



## Participants in Court

Learning objectives:

By the end of this unit you will be able to:

- discuss the roles of the participants in a court hearing

Relevance of learning to your role:

- You may be required to manage a defended hearing, and will need to be familiar with the different roles people play in a court environment

Behavioural competencies for success:

- Integrity
- Professionalism
- Interpersonal skills
- Accountability and responsibility

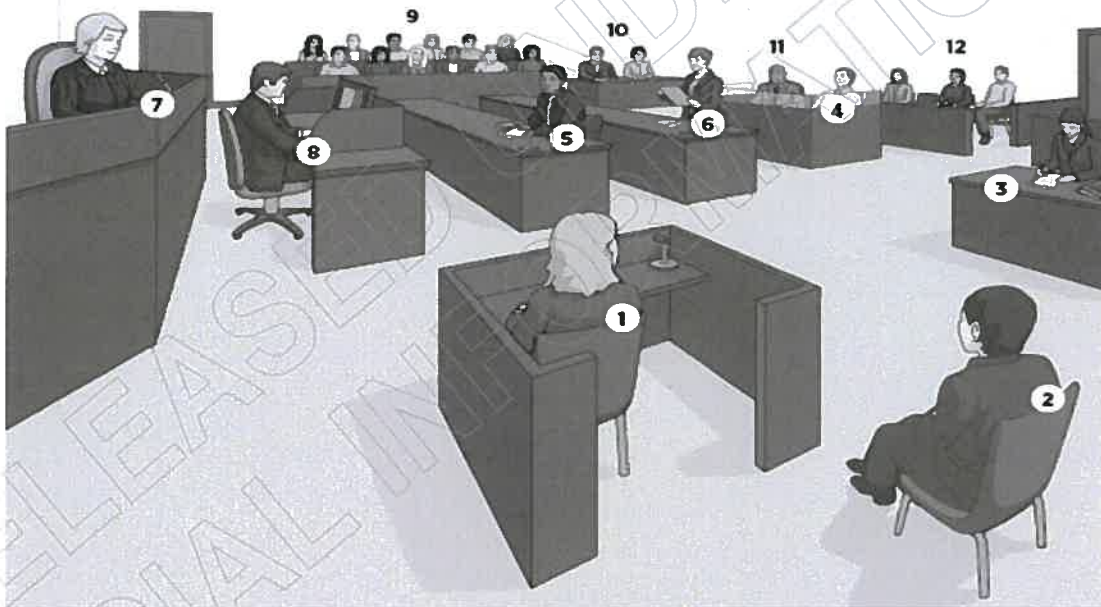
## Introduction

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Each participant in the prosecution process has a role to play.

This picture shows the different people who might be in the court room for a criminal case:

- some of the people are part of the hearing, such as the judge, jury and witness
- other people are there to watch the hearing or support friends or family. These people might include the media and members of the public.



<p><b>No 7 - The Judge - (District Court)</b></p>	<p>District Court Judges are appointed by the Governor General, acting on the advice of the Attorney General. To be considered for appointment a person must usually have held a New Zealand practicing certificate for at least 7 years.</p> <p>A Judge of the District Court must be addressed as Judge, Sir (male) or Ma'am (female).</p> <p>You must stand up when you are speaking to the Judge or the Judge is speaking to you (unless you are unable to). Only one person should be standing at a time.</p>
<p><b>No 8 - The Registrar / Court Attendant</b></p>	<p>The person who makes sure court processes are followed, helps the judge and records what happens in court. The Jury/Court Attendant sits alongside the Registrar. The Jury/Court Attendant is a court staff member who looks after the jury and will oversee them when deliberating.</p>
<p><b>No 5 - The Prosecutor</b></p>	<p>This will be the Police, the Crown Solicitor or the Legal Services Solicitor. The Prosecutor presents MSD's case to the Court.</p>
<p><b>No 4 - Defendant</b></p>	<p>This is the technical term for the person who is being prosecuted in a criminal hearing.</p>
<p><b>No 6 - Defence Lawyer</b></p>	<p>A defence lawyer must protect his or her client so far as is possible from being convicted and in doing so must—</p> <ul style="list-style-type: none"> <li>(a) put the prosecution to proof in obtaining a conviction regardless of any personal belief or opinion of the lawyer as to his or her client's guilt or innocence; and</li> <li>(b) put before the court any proper defence in accordance with his or her client's instructions—</li> </ul> <p>but must not mislead the court in any way. Click link to read the full section – <a href="#">Chapter 13.13 of Lawyers and Conveyances Act 2008</a></p>

<b>No 1 - Witnesses</b>	There can be witnesses both for the prosecution and the defence. The Prosecutor's witnesses are the first to give evidence and should have been briefed ie, a formal written statement of their evidence will have been prepared by the investigator in consultation with Legal Services (the Prosecutor) before the Court hearing.
<b>No 10 - The Press</b>	One of the underlying principles of justice in New Zealand is that justice must be able to be seen being done. The freedom of the Press to report any criminal case extends to cases of benefit fraud, unless a judge makes an order either suppressing the name of a defendant or any details of evidence in the case. In benefit fraud cases, this would be unusual, though not impossible.
<b>No 12 - The Public</b>	The criminal court is usually held in public unless there are private ("chambers") matters to discuss. These private matters usually relate to matters of points of law. Almost everything else is held in public, even if evidence or identity of parties is suppressed. If evidence or other matters are suppressed, you are not allowed to give details of the suppressed material to anybody, including the MSD file.
<b>No 9 - The Jury</b>	A jury, once selected, is made up of 12 people. It is used in a District Court where a defendant has elected jury trial or in a High Court hearing. Almost always if there is to be a jury, a benefit fraud case will be heard before a District Court jury. It is their task to decide on the verdict of "guilty" or "not guilty" to the charge(s). Their task is to decide on the facts (set out in the evidence) after they have been instructed in the law by the judge.

<b>No 11 – Prisoner escort</b>	The person who escorts the defendant in court.
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**Now you have completed this module, an assessment of your knowledge is required.**

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For course sign off, please answer the following questions;

1. Explain the role of the Registrar
2. Explain the role of the Defence Lawyer

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## Prosecutions

Learning objectives:

By the end of this unit you will be able to:

- Understand the prosecution process for MSD investigators
- Ensure that you understand what is required for a prosecution to be approved
- Know what happens during the District Court process

Relevance of learning to your role:

- Applying the correct sanction is an important part of your role as investigator
- Prosecution needs to be considered in cases where fraud is proven
- Knowledge of the process of each stage of a prosecution ensures that you manage your prosecution correctly

Behavioural competencies for success:

- Critical thinking
- Analytical – attention to detail
- Integrity
- Accountable and responsible
- Decisive – sound judgement
- Non-judgemental

## **The decision to prosecute**

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The decision to refer a matter for prosecution depends on sound, objective judgement. A full assessment of all relevant factors must be considered to ensure that appropriate cases are referred for prosecution.

You should assume that all benefit or housing fraud matters will proceed to prosecution. The decision-making process cannot be a mathematical equation or a simplistic 'ticking off' of various criteria.

In many cases it will be obvious that fraud has occurred - 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 person under investigation
- particular circumstances of the offence
- public interest

This all-encompassing approach makes it more certain that you are referring the right case.

An overarching principle is that MSD must endeavor to exercise consistency in its decisions to prosecute offenders. All benefit and housing 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.

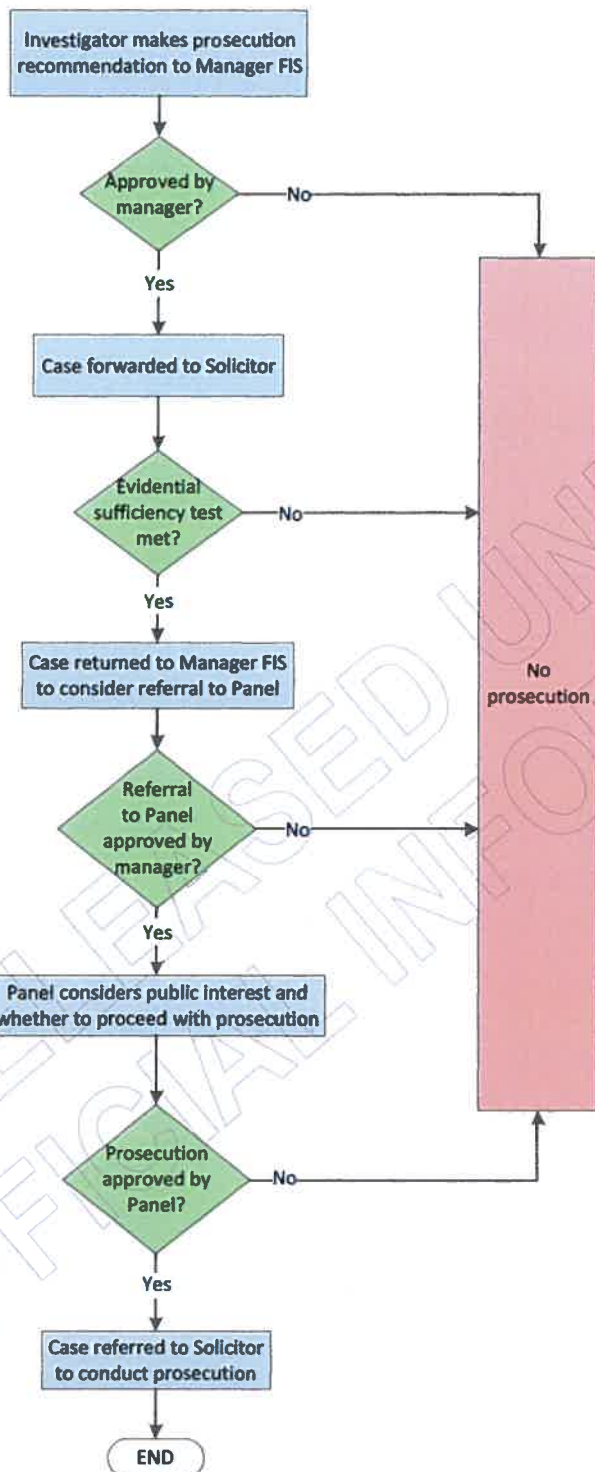
Click link for more information: [Exercising discretion to refer to Legal Services for prosecution](#)

## **MSD Prosecution process**

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The first stage will be to complete a Decision template and have that approved by your FIS Manager. The following flowchart sets out the basic process:

## Prosecution Decision Making Flow Chart



Once your case has been approved by your FIS Manager, the investigator is responsible for preparing the prosecution file. The guidelines for preparing a prosecution file for are contained in Doogle.

Click link to read the information on: [Prosecution Process for Investigators](#)



When you have prepared your prosecution file, this will be referred to MSD's Legal Services section who will determine whether your investigation case has sufficient evidence and has met the evidential standard for prosecution.

If MSD Legal confirms your investigation has met the evidential standard, your prosecution referral can then proceed to the next stage – the Public Interest test.

The Public interest test is reviewed by the [Prosecution review panel](#). The panel will review your case to ensure that the Public Interest test is met. If they agree, your case will then be sent back to MSD's Legal Services section for final sign off for the prosecution to proceed.

At any time during the prosecution referral process, a decision may be made not to continue to take your case to the next stage.

Once your file has been approved by both MSD Legal Services and the Prosecution review panel you will then be able to continue with prosecution process.

## **Court prosecution process**

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### **Commencing a criminal proceeding**

[Section 14](#) of the Criminal Procedure Act 2011 states that a criminal proceeding in respect of an offence is commenced by filing a charging document in the office of the District Court that is

- where the offence was allegedly committed, or
- where the defendant may be found
- however, if all parties agree, the charging document maybe filed in another District Court

[Section 16](#) of the Criminal Procedure Act 2011 requires that a charging document must be for one offence only and advised what must be included in the document.

[Section 17](#) of the Criminal Procedure Act 2011, requires that the charge must relate to a single offence and must contain sufficient particulars to

fully and fairly inform the defendant about the offence with which they are charged.

A charging document must:

- be accurate
- fairly inform the defendant of a particular offence
- show the correct date of the offence
- show the place where the offence was committed
- show the correct statute and section of the offence
- show the correct charge
- be filed within the legal time limit
- show the place of hearing (date and time)
- **does not need to be sworn**, but must be signed and dated by the Investigator (as prosecutor who has good cause to suspect)
- use Legal Services' address as the address for service

### Filing a charging document

*The Criminal Procedure Rules, Rule 2.3(2) provides that a charging document can be filed by delivering it to the Registry by hand; or by sending it to an electronic system used by the Registry. Delivery by hand would include by courier to the Registry's physical street address (Not the postal address).*

The District Court will accept your charging document(s) and commence processing them in their system. That will result in the Court issuing MSD with the date for first call, the CRI number which is a unique reference number for the case, and the CRN numbers which are the unique reference numbers for each charging document. The Court should send copies of the processed charging documents to Legal Services, who will notify you when they are received.

### Summons

#### What are they?

The issuing of a summons is the way in which MSD (the prosecutor) notifies the defendant of the date of his/her first court appearance. Under the Criminal Procedure Act, the obligation has shifted from the Court to the prosecutor (Investigator) to prepare and issue a summons.

The summons is the first way a defendant is notified of charges, they must contain detail sufficient for the defendant to engage private legal counsel.

Almost all of MSD's prosecutions are instigated by summons. As previously mentioned MSD staff do not have arrest and detention powers.

### **What law applies to them?**

[Sections 28-34A](#) of the Criminal Procedure Act, and Rules 3.2, 3.4, 3.7 of the Criminal Procedure Rules apply.

The investigator will create, sign (issue), and serve the summons on the defendant.

There is no requirement to prepare one summons per charging document. One summons can be prepared for each defendant as long as all the charges have the same first call date. The summons must detail all offences that are to be heard together on the date of the first call. Note that the service of a summons triggers the Prosecutor's disclosure obligations under the Criminal Disclosure Act 2008. It is MSD's practice that initial mandatory disclosure is delivered to the defendant at the time that the summons is served.

### **Serving Summons**

A summons can be served by any officer or employee of MSD. A template summons document can be found on [Doogle - Request to summons defendant](#).

You will need to ensure that the summons clearly indicates the date and time at which the defendant has to appear.

You will need to prepare the initial mandatory disclosure to provide to the defendant at the time that you serve the defendant.

The summons should be served on the defendant personally if possible. However, Rule 2.6 of the Criminal Procedure Rules 2012, permits service by leaving it for the defendant at their place of residence with a "member of the person's family" who is

- a) living with him and
- b) appears to be aged 18 or over.

“Member of the person’s family” is not defined.

The summons can be served on a family member in accordance with Rule 2.6, but the initial mandatory disclosure cannot. If the summons is served on a family member, it is recommended that the initial mandatory disclosure be couriered to the defendant’s last known address.

If you cannot find the defendant or any person qualifying under Rule 2.6, you will need to prepare and swear an “affidavit of non-service” that tells the Court what you have attempted to serve the summons. The prosecutor will use that affidavit as evidence for asking the Court to issue a warrant to arrest the defendant in lieu of serving them with a summons.

## **Criminal Procedure Act 2011**

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The Criminal Procedure Act 2011 (CPA) sets out the procedure for the conduct of all criminal proceedings. The CPA establishes four offence categories and two types of trial process; Judge Alone Trials (JAT) and Jury Trials (section 6 CPA).

### **Four offence categories for different levels of seriousness** [Criminal Procedure Act 2011, Section 6](#)

#### *Category 1 offences: Fines only*

These are offences for which a person can only be fined and can’t be sentenced to imprisonment or to a community-based sentence like community work or supervision. A person will be dealt with in the District Court, and usually by Justices of the Peace or a Community Magistrate rather than a judge.

#### *Category 2 offences: Less than two years imprisonment*

These are offences with a maximum penalty of less than two years imprisonment. If a person denies the charge, the trial will be in front of a judge alone. Usually this will be in the District Court. Category 2 offences also include:

#### *Category 3 offences: Two or more years imprisonment*

These are offences with a maximum penalty of a jail term of two years or more (but excluding Category 4 offences). Usually these are heard by the

District Court. A person has the option of either being tried by a judge alone or having a jury trial.

Note: Usually if a person is charged with a Category 3 offence they have to choose whether or not to have a jury trial at the time that they plead not guilty, which will usually be three weeks after the first call date. It's therefore very important that the person gets good legal advice very early on.

*Category 4 offences: Very serious crimes*

These are the most serious offences, including murder, manslaughter, torture and terrorism offences. They're dealt with in the High Court. Usually there'll be a jury trial, but a judge-alone trial can be ordered in some cases.

