Plumbers, Gasfitters and Drainlayers Board

CANNELL v GWYNNE

Plumbers, Gasfitters & Drainlayers Board Disciplinary Decision (2023/22)

Summary

Nicholas Gwynne, Certifying Plumber, Certifying Gasfitter, was charged with negligent or incompetent gasfitting, carrying out gasfitting in a manner contrary to an enactment, and issuing a false or misleading return. The charges related to the installation of a gas heater at a property in Tokoroa in October 2020.

Mr Gwynne defended the charges.

The investigator's case was that Mr Gwynne had connected the gas heater to the gas supply despite not having installed the brackets required to secure it in accordance with the manufacturer's instructions. As a result, the heater had moved over time causing the flue to detach. Because Mr Gwynne had also failed to install a flashing above the heater, it was possible that products of combustion could escape from the displaced flue and enter the room in which the heater was installed. Mr Gwynne had therefore carried out gasfitting work in a negligent or incompetent manner.

The investigator further submitted that Mr Gwynne had issued a Certificate of Compliance (COC) for the installation but had not issued a Gas Safety Certificate (GSC) nor entered the details of the work on the WorkSafe Electricity and Gas High-Risk Database (Database) as required under the Gas (Safety and Measurement) Regulations 2010 (Regulations). This was therefore contrary to an enactment.

Finally, the investigator submitted that the COC issued by Mr Gwynne for the work was wrong in a number of respects and was therefore false and misleading.

Mr Gwynne's defence was that the installation of the heater was incomplete. He knew he needed to install the flashing in order to install the brackets required under the manufacturer's instructions, but he needed an opportunity to return to the property to carry this out. He said he temporarily secured the heater using a stay-wire, and connected the installation to the gas supply because the property owner was elderly and in poor health. When he attempted to return to the property the next day to complete the outstanding work, the property owner was not there and had been admitted to hospital. Mr Gwynne said he made repeated attempts following this to return to the property but

the owner was never home and was not able to be contacted on the phone to arrange a time to go back and complete the work.

Mr Gwynne disputed that the COC had been issued by him, and said that he had not issued a GSC or entered the work on to the Database because it was not complete.

The Board found that charge of carrying out gasfitting in a negligent or incompetent manner was made out because the heater had been connected without the required brackets. This created a risk to the gas pipe and flue. The Board did not accept Mr Gwynne's evidence that a stay wire had been installed, but also did not accept the evidence put forward by the investigator that the flue had already become detached.

The Board found that Mr Gwynne had failed to issue a GSC and enter the work on the Database which was contrary to Regulations.

The Board was not satisfied that Mr Gwynne had issued the COC apparently completed in respect of the work, and therefore the charge of issuing a false or misleading return was not made out.

IN THE MATTER OF a disciplinary hearing pursuant to section 101 of the Plumbers, Gasfitters, and Drainlayers Act 2006

BETWEEN **MELISSA CANNELL**

Investigator

AND **NICHOLAS ROBERT GWYNNE**
Certifying Plumber, Certifying Gasfitter, of Putāruru

Registered Person

DECISION OF THE BOARD ON LIABILITY
18 FEBRUARY 2024

Hearing:	Held via audio visual link on 30 November 2023
Members sitting:	Diana Kuhtz-Covich (Chair), James Smith, Beth Healy, Ming-chun Wu, Sue Simons
Counsel:	Elena Mok for the investigator Mr Gwynne was self-represented
Legal advisor:	Richard May

Disciplinary hearing

1. On 30 November 2023, the Plumbers, Gasfitters and Drainlayers Board (**Board**) held a disciplinary hearing via audio visual link to consider a complaint by Walter Craven against Nicholas Robert Gwynne, Certifying Plumber, Certifying Gasfitter.

Charges

2. By Notice of Disciplinary Charges dated 17 April 2023, Mr Gwynne was charged with the following offences:

    a. carrying out gasfitting in a negligent or incompetent manner, which is a disciplinary offence under section 89(a)(i) of the Plumbers, Gasfitters, and Drainlayers Act 2006 (**Act**) (**charge one**)

    b. carrying out gasfitting in a manner contrary to an enactment, which is a disciplinary offence under section 89(a)(ii) of the Act (**charge two**)

    c. filing a false or misleading return required under an enactment relating to gasfitting, which is a disciplinary offence under section 89(f) of the Act (**charge three**).

Summary of investigator's opening submissions

3. Ms Mok's opening submissions outlined the key allegations, and the evidence she intended to call.

4. Charge one related to gasfitting work Mr Gwynne carried out for Mr Craven at 5 Billah Street, Tokoroa (**property**) in October 2020. The work involved Mr Gwynne removing an existing gas heater and installing a new energy saver heater and flue extension. Mr Gwynne then connected the installation to the gas supply. Ms Mok submitted the work was negligent or incompetent.

