



## **Attorney General's Guidance**

### **Note for Officers of Regulatory Departments when considering whether or not a suspected breach of the law should be referred to the Attorney General**

- 1) The Attorney General is the ultimate authority in respect of all prosecutions in the Island and has the power to prosecute notwithstanding that a decision may have been made by the Minister (or his officers) not to refer a case to the Attorney General. Suspected offenders may be told that the case will not be referred to the Attorney General, but should never be told that they will not be prosecuted unless the Attorney General has so decided.
- 2) A suspected breach of the law should be referred to the Attorney General in the following circumstances:
  - a) where it was significant;
  - b) where it is seen to have been conscious and deliberate;
  - c) where the public interest makes it important that there should be a prosecution;
  - d) where it was one of a series of small breaches which suggest a persistent lack of conformity with the law;
  - e) where there was a perceived trend of similar minor breaches by others which might call for prosecution as a warning or example.
- 3) It may be appropriate not to refer a suspected breach of the law in the following circumstances:
  - a) where it was minor;
  - b) where the offence was committed as a result of a genuine mistake or misunderstanding\*;
  - c) where it is believed to not be in the public interest for the offender to be prosecuted\*. For example, if by relying on information volunteered in the course of a genuine enquiry to form the basis of a prosecution, this would deter others from seeking assistance from the Department to comply with the Law\*;
  - d) where it was a single incident\*;
  - e) where there had been a long delay between the Department having knowledge of a suspected breach of the law and investigating it\*.

\*These factors must be balanced against the seriousness of the offence.

- 4) In applying these Guidelines, although every case is unique, they should be applied with fairness and consistency.

- 5) A report containing a recommendation to refer or not to refer a case to the Attorney General shall generally be submitted to the Minister for his or her consideration and decision (unless the Minister has delegated to the Department's Officers the power to decide whether or not to refer a case to the Attorney General).
- 6) If there is any doubt on the part of the Minister or Departmental Officer as to whether or not a case should be referred to the Attorney General, it shall be referred.
- 7) Departmental Officers should not invite a Centenier to exercise his or her discretion to charge without first seeking advice from the Attorney General, unless it is a marine resource<sup>1</sup> case or as otherwise agreed.
- 8) If it appears that a breach of the law may have been committed by a Minister<sup>2</sup> or an employee of the Department<sup>3</sup>, or any States connected entity<sup>4</sup> and either:
  - i) the file is referred to the Minister or Departmental Officer for a view as to whether there should be a reference to the Attorney General; or
  - ii) the Department has taken the decision not to refer a file to the Attorney General and no regulatory or administrative action is taken; or
  - iii) some remedial regulatory or administrative action has been taken;

then, in the case of i) the Attorney General shall be advised that the file has been referred to the Minister and in the case of ii) and iii) the file will not be sent to the Attorney General unless it is called for, but broad details of the suspected breach and the administrative or regulatory sanction (if any) imposed should be referred to the Attorney General in writing (some Departments provide a Quarterly Report but such frequency of reporting is not always necessary).

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<sup>1</sup> Due to the nature of marine resource matters, cases are often referred to the Honorary Police for cases to be dealt with by the Magistrate's Court or in Parish Hall Enquiries.

<sup>2</sup> Whether as Minister or in his or her private capacity.

<sup>3</sup> Unless the employee is not identified by the Department as such when the breach occurs.

<sup>4</sup> For example any States Department, Ports of Jersey, Andium Homes, Jersey Telecom, Jersey Water, Jersey Electricity Company and the States of Jersey Development Company.