### **Phases of District Court action**

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Click link to view the flowchart that sets out the process: [Criminal case process](#). A prosecution can go through many different phases set out below: -

First appearance (first call)	The first occasion on which the matter is called in court is the first call
Enlarged	The matter is adjourned to a later date because either the summons has not been served or proof of service is not available.
Warrant to arrest	A warrant authorised and issued by the Court to the NZ Police to arrest an individual and bring them before the Court. A warrant is generally issued if the defendant has been served but does not appear in court on the date and time stated on the summons, or on any date the case is adjourned to.
Warrant in lieu	A warrant of arrest issued where no service on the defendant was effected and the court is persuaded by an affidavit of non-service that the only way to obtain the defendant's appearance is through his or her arrest.
Remanded	The defendant is required to appear at a later date for a further hearing. This can either be in custody, on bail (subject to a bail bond

	<p>requiring the defendant's appearance at the next hearing, or at large (not subject to any legal status). If the defendant is remanded at large but fails to appear at the next hearing, a warrant to arrest can still be issued.</p>
Second Appearance	<p>The Criminal Procedure Act prescribes the time frames between the first and second hearings. The timing of the second appearance depends on the category of the offence.</p> <p>For category 2 cases, the timing of the second appearance must not be later than 10 working days after the first appearance (where initial mandatory disclosure has been made).</p> <p>For category 3 offences, the second appearance must not be later than 15 working days after the first appearance (where initial mandatory disclosure has been made).</p>
Adjourned	<p>A term used with reference to the case as opposed to the defendant.</p>
Remanded without plea	<p>The remand takes place without the defendant having been required to enter a plea.</p>
Disclosure	<p>Disclosure is the production, at the request of the defence, of documents in the possession of the prosecution. Normally this refers to a request under section 12(2) of the Criminal Disclosure Act 2008 for production of the documents specified in that provision. It can also refer to full disclosure of the Ministry's file under section 13 that must be provided automatically upon the defendant pleading not guilty.</p>
Plea	<p>The defendant's counsel formally advises the court whether they are pleading guilty or not guilty.</p>

Guilty plea:	When a defendant enters a plea of "Guilty" they will then proceed towards sentencing.
Not guilty plea:	When the defendant enters a plea of "Not Guilty", and chooses to defend the matter then all facts alleged in the charging document must be proven at a trial. The burden of proof is on the prosecution to prove the charges. The standard of proof the prosecution must meet is "beyond reasonable doubt". In other words, the Judge or jury must be left with no reasonable doubt about the defendant's guilt before finding the defendant guilty.
Judge Alone Trial vs. Jury Trial	<p>The defendant's counsel must formally advise the court whether the defendant wishes to be tried by a Judge Alone or by way of a Jury Trial.</p> <p>The election usually occurs at the same time as the entering of the plea.</p> <p>The matter is adjourned and proceeds to a "Case Review Hearing" and ultimately to a Judge alone or Jury trial.</p>
Case Review hearing	<p>When a defendant pleads not guilty the matter is adjourned for a Case Review Hearing (CRH). The registrar will notify the parties of the date of the CRH. For a category 2 offence the adjournment period between the not guilty plea being entered and the case review hearing is 30 working days. For a category 3 offence the adjournment period is also 30 working days unless a jury trial is elected, in which case it is 45 working days.</p> <p>Five working days prior to the case review hearing a case management memo must be filed with the Court by defence counsel. Case management discussions must be held between the parties and a case management memo is completed to ascertain whether the proceedings will proceed to trial, and if so,</p>

	<p>make any arrangements necessary for a fair and quick resolution of the hearing. Case management discussions should involve a frank exchange of views between prosecution and defence. An indication is required of the number of witnesses on each side, an estimate of the hearing time needed, and any issues that need to be resolved to allow the hearing to proceed smoothly.</p>
Pre-trial admissibility hearing	<p>Where the matter is proceeding to a trial, if there are any issues as to the admissibility of any evidence to be produced, then an application can be made to have these issues sorted out by a Judge prior to the actual hearing.</p>
Judge Alone Trial ('JAT')	<p>A trial conducted by a judge or judicial officer, without a jury. <i>Previously called a defended hearing.</i> This is the default trial for category 1, 2 and 3 offences, although a defendant charged with a category 3 offence may elect jury trial.</p>
Jury Trial	<p>A hearing before a Judge and jury at which the evidence for and against the defendant is presented by witnesses and the production of exhibits, and the jury (subject to legal directions given by the Judge) makes a decision on the guilt or otherwise of the defendant. If the jury finds the defendant guilty on some or all of the charges, the case proceeds to "sentencing" as described earlier.</p> <p>If a defendant elects trial by jury, once the matter has been adjourned from the Case Review to a trial call over the prosecution is handed over to the Crown Solicitor and he/she is now responsible for the case.</p> <p>MSD must prepare formal written statements (similar to briefs of evidence) for all the prosecution witnesses. The formal statements require a declaration from the witness that their statement is true. The CPA allows a</p>