5. Charge one was supported by the evidence of Robert Winterson, who had previously employed Mr Gwynne at his company Winterson Plumbing Limited,. In May 2022, Mr Winterson went to the property after Mr Craven made a number of attempts to contact Mr Gwynne to get him to do further work on the installation. Mr Winterson found that there were no brackets on the heater and it lacked a flashing. He also said that the flue pipe was coming out of the hole in the chimney meaning that combustion products were likely to be entering the lounge. Mr Winterson believed that the heater had moved over time because of the lack of brackets which had caused the flue to come out of the chimney. Mr Winterson ordered brackets and returned in July 2022 to carry out remedial work on the installation.

6. Samuel Wood, a technical advisor and certifying gasfitter, considered that the absence of brackets meant that Mr Gwynne's work breached the mandatory gas installation standard AS/NZS 5601:2013 (**Standard**) and the Gas (Safety and

Measurement) Regulations 2010 (**Regulations**). Given this, Ms Mok submitted that Mr Gwynne's work was negligent or incompetent.

7. Ms Mok noted that Mr Gwynne had said the work was not finished because he had not installed the flashing and denied there were any issues with the flue. Mr Gwynne also claimed the complaint was vexatious as he had previously worked for Mr Winterson but was now in competition with him. Ms Mok submitted that this was not a defence to the charge.

8. Charge two related to Mr Gwynne's failure to issue a Gas Safety Certificate (**GSC**) for the work and lodge the details on WorkSafe's Electricity and Gas High-Risk Database (**Database**). These were requirements under the Regulations. Ms Mok submitted that Mr Gwynne only issued a Certificate of Compliance (**COC**) for the installation.

9. Charge three related to the COC apparently issued by Mr Gwynne. Ms Mok submitted that a certifier is required to confirm the truth and accuracy of COCs they issue and this COC contained false information. The COC recorded that the installation was low risk, it complied with the Standard, it was safe to connect to the gas supply, and it had been done lawfully and safely. Ms Mok submitted that defects with the work meant that these statements on the COC were false.

10. Ms Mok submitted that the COC was issued in Mr Gwynne's name and contained his registration number and what appeared to be his signature. She noted that Mr Gwynne had accepted that he had issued the COC during the investigation but now claimed it had been falsified by Mr Winterson and/or Ms Shailer, the administrator at the company. Ms Mok submitted that Mr Winterson and Ms Shailer's evidence was that Mr Winterson had had no involvement in the initial installation at the property and therefore had no involvement with the COC issued.

Summary of evidence – Robert Winterson

11. The first witness for the investigator was Mr Winterson. The Board considered his evidence contained in a written statement dated 19 September 2023. Mr Winterson also attended the hearing via audio visual link.

12. Mr Winterson stated that he was a trainee plumber, gasfitter, and drainlayer and the owner of Winterson Plumbing Limited which was a franchise of GoFox based in South Waikato. Mr Gwynne had been employed by Mr Winterson until April 2022 and had been the certifying gasfitter for the business responsible for gas certification. Mr Gwynne had also been Mr Winterson's supervisor for gasfitting from May to October 2021.

13. Mr Winterson stated that Mr Gwynne had installed a Rinnai energy saver gas heater at the property in 2020, replacing the existing gas heater. Mr Winterson had not been involved in the initial installation but went to the property in May 2022 where he found that there were no brackets on the heater and no flashing. He stated the

heater, which was on a tile hearth, appeared to have moved because of the lack of brackets, causing the flue to detach from the hole in the chimney cavity. He said this meant flue combustion gases were probably entering the lounge because there was a large gap around the heater because of the lack of a flashing. The flue pipe was also not straight because the hole in the brick work in the chimney cavity had not been drilled straight, and this was contributing to the heater being in the wrong position.

14. Mr Winterson stated that Mr Craven had contacted his company requesting Mr Gwynne come to the property to carry out additional work on the installation. Mr Winterson stated that he asked Mr Gwynne several times to return to the property to fix the issues with the work while he was employed, but this did not happen. He subsequently ordered brackets for the heater and in July 2022 he went to the property and installed the brackets, fitted a new flue pipe, and repositioned the outlet hole in the brick work to make the work straight. A gas certificate for the remedial work was issued by Mr Winterson's supervisor.

15. Mr Winterson stated that his working relationship with Mr Gwynne while he was employed by his company had been cordial and the same as with any other staff member. After Mr Gwynne left, he had emailed him a couple of times asking him to return some tools and reminding him of the restraint of trade which prevented him from taking any of his company's customers. Other than that, he stated he had not had any interaction with him. Mr Winterson said it was Mr Craven who wished to make the complaint against Mr Gwynne after he failed to come back to his property to rectify the issues with the heater. Mr Winterson had only assisted Mr Craven to make the complaint because Mr Craven was elderly with serious health concerns and was not sure of the process.

16. In cross examination, Mr Gwynne challenged Mr Winterson about Mr Craven's complaint, noting that it had originally been made on the basis that the flue was plastic and non-compliant, and that the complaint was later changed to a claim that the flue had come out of the chimney. Mr Winterson accepted that the complaint had changed in relation to the claim the flue was plastic. Mr Gwynne put it to Mr Winterson that there were no photos of the heater showing the flue detached, which Mr Winterson accepted. Mr Gwynne then challenged the correctness of Mr Winterson's remedial work on the installation claiming it did not comply with the manufacturer's instructions. Mr Winterson did not accept this. Mr Winterson also did not accept that he had led Mr Craven into making his complaint because he was unhappy with Mr Gwynne taking customers away from his business. Finally, Mr Winterson stated he had not been asked by Mr Wood to have the installation assessed by a third party before he carried out any remedial work saying he had never had any contact with Mr Wood.

Summary of evidence – Robyn Shailer

17. The next witness was Robyn Shailer. The Board considered Ms Shailer's evidence contained in a written statement dated 21 August 2023. Ms Shailer also attended via audio visual link.

18. Ms Shailer stated that she was the Plumbing Administrator for Mr Winterson's company. She stated that she arranged the work schedules for Mr Gwynne when he was employed by the company but Mr Gwynne could also change his own schedule and update his work records. She gave as an example that on 29 October 2020, Mr Gwynne marked the job of installing a new gas heater for Mr Craven as complete.

19. Ms Shailer stated that she had provided information from Simpro, the company's work recording programme, relating to the job for Mr Craven. The information recorded that Mr Gwynne had installed the heater on 29 October 2020. Mr Craven subsequently came into the company's office to pay for the installation on 16 November 2020 and asked that Mr Gwynne return to install the flashing around the heater and fix it in place. Ms Shailer records that she added these notes to the job on Simpro and put it into Mr Gwynne's schedule for him to do the next day. Mr Gwynne did not go to the property the next day and on the following day removed the job from his schedule. Mr Craven came into the office again in May 2021 and again asked for the work to be done. Ms Shailer again recorded it on Mr Gwynne's schedule in Simpro for the next day but Mr Gwynne did not go to the property and again removed it from his schedule. This happened a third time in July 2021.

20. Ms Shailer stated that the process for Mr Gwynne to issue gas certificates when he worked for the company was for him to provide the information required for the certificate to her either personally or over the phone and she would then type it into the certificate. She would print the certificate and give it to Mr Gwynne to check before he signed it. She said occasionally Mr Gwynne would roughly fill in a paper copy of the certificate and leave it on her desk to type up for him. Once the certificate was signed, Ms Shailer stated she would scan it and save it to a signed gas certificates folder. She would also attach a copy to the specific job so it could be easily located. Ms Shailer stated that Mr Winterson did not have any involvement with the process around gas certificates.

21. Ms Shailer stated that she had reviewed the certificate for the work done at Mr Craven's property signed in Mr Gwynne's name and dated 29 October 2020. She confirmed it was the original that Mr Gwynne had signed.

22. In cross examination, Mr Gwynne put it to Ms Shailer that he had gone to Mr Craven's property multiple times but Mr Craven had not been there. He asked Ms Shailer why she had not provided GPS data with the information about his job. Ms Shailer stated that she believed that if Mr Gwynne had been back to the property, Mr Craven would not have come in again seven months later saying he had not been back. Mr Gwynne asked Ms Shailer if Mr Craven had gone into hospital for a

substantial period after he had installed the heater. Ms Shailer said she did not know. Mr Gwynne put it to Ms Shailer that the reason he removed the job from his schedules was because he had gone to the property and not be able to get in and this was clear from the fact he had removed the jobs the day after they were scheduled. Ms Shailer responded that Mr Gwynne also removed jobs from his schedule that he did not want to do.

23. Mr Gwynne asked Ms Shailer if she had ever completed a gas certificate without his approval. She said she hadn't. Mr Gwynne put it to her that she done so and named a specific case where he claimed this had occurred. Ms Shailer stated she did not know the case he was referring to, and denied that she had issued a certificate in his name in that case.

