrong.

No prosecution

[13] If the decision is that there is insufficient evidence or that it is not in the public interest to prosecute, a decision of 'no prosecution' will be taken.

[14] A decision of 'no prosecution' does not preclude any further consideration of a case if new and additional evidence becomes available, or a review of the original decision is required. It is anticipated that such a step will be rare.



The decision-maker

- [15] After reviewing the file and investigator's report, the Team Leader Investigations will prepare a memorandum to the Manager-Investigations outlining the recommended actions.
- [16] The Manager - Investigations will take the decision to prosecute.
- [17] Decisions are made in accordance with the principles set out in this policy and the Solicitor-General's Guidelines to ensure that a consistent, fair and transparent outcome is reached. In particular, it is the responsibility of the Manager-Investigations to ensure that any decision to prosecute is free from undue or improper pressure from any source, political or otherwise.
- [18] The Manager-Investigations is also responsible for meeting the obligations of the Criminal Disclosure Act 2008.

Appeals

- [19] No appeal may be brought by Housing New Zealand unless the Manager - Investigations, General Manager - Tenancy Services and General Counsel of Housing New Zealand have been consulted and, to the extent required by law, the Solicitor-General has given approval in accordance with the Criminal Procedure Act 2011.

General Manager – Tenancy Services

Date:

General Counsel

Date:

