

25 November 2014

Our ref: AS/L14355
*Please quote above reference on all
future correspondence*

Paul Gee

By email: gasnsolarservices@gmail.com

Dear Mr Gee

Email dated 10 November 2014

I refer to your email of 10 November 2014 in which you ask when you are going to receive a response to your "OIA request". This is a reference to an earlier email of yours of 2 October 2014 in which you refer to section 91 of the Plumbers, Gasfitters and Drainlayers Act 2006 (*Registrar must appoint investigator*), and ask why the Act does not apply to Mr Darnley in relation to your emails about a property you consider carries a risk of Legionnaires disease from plumbing work he undertook there.

I would like to begin by pointing out that your email of 2 October 2014 is not a request for official information. Section 12 of the Official Information Act 1982 (OIA) states that a request under that Act is a request "*...to make available ... any specified official information*". Official information is defined in section 2 of the OIA (subject to a number of exceptions), as "*...any information held by ... an organisation*". Your request of 2 October 2014 is a request for an explanation about a matter and not a request to make information available to you. As such, the OIA does not apply.

Section 91 of the Plumbers, Gasfitters and Drainlayers Act 2006 is in Part 3 of the Act which deals with discipline and offences. Under section 90 of the Act, any person may complain to the Board about the conduct of a registered person or provisional licence holder. Under section 90(3), upon receipt of a complaint I must inform the Board and the person complained against of the general nature of the complaint. In practice, this is done by sending a copy of the complaint to the person complained against and inviting them to respond to the complaint.

When I receive a response from a person who is the subject of a complaint, I consider whether the complaint is frivolous or vexatious. If I determine the complaint is frivolous or vexatious, the matter is not progressed and the file is closed. If the complaint is not frivolous or vexatious, section 91 applies and I must appoint an investigator to investigate the complaint. I have **enclosed** a copy of the Board's guide to the disciplinary process explaining it in more detail for your information.

I have reviewed the correspondence you have sent to the Board since May 2010 concerning your belief that there is a risk of Legionnaires disease at a property at 8 Matuku Place, Atawhai arising from plumbing work done there by Mr Darnley. I can advise that, for a number of reasons, the information you have provided to date would

not be sufficient to constitute a complaint in terms of section 90 of the Act that the Board could act on.

First, the information you have provided about 8 Matuku Place all appears to be second hand. For example, you say in an email of 14 March 2011

"It was at this job, when the apprentice dropped off the crimping tool for the gas line's Pexal pipework, John Darnley was already commissioning the system, i.e. firing up the califont, without crimping the pipe!! Apparently the apprentice gave him the tool and ran, because of the smell of raw gas."

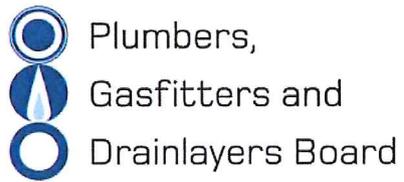
You also advise in your emails that the installation was undertaken and/or completed after you left Mr Darnley's employment in December 2003 (your emails vary on this point). The schematic you have provided with some of your correspondence is not a schematic of the installation at 8 Matuku Place (as you advise Mr Darnley did not use one), but is your recollection of how you think the system was installed. Finally, you state that the owner of the property concerned, a Mr Kraak, has not responded to the concerns you have raised with him and is not interested in pursuing this matter.

In summary, there is simply no direct, first hand information about the system that was installed at 8 Matuku Place, and whether it actually is or was substandard in any way. In addition, you state the owner of the property does not want to pursue this matter and, at an entirely practical level, this would make it extremely difficult if not impossible for the Board to look into this matter. Taking all of these things into account, I have to advise that the Board will not be taking any action in relation to this matter under Part 3 of the Act.