	<p>range of material to be used as evidence including audio/visual recordings. The formal statements must be provided to the Crown Solicitor no later than 5 working days after the proceeding has been adjourned for trial call over. The Crown Solicitor will advise whether any changes need to be made to the witness statements (which the investigator will attend to); however, it will be the Crown Solicitor who files the statements in Court. The Crown solicitor will also serve a copy of the formal statements upon all parties. However, it is MSD's job to file the exhibits. You must liaise with the Crown Solicitor about when to file the exhibits with the Court.</p> <p>The formal statements will be filed by the Crown Solicitor 15 working days before the call over date.</p>
Call over (Jury Trial)	<p>Under the CPA, this is the hearing to determine the date of the jury trial. MSD's case will now be with the Crown Solicitor. The Court wants to know if the matter is still proceeding and if the parties are ready. The call over date marks the date for filing any pretrial applications. Fifteen days prior to the trial call over, the Crown Solicitor will have filed a memorandum advising the Court and defence of various matters to assist in the management of the trial.</p>
Proceeding in the absence of the defendant	<p>The defendant is required to be present in Court for plea and sentencing. A case review hearing may proceed in the absence of the defendant if the Court is satisfied that it would be in the interests of justice. If there is no reasonable excuse for the defendant's absence at a Judge Alone hearing or trial, and the Court is satisfied that the defendant's absence will not prejudice the case, then the hearing may proceed. This power is more likely to be used in a large multi defendant</p>

	trial than a benefit fraud trial with one or two defendants.
Sentencing Indication	This is an indication from the presiding Judge in open court at the request of the defence of his or her views on a probable sentence based on the summary of facts and such other information as the defence and prosecution may wish to put before the court at the time of such request
Pre-sentence report (Provision of Advice to Court (PAC) Report)	A report prepared by the Community Probation Service at the request of the court to assist the court in arriving at the proper sentence – it should be noted that the court is not bound by the recommendations contained in such a report.
Sentencing	The hearing at which the court is addressed by both parties on the appropriate sentence for the defendant and the decision of the court is announced.

### Summons Witnesses

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Before the date for the trial is set down you should contact the witnesses for the prosecution and ask them for any dates they will be unable to attend court. The MSD solicitor conducting the case needs to know these dates so that he or she does not agree to have a defended hearing on a date on which not all the witnesses are available.

When the trial date is set, all the prosecution witnesses need to be summonsed.

For any witness who has to travel a significant distance, request your support or administration officer to arrange their travel and any accommodation.

### Witnesses' statements

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A witness statement is any statement which presents clearly and concisely in an orderly manner, **ALL** the admissible evidence that can be given by a witness in support of the charge(s). It's no longer a

requirement that they have to be written and can include an audio statement. In court these are known as 'briefs of evidence' (for a Judge alone trial) or 'formal statements' (for a jury trial).

Statements at a Judge Alone trial do not necessarily need to be formal or to be signed or contain a declaration that they are correct. Whether you will prepare a written brief, and whether you will need to get it signed, depends on a number of things, including the nature of the witness' evidence, the existence and quality of any statement made by the witness during the investigation, any pre-trial directions made by the Judge, and whether the witness will have to give evidence in person or have their brief handed up to the Judge. These issues should be discussed with the Legal Services lawyer who has responsibility for the case. However, if you are simply instructed to prepare the briefs for the case, the starting point is that you should prepare a written brief and get it signed by the witness.

Witness statements for a Jury Trial need to be filed with the Court prior to trial. The Prosecutor (now the Crown Solicitor) is required to file formal statements from potential witnesses in relation to the jury trial. A formal statement contains the evidence of a witness along with a declaration that it is true. The CPA approach to formal statements allows a range of material to be used as a statement including original police interviews and audio visual recordings. However if a video/audio interview is filed as a formal statement, a transcript of that interview must be filed at the same time.

### **Exhibits list**

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For the hearing you must prepare a new list of Exhibits.

This list is necessary because it will only contain the exhibits that you have decided to produce to the court and will specify the witness who will produce the exhibit.

The list will also act as the front sheet for the bundle of exhibits that will be used during the hearing.

### **Trial bundle**

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The trial bundle serves as a file of documents that is provided to the Judge, prosecutor, defence counsel, and the witnesses, so that when an

exhibit is referred to, everyone can easily refer to that exhibit at the same time.

The trial bundle must:

- Have the exhibit list as the coversheet
- Include copies of all the exhibits in the exhibit list
- Be copied single sided
- Have page numbering
- Have a tab showing the location of each exhibit

You should prepare copies of the trial bundle for:

- The prosecutor
- The Judge
- The defence counsel (N.B. if prosecuting a couple there may be two counsel)
- The witnesses
- Yourself
- A spare in case further copies are required to be made

## **The Exhibits**

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For the hearing you need to obtain the original of each exhibit.

Despite the fact that the "best evidence" rule no longer formally exists, Judges still expect to be provided with originals of exhibits. Judges will usually accept copies where both parties agree, or where the witness can provide an explanation as to why the original cannot be produced.

This is important because a lot of your exhibits may be responses to Schedule 6 inquiries, and any documents supplied to you will have been copies.

It is good to try to obtain the originals before the hearing. However the witness does not have to provide the originals in advance, and is entitled to hold them until they actually give their evidence and produce the exhibits to the court.

## **Defence witnesses**

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It is likely that the defendant will call witnesses to give evidence for them. You will not know who those people are until the moment the defence

counsel actually calls them into the witness box. The prosecutor will then have an opportunity to cross examine them. To do that effectively the prosecutor will need any material you have that relates to that witness. You may have interviewed them as part of the investigation. They may have completed benefit applications containing information contrary to their evidence. You may have obtained other documents they have completed.

Therefore before the hearing you need to assemble, for each possible defence witness, all the material that pertains to that person.

### **Post hearing formalities**

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There are two main things to attend to after the hearing:

1. Contact the witnesses, thank them, and ensure that their witness expenses are paid.
2. Obtain the exhibits from the court and return them to your witnesses (you can only do this after a final decision has been given, the defendants have been sentenced if they were found guilty, and the 28-day appeal period has expired).

### **Jury trial**

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If a defendant elects' trial by jury, the case proceeds in two steps. First, there is the Case Review Hearing. MSD handles the case until this point. Then the matter is remanded for trial and the file is referred to the Crown Solicitor who becomes responsible for the prosecution.