Summary of evidence – Samuel Wood

24. The third witness for the investigator was Mr Wood. The Board considered Mr Wood's evidence contained in a written statement dated 20 September 2023. Mr Wood also attended the hearing via audio visual link.

25. Mr Wood is a registered and licensed certifying plumber and certifying gasfitter. He had previously been employed by the Board as a technical advisor and now provided technical advice to the Board on a contract basis. In that capacity, he provided expert technical advice on matters relating to plumbing and gasfitting.

26. Mr Wood stated that on 10 May 2022 he spoke to Mr Winterson on the phone about the issues identified with the work. No remedial work had been carried out at that stage. Mr Wood stated he also spoke to Mr Craven the same day and told him of the concerns he had about the safety of the gas heater. He advised Mr Craven to get a gasfitter in to fix it. He also advised him not to use the heater until it had been fixed. Mr Craven told Mr Wood that he would get Mr Winterson to fix the heater.

27. Mr Wood stated that on 5 October 2022, he provided a technical assessment of the gasfitting work Mr Gwynne had carried out at the property and the gas certificate he had issued. In his assessment, Mr Wood stated that he considered the lack of brackets installed on the heater was highly serious because it meant the heater could easily tip over or be moved. This could, in turn, result in damage to the gas pipe or the flue coming apart. If the flue came apart, it risked products of combustion entering the living space because there was no flashing covering the cavity behind the heater.

28. Mr Wood commented on Mr Gwynne's position that the gasfitting work at the property was incomplete and he intended to return and secure the heater and install the flashing but was prevented from doing so due to factors beyond his control. Mr Wood stated that it was his view that an installation that was not complete or compliant should not be connected to the gas supply or be left in a state where it was capable of being connected to the gas supply. In his opinion, Mr Wood stated Mr

Gwynne should not have left the installation in the state he did and should not have issued any certificate stating that it was safe and compliant given the issues with the installation.

29. Mr Wood stated that the certificate apparently issued by Mr Gwynne was a COC only, and he was aware of no GSC for the work. Mr Wood stated he had also reviewed the Database and there as no record of the work as required given it was a high risk gasfitting.

30. In cross-examination Mr Gwynne asked Mr Wood if he had recommended that a third party gasfitter should assess the installation. Mr Wood agreed and added that he had also recommended that they should be a certifying gasfitter as they had greater credibility than a trainee. Mr Wood noted that a certifier, Mr Winterson's supervisor, had certified the remedial work on the heater.

Summary of evidence – Melissa Cannell

31. The final witness was the investigator, Ms Cannell. The Board considered Ms Cannell's evidence contained in a written statement dated 18 August 2023. Ms Cannell also attended the hearing via audio visual link.

32. Ms Cannell described the investigation into Mr Craven's complaint and detailed the information she had collected during the investigation. She also described her difficulties contacting Mr Craven both as part of her investigation and in relation to providing a statement for the disciplinary hearing.

Summary of Mr Gwynne's opening submissions and evidence

33. Mr Gwynne stated he had done the work at Mr Craven's installing the new gas heater. He stated Mr Craven was an elderly man with serious health problems requiring frequent hospitalisations. The heater required a flashing to be installed in the gap above the heater to allow the brackets to be attached in accordance with the manufacturer's instructions. Mr Gwynne stated that the heater was stay-wired in place and he would not leave an expensive gas heater unsecured. The installation was gas-tight and the flue had been installed correctly. He stated it was not drilled on an angle as Mr Winterson was claiming.

34. Mr Gwynne stated that Mr Craven went into hospital after he installed the heater for an extended period of time and he had no way of accessing the property to complete the installation. He stated he had tried on many occasions to finish the job but had never been able to because Mr Craven was never at the property. He stated that if the company had provided the GPS data in relation to this job it would show that he had repeatedly tried to return to the property and finish the job.

35. Mr Gwynne stated he did not complete the job and he was not responsible for invoicing Mr Craven for the work. He stated he may have accidentally marked the job as complete on his phone but everyone knew, including Mr Craven, that he was going

to return to the property and install the flashing. Despite repeated attempts to return, Mr Gwynne had not been able to do so.

36. Mr Gwynne stated he was never able to contact Mr Craven and referred to Ms Cannell's evidence that she had also had difficulties contacting Mr Craven as part of her investigation.

37. Mr Gwynne stated that Mr Winterson was a disgruntled ex-employer and the complaint was vexatious. He submitted that if an independent, third party gasfitter had gone to the property and viewed his work he would not be in the position of having to appear before the Board. He submitted that Mr Winterson was "bending the truth" in this case. He also said that Mr Winterson had led Mr Craven into making the complaint as Mr Craven would have had no knowledge of the complaints process himself. He noted that the complaint had started off as a complaint about a plastic flue, but when it was realised the flue was actually coaxial pipe, which was permitted, the complaint had changed to be about something else. He stated that Mr Winterson's motivation was personal and intended to get at him because he was hurting Mr Winterson's business.