Yours sincerely

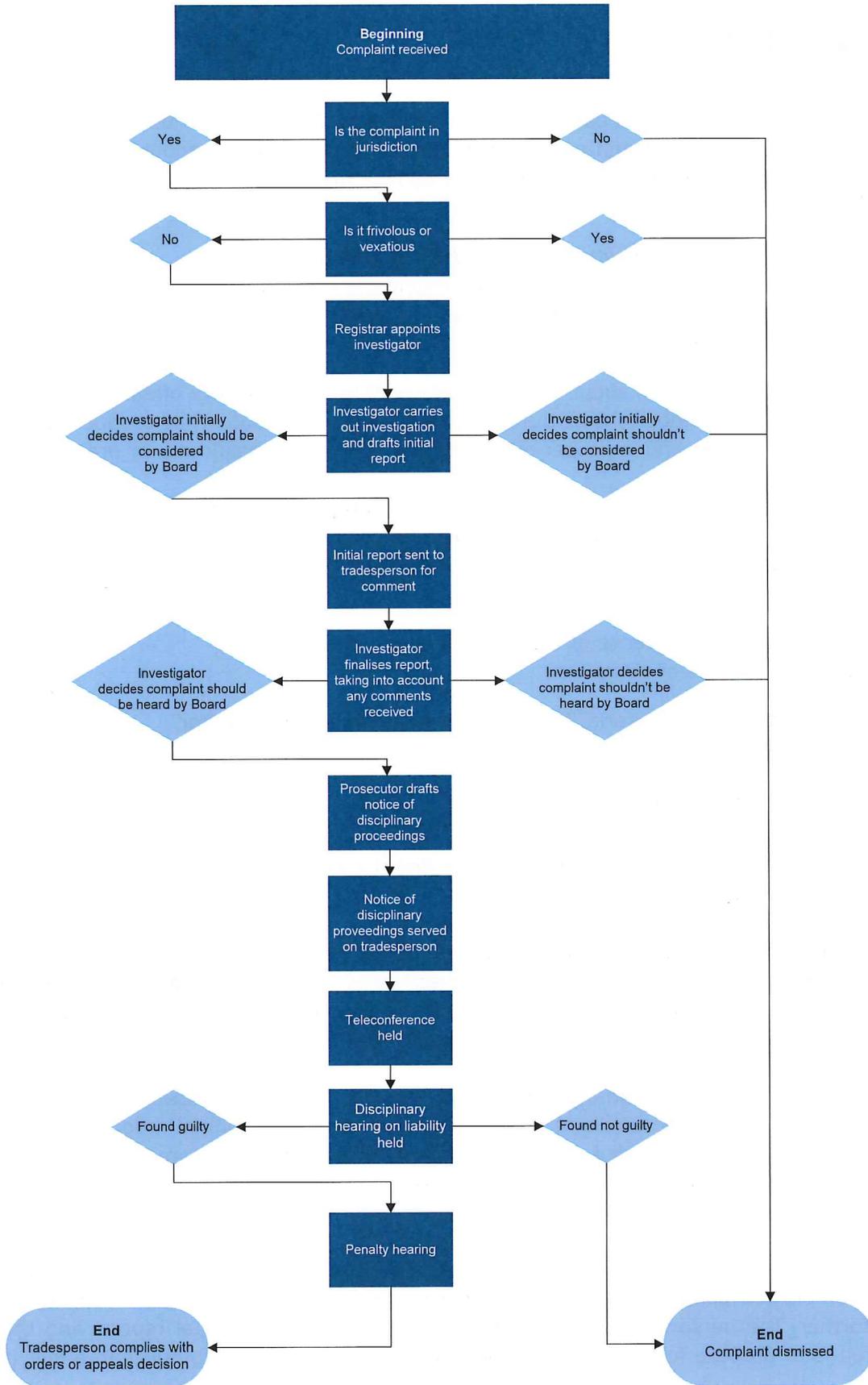
A handwritten signature in black ink, appearing to be 'Max Pedersen', with a long, sweeping underline that extends to the right.