### **Formal Statements for Jury Trial**

The briefs are the same as for hearings before a Judge, with one vital difference. The brief must contain this statement at the end:

"This statement is true, and I make it knowing that it will be used in court proceedings."

If the witness is under 18 the statement must state their age.

If the witness cannot read, you must read it to them first and attach an authenticated statement that you did so, and they appeared to understand the contents.

## Filing and Service of Formal Statements

Formal statements are to be provided to the Crown Solicitor no later than five working days from the date of the Case Review after the proceeding has been adjourned for trial call over. These statements are to be filed with the court no later than 15 working days prior to the trial call over date.

## List of Exhibits

You need to prepare an exhibit list. This is exactly the same as the list you would prepare for a hearing with a Judge.

## Filing and Service of Exhibits

MSD is responsible for the filing of the exhibits with the court. While a copy of the exhibits is provided to the Crown for the trial, in order to preserve the chain of custody, the original exhibits remain with MSD who is required to file them and serve a copy of the exhibits together with the Exhibit list on defence counsel.

You should liaise with the Crown regarding when you should file the exhibits.

## Trial by jury

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A trial by jury is very similar to a hearing with a Judge. The main differences are that the prosecution is conducted by the Crown Solicitor, and the decisions on the facts are made by the jury.

To successfully manage the jury trial process, you need to proactively stay in contact with the solicitor from the Crown Solicitor's office who will be doing the trial, and ensure that you are doing everything you need to be doing.

**Now you have completed this module, an assessment of your knowledge is required.**

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For course sign off please complete the following questions;

1. Explain the process for a prosecution referral prior to the Public Interest test being considered.
2. Explain the Public Interest test and why this is important when deciding whether to prosecute.
3. What would you need to do once you have had final sign off from Legal Services to get the matter to Court?

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## Relationship debt sharing

Learning objectives:

By the end of this unit you will be able to:

- recognise & assess a situation where you can consider applying the relationship debt sharing legislation
- understand the law when deciding if a spouse or partner will be liable for a shared relationship debt
- understand how relationship debts are shared
- understand the law when deciding a spouse or partner has committed an offence
- understand that partners and spouses have review rights if they are liable

Relevance of learning to your role:

- the majority of MSD investigations include a relationship line of inquiry
- having an understanding of what relationship debt sharing is, will assist in making better decisions in investigations
- knowledge and appreciation of the legal terms to decide if a partner is party to the debt and possible offending

Behavioural competencies for success:

- Critical thinking - objective analysis and evaluation
- Analytical – Attention to detail
- Empathy
- Interpersonal skills
- Open minded
- Non-judgmental



- Decisive - ability to make correct decisions

## **Introduction**

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From 7 July 2014, relationship debt sharing provisions were introduced by the Social Security (Fraud Measures and Debt Recovery) Amendment Act 2014, which amended the Social Security Act 1964.

The Amendment Act 2014 introduced the following fraud measures:

- Empowers, beneficiaries and their partners to be held '*jointly and severally*' liable for debt recovery
- (debt sharing)
- Creates a new offence specific to partners (includes married, civil union and de facto)
- Provides review and appeal rights for partners (for the decision to recover debt from them)

The primary intent of relationship debt sharing is to make the system fairer in cases involving undeclared partners. Historically, in the vast majority of cases, only the beneficiary was held accountable for the debt and/or prosecuted.

### **Who does this affect?**

For the purposes of this document the term 'partner' includes any person deemed to be in a relationship with another adult. This means a couple who are in a married, civil union or de facto relationship.

### **What is a declared partner?**

A declared partner is a person known to MSD as living in a married, civil union or de facto relationship with their spouse/partner and they are in receipt of benefits apportioned at half of the married rate each. (There are some exceptions to the rate of benefit when a declared spouse/partner is not residentially qualified so has no entitlement to an apportionment of any benefit).

### **What is an undeclared partner?**

An undeclared partner is a person that MSD has not been notified of, that is living in a married, civil union or de facto relationship with a person on a benefit.

## The legislation relating to Debt Sharing:

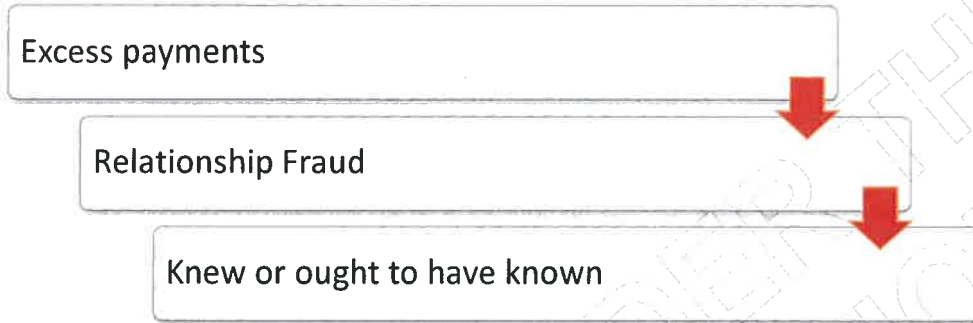
<p><b>Section 358 of the Social Security Act 2018</b> - Recovery from spouse or partner who misleads MSD of excess amount beneficiary obtained</p>	<p>This section applies to a beneficiary's spouse or partner.</p> <p>If the partner/spouse makes a false statement to, or otherwise misleads, MSD, then the amount paid in excess to the beneficiary is a debt due to the Crown, and may be recovered from the spouse/partner on the basis that they are jointly and severally liable.</p> <p>Click link to read in full - <a href="#">Section 358</a></p>
<p><b>Section 359 of the Social Security Act 2018</b> - Recovery from spouse or partner of apportioned excess amount beneficiary obtained by fraud</p>	<p>This section relates to <b>declared partners</b>.</p> <p>The partner will be <b>jointly and severally</b> liable for a debt where he or she <b>knew</b> or <b>ought to have known</b> that their beneficiary partner was committing fraud.</p> <p>Standard of proof is - 'balance of probabilities'.</p> <p>Click link to read in full - <a href="#">Section 359</a></p>
<p><b>Section 360 of the Social Security Act 2018</b>- Obtaining amount by fraud: meaning and proof</p>	<p>An amount is <b>obtained by fraud</b> by a person if the person obtained that amount by</p> <ul style="list-style-type: none"> <li>(i) making any statement to MSD knowing the statement to be false in a material particular; or</li> <li>(ii) knowingly saying or doing anything or omitting to do or say anything for the purpose of misleading MSD in administering this Act</li> </ul> <p>Click link to read in full - <a href="#">Section 360</a></p>
<p><b>Section 361 of the Social Security Act 2018</b> - Recovery from spouse or partner of the un-apportioned</p>	<p>This section relates to <b>undeclared partners</b>.</p> <p>The Ministry has the power to recover fraudulent payments (Crown debt under Section 362) made to a beneficiary in excess of</p>

<p>excess amount beneficiary obtained by fraud</p>	<p>entitlements from a partner in certain circumstances.</p> <p>This is the physical act of getting the money back.</p> <p>Standard of proof is - 'balance of probabilities'. Click link to read in full - <a href="#">Section 361</a></p>
<p><b>Section 291 of the Social Security Act 2018</b> - Offences: spouse or partner knowingly benefiting from excess amount obtained by beneficiary's fraud</p>	<p>The partner will be liable for prosecution where he or she benefitted from the beneficiary partner's fraud and <b>knew</b> or was <b>reckless</b> as to whether the beneficiary partner was being overpaid and whether the beneficiary partner was committing fraud.</p> <p>Standard of proof is - 'beyond reasonable doubt'</p> <p>Where this is met, you can prosecute.</p> <p>Click link to read in full - <a href="#">Section 291</a></p>
<p><b>Section 66 of the Crimes Act 1961</b> - Parties to offences</p>	<p>Everyone is party to and guilty of an offence who:</p> <ul style="list-style-type: none"> <li>• Actually commits it</li> <li>• Does an act for the purpose of aiding</li> <li>• Omits an act for the purpose of aiding</li> <li>• Abets in the commission</li> <li>• Incites to commit</li> <li>• Counsels to commit</li> <li>• Procures a person to commit</li> </ul> <p>Standard of proof is - 'beyond reasonable doubt'</p> <p>Click link to read in full - <a href="#">Section 66</a></p>

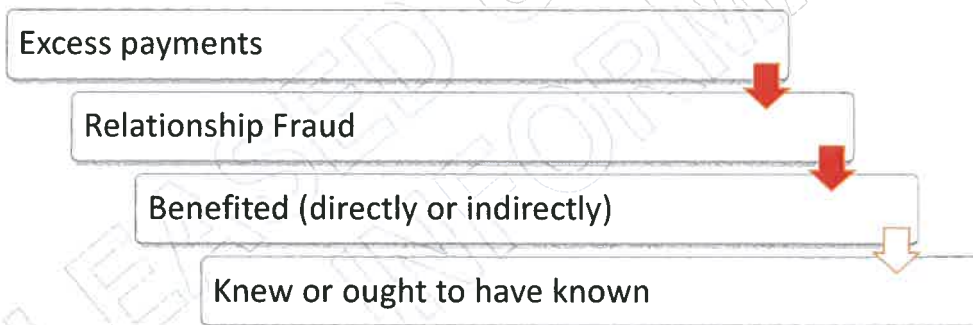
## When does the partner become liable to repay?

This may be gradual and not the same as for the beneficiary.

Under Section 359 of the Social Security Act 2018, the partner can only be liable from the date that the partner display's the following elements.



Under Section 361 of the Social Security Act 2018, the partner must display the following elements.



To establish the commission of the offence, investigators must prove the following:

- Person A (the beneficiary) received benefit payments in excess of entitlement (proof of receipt of excess)
- Person A (the beneficiary) committed fraud (proof of false statement or omission to mislead an officer)
- Person B (the partner) was person A's (the beneficiary) partner (proof of relationship)
- Person B (the partner) directly or indirectly benefited from some part of the benefit payments received in excess (proof of benefiting as part of an economic unit)
- Person B (the partner) knew or was reckless as to whether the amount received was in excess of person A's (the beneficiary) entitlement.

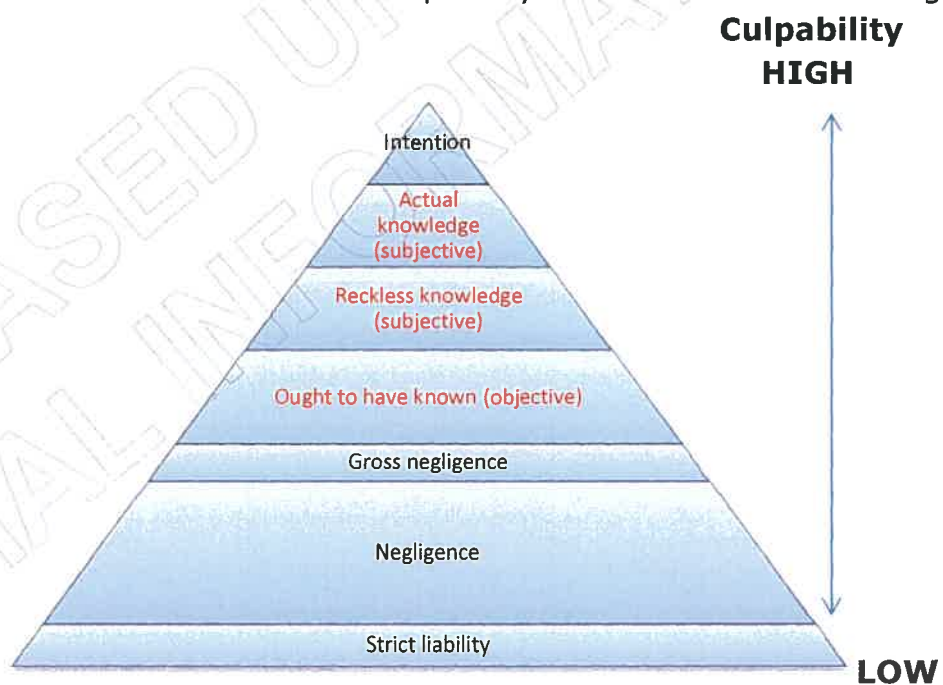
- Person B (the partner) knew or was reckless as to whether the amount received was obtained by false statement or misleading omission (proof to criminal standard of beyond reasonable doubt).  
N.B. Person B (the partner) does not have to be aware of the precise way in which person A (the beneficiary) committed the fraud.

### What are the differences?

The differences between knowledge, reckless and ought to have known are:

- Actual knowledge
- Aware the circumstances may exist but recklessly proceeds
- May not have known, but ought to have known

Each of these have different levels of culpability as shown in the following model:



### Period of offending

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While the legislation came into force on 7 July 2014 – overpayments and the offence commence the day after this date i.e. overpayments and offences begin on 8 July 2014.

The legislation is not retrospective – there can be no overpayments or offences prior to 8 July 2014.

Where the period of offending begins prior to 7 July, only the proportion of debt incurred from 8 July 2014 may be shared, and this is the first date of an offence.

## **Timeframes**

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The limitation period for filing charges against partners under the Social Security Act 2018 is 12 months from when the facts alleged are brought to the knowledge of an officer.

## **Monetary penalties**

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A monetary penalty (sanction) does not apply as part of the relationship debt sharing.

The penalty can only be imposed on the beneficiary (A), not the partner (B), and is not a shared amount.

## **Privacy requests**

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The client and/or partner may request information;  
during an investigation:

- Use appropriate sections of the Privacy Act to consider whether you have grounds to withhold the release of information. This will need to be assessed on a case by case basis.

after a decision has been made:

- Release appropriate information to the beneficiary
- For partners, only release information relevant to the decision
  - this may include some of the beneficiary information (e.g. information that proves the relationship or the beneficiary's fraud), but not information that had no bearing on the final decision.

For requests from the partner under the Criminal Disclosure Act - you are still required to disclose all information that is relevant to the decision to prosecute.

## Review and Appeal rights

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Under sections 391-394 and 395-399 of the Act, partners will have the right to review and appeal decisions made:

- To make them jointly and severally liable for a debt.
- That the beneficiary committed the fraud that resulted in the debt.

They **will not** be able to review or appeal against a decision that relates to:

- the temporary deferral, rate or method of debt recovery from the other person.
- the cancellation or rate of payment paid to the beneficiary

**Note:** The management of reviews and appeals will follow existing MSD process and timeliness standards, and will be lodged in HIYA. All clients will have the right to a Benefit Review Committee (BRC) hearing to proceed to appeal.

## Collection of Debts

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The enforcement and collection of shared debts will be completely managed by Collections Unit staff.

FIS are only responsible for enquiries about shared debt establishment.

All enquiries about shared debt recovery, or the current balance, should be referred to Collections.

## Definition of terms

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Term	Definition
Allegation	An assertion of wrongdoing

Evidence	Any type of proof which tends to establish or disprove a fact material to the case. It includes, but is not limited to, witness statements, documents and electronic and audio records.
False statement	A statement made to the Ministry by someone knowing it to be false for the purpose of receiving or continuing to receive payments.
Fraud	Where a person receives money to which they are not entitled as a result of their false statement or omission.
Jointly and severally	Both the beneficiary and his or her partner will be liable for a shared debt. It is not split 50/50, they are both 100% liable for the whole debt until it is paid off in full.
Knowingly benefited	This involves actual knowledge. For example, where a person knows for a fact that: <ol style="list-style-type: none"> <li>1. their spouse or partner is receiving payments in excess of their entitlements, and</li> <li>2. that they are benefiting from those payments</li> </ol>
Ought to have known	This is knowledge that a person would have had if he or she had made inquiries that a reasonable and honest person would have made in the same circumstances. Note: this requires proof to the required civil burden of proof: 'on the balance of probabilities'
Partner	The Ministry considers a person to be part of a couple when they are in a relationship with another adult. This includes a couple who are in a married, civil union or de facto relationship.
Knowingly	Involves actual knowledge. The person knows that his or her partner (beneficiary) is receiving payments in excess of his or her entitlements, and that he or she is benefiting from it.
Reckless	Recklessness involves being aware of the risk that the relevant circumstances may exist (e.g. whether his or her partner is receiving payments in excess of his or her entitlement) but decides to proceed regardless.



Wilful omission	A deliberate failure to tell the Ministry about something that the person knows should be the subject of advice.
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### Test Your Knowledge

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Congratulations on completing the obligations, reviews & debt module!

For course sign off, please answer the following questions;

1. Explain in your own words what Relationship Debt Sharing is?
2. What is the reason RDS was introduced?
3. Give a short scenario of when a partner is liable for RDS? Why?

Give a short scenario of when a partner would not be liable for RDS? Why?

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OFFICIAL INFORMATION ACT