38. Mr Gwynne stated that he was a good gasfitter and did a good job. He was now employed by the Waikato DHB at Tokoroa Hospital and was also the Fisher & Paykel representative for Waikato and Bay of Plenty. He submitted that this showed that he was good at what he does.

39. Mr Gwynne acknowledged that he did have a previous disciplinary conviction and he had pleaded guilty to that because he was responsible. He stated he was not responsible in this case because he had tried on numerous occasions to finish the job and had not been able to because of factors outside of his control. He submitted that he could not be held responsible for things he had no control over.

40. Mr Gwynne stated that he did not believe he signed the COC that was issued for the work. He stated that he always included the serial numbers of any units he installed on his gas certificates and there was no serial number on Mr Craven's certificate. He also knew the job wasn't finished. Mr Gwynne stated that he knew that Ms Shailer had signed off a gas certificate in his name once before at a specified property without his knowledge and consent. While it had only happened once that he knew of, he submitted that it could have happened on other occasions. Mr Gwynne also noted that the certificate that had been supplied as part of the complaint was not the original and the signature on it was computer-generated.

41. Mr Gwynne submitted that in the absence of the original gas certificate, the GPS data, photos of the flue that had fallen apart, and an independent third party report on the state of the installation prior to remediation there was no evidence proving the complaint against him.

42. In response to questions from Ms Mok, Mr Gwynne accepted that he had carried out the work at the property installing the heater including a flue extension. He also accepted that he had connected the heater to the gas supply the same day and the heater was in working order. Mr Gwynne accepted that the brackets for the heater

were not installed as required by the manufacturer's instructions but he had felt sympathy for Mr Craven given his age and poor health. He said he had installed a stay-wire so the heater would not move, and was going to go back the very next day to install the flashing and brackets but he was unable to do this because Mr Craven went into hospital.

43. Mr Gwynne accepted that he had never mentioned the stay-wire at any point during the investigation but claimed he had not thought the complaint would go anywhere and probably hadn't taken the matter seriously enough. He stated that it was only when he realised the hearing was proceeding that he had looked into the matter properly. He also claimed he had not read Mr Wood's technical report provided during the investigation or the Notice of Disciplinary Charges which set out that the issue with the installation was that he had not installed the brackets.

44. Referring to the evidence from Simpro about scheduling, Ms Mok put it to Mr Gwynne that his failure to return and finish the installation was not because of factors beyond his control. Mr Gwynne rejected this and stated that the scheduling information was limited and selective and not supported by GPS data which would have proved he made numerous attempts to return to the property. He repeated that Mr Craven was never home and was impossible to reach on the phone, as Ms Cannell had also experienced. Ms Mok put it to Mr Gwynne that it was within his control though to connect the heater to the gas supply on 29 October 2020. Mr Gwynne accepted this and also accepted that the work was incomplete at the time he did this. However, he insisted the heater was secure even if it did not comply with the manufacturer's instructions and he was going to return the next day to finish the job.

45. Mr Gwynne did not accept that the invoice prepared by Mr Winterson's company for the remedial work to the installation proved that the installation was defective in the manner claimed. Mr Gwynne stated that brackets and flashing for the heater were at the company's workshop ready to be installed and did not need to be purchased. In addition, the flue on the heater was on a swivel meaning it could move around so would not have been on an angle as Mr Winterson claimed. Mr Gwynne stated that Mr Winterson had never installed a Rinnai energy saver heater and did not know what he was doing. He said this was proved by the fact that the remedial work he had carried out on the heater did not comply with the manufacturer's instructions.

46. Mr Gwynne accepted that he had not issued a GSC for the job despite connecting it to the gas supply but claimed it was because the work was not finished. He also accepted that the work was classified as high risk, not low risk as he had initially said to Ms Cannell, and that he had not entered the details of the work on the Database. Again, he stated it was because the job was unfinished. Mr Gwynne accepted that a GSC was required within 20 working days of connection to the gas supply but said it was beyond his control because Mr Craven went into hospital for an extended period.

47. Mr Gwynne said that the process for issuing gas certificates at the company was that he would write out and sign full, handwritten gas certificates. Ms Shailer would then

create a typed copy of his handwritten certificate. He stated he did not review and sign the typed copies of the certificates Ms Shailer prepared. Mr Gwynne denied that the typed copy of the certificate provided by the company was his certificate and claimed