Max Pedersen
Chief Executive / Registrar



A GUIDE TO DISCIPLINARY PROCEEDINGS

THE COMPLAINTS AND DISCIPLINE PROCESS



formally notified of the hearing by the Board when he or she receives a notice of disciplinary proceedings.

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

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

Disciplinary hearings

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

Support staff also attend the hearing and may include a legal advisor who helps the Board with legal matters and procedure, an executive officer who organises administrative matters, and a stenographer who records the hearing.

Notice of disciplinary proceedings

At the beginning of the disciplinary process, the person complained about (now called the respondent) receives a notice of disciplinary proceedings. It tells the respondent:

1. that the Board thinks there is good reason to hold a hearing
2. when the hearing will be held
3. where the hearing will be held
4. what disciplinary offences the investigator thinks the person has committed
5. when a teleconference will be held.

The respondent and the investigator are also sent a checklist to fill out information on matters that will be discussed at the teleconference such as when they can provide certain documents for the hearing, how many witnesses they intend to use and how long they think the hearing will be. This checklist is returned to the executive officer before the teleconference is held.

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

The teleconference

Before the disciplinary hearing, a teleconference is held to make sure the hearing will run smoothly. The checklists the respondent and investigator have completed are used in the discussion.

2. The respondent's lawyer has a chance to question each of the investigator's witnesses after the prosecutor has questioned them; and the prosecuting lawyer can in turn question them again, but only on matters raised by the respondent's lawyer.
3. Then it is the respondent's lawyer's turn to make an opening statement about why the respondent has not committed the disciplinary offence and call witnesses. The investigator's lawyer can then question the respondent's witnesses; and the respondent's lawyer can in turn question the witnesses again, but only on matters raised by the prosecuting lawyer.
4. The Board may ask witnesses questions from time to time. If panel members ask any questions, the parties may ask follow up questions, if necessary.
5. The lawyers from both sides make their final statements saying why they think the disciplinary offences have been committed, or have not been committed.
6. The Board then considers the matter and makes their decision.

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

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

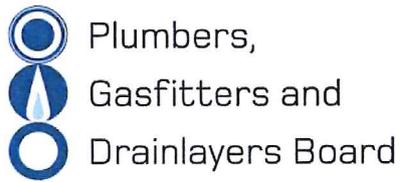
Undefended hearing

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

If the parties agree the Board can convene an undefended hearing where the parties are not present. This is called a hearing "on the papers" and the Board makes a decision on whether offences have been committed based on documents filed by the parties in advance such as the agreed summary of facts, submissions from the parties on what would be an appropriate penalty, and legal advice on procedure from the Board's legal advisor. In these cases, the Board usually hears and considers penalty on the same day.

Formal proof hearings

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



A GUIDE TO DISCIPLINARY PROCEEDINGS

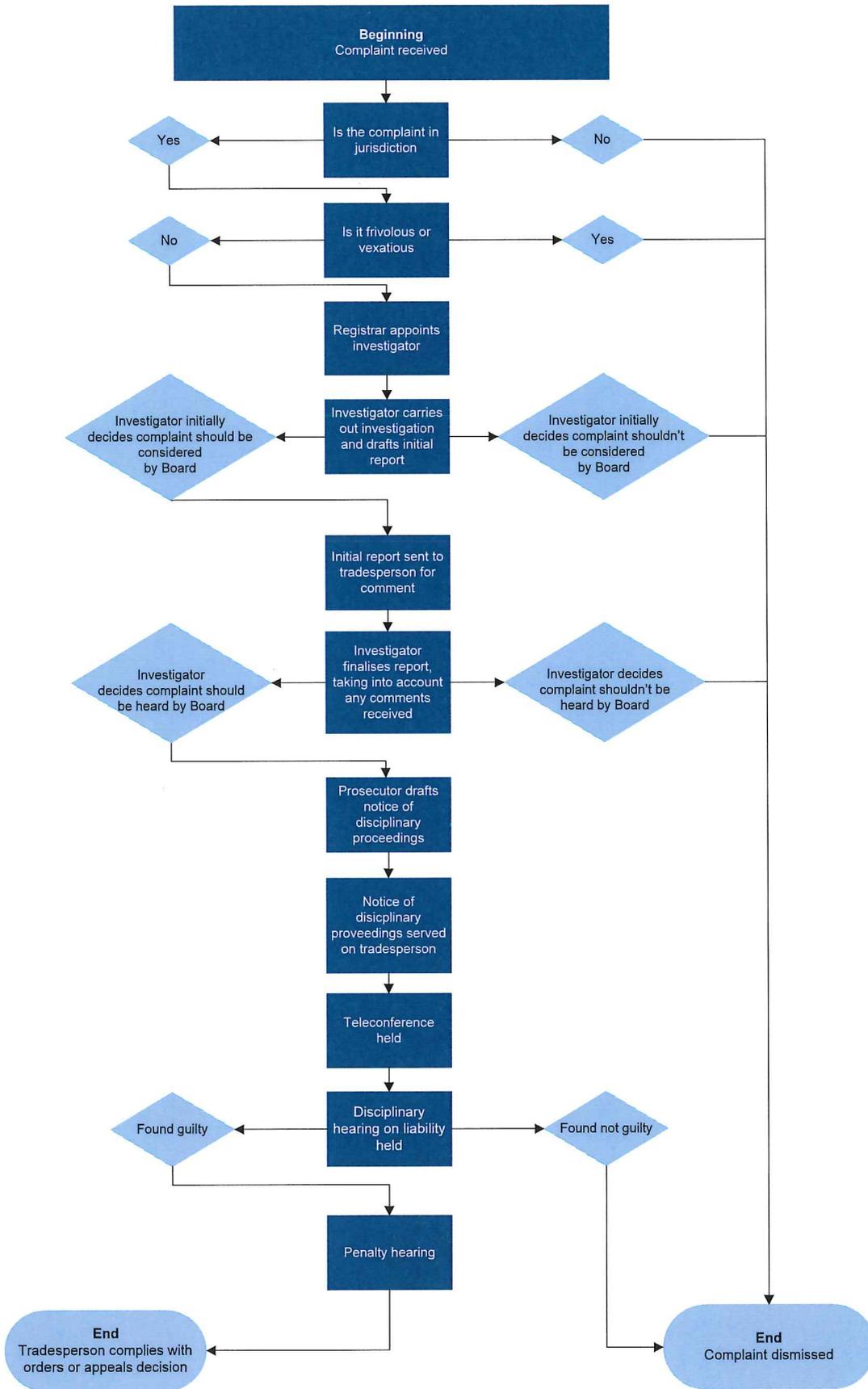
Introduction

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

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

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

THE COMPLAINTS AND DISCIPLINE PROCESS



The complaints and discipline process explained

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

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

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

After receiving a complaint, the Registrar writes to the person complained about, gives them a copy of the complaint, and asks for their side of what happened. After a set time, the Registrar decides whether the complaint is something the Board might be able to consider, meaning:

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

If the complaint fits these criteria, the Registrar appoints an investigator.

The investigation

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

The complainant and the person complained about receive letters saying that the investigation has begun. The investigator investigates what has happened; collecting information by doing things like interviewing all the people involved, gathering relevant documents, and taking photographs. They may also visit the work site.

The investigator then writes an initial report. If the report is tending towards saying the Board should consider the complaint at a disciplinary hearing, this initial report gets sent to the person complained about, who has another opportunity to comment. The initial report is not sent to the complainant because this could create problems if a disciplinary hearing needs to be held.

Next the investigator finalises the report taking into account the comments made by the person complained about. If the investigator recommends that the complaint should be taken further, the person complained about is sent a copy of the final report, and the next step is to prepare for a disciplinary hearing. The tradesperson complained about is

formally notified of the hearing by the Board when he or she receives a notice of disciplinary proceedings.

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

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

Disciplinary hearings

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

Support staff also attend the hearing and may include a legal advisor who helps the Board with legal matters and procedure, an executive officer who organises administrative matters, and a stenographer who records the hearing.

Notice of disciplinary proceedings

At the beginning of the disciplinary process, the person complained about (now called the respondent) receives a notice of disciplinary proceedings. It tells the respondent:

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The respondent and the investigator are also sent a checklist to fill out information on matters that will be discussed at the teleconference such as when they can provide certain documents for the hearing, how many witnesses they intend to use and how long they think the hearing will be. This checklist is returned to the executive officer before the teleconference is held.

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

The teleconference

Before the disciplinary hearing, a teleconference is held to make sure the hearing will run smoothly. The checklists the respondent and investigator have completed are used in the discussion.

Who phones in to the teleconference?

1. the prosecuting lawyer (representing the investigator)
2. the respondent and/or their legal representative
3. the Board's legal advisor
4. the executive officer.

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

- whether an agreed summary of facts can be filed
- whether the respondent is attending the hearing (highly recommended)
- who the lawyers are
- whether the respondent is defending the matter or pleading guilty.

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

After the teleconference is finished, the executive officer writes up a record of the teleconference, including any requests for orders the respondent or investigator want the Board to make. Copies of the record are sent to the Board the respondent and the investigator. The Board considers any applications, and the parties are notified of the decisions made.

Public hearings

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

A defended hearing

A defended hearing is when the respondent wants to defend, or argue against, the charges alleged in the notice of disciplinary proceedings. The hearing is similar to a court case. The Board makes sure that both parties have an opportunity to be heard and any statement, document, information or matter is considered. It is up to the prosecutor to prove the case, so the investigator has to present enough evidence to establish the facts of the case on the balance of probabilities.

The usual process is:

1. The prosecuting lawyer makes an opening statement, which is where they talk about why they think the respondent has committed a disciplinary offence. After that statement, they call on their witnesses to give evidence under oath or affirmation.

2. The respondent's lawyer has a chance to question each of the investigator's witnesses after the prosecutor has questioned them; and the prosecuting lawyer can in turn question them again, but only on matters raised by the respondent's lawyer.
3. Then it is the respondent's lawyer's turn to make an opening statement about why the respondent has not committed the disciplinary offence and call witnesses. The investigator's lawyer can then question the respondent's witnesses; and the respondent's lawyer can in turn question the witnesses again, but only on matters raised by the prosecuting lawyer.
4. The Board may ask witnesses questions from time to time. If panel members ask any questions, the parties may ask follow up questions, if necessary.
5. The lawyers from both sides make their final statements saying why they think the disciplinary offences have been committed, or have not been committed.
6. The Board then considers the matter and makes their decision.

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

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

Undefended hearing

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

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Formal proof hearings

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

Penalties

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

- a. cancelling, suspending, or restricting the respondent's registration and/or practising licence, or provisional licence
- b. disqualifying the respondent from doing plumbing, gasfitting, or drainlaying work
- c. reprimanding the respondent
- d. requiring the respondent to do some training
- e. fining the respondent up to \$10,000.

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

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

Publication

The Board may publicise orders and the respondent's name in the *Gazette* and any other publications.

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

Appeal

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

How long does it take?

The complaints and discipline process is often lengthy. As a general guide, it takes up to 2 months from receipt of the complaint to the appointment of an investigator, and another 2 months for the investigator to complete the investigation. If the complaint proceeds to a disciplinary hearing, this is usually held within 12 months of receipt of the complaint. In some cases, more complex complaints may take longer to be processed.

Further information

This guide summarises what happens before, at, and after a disciplinary hearing. If you have any further questions, please talk to your lawyer. You may also discuss administrative matters with a Board solicitor. Call 0800 743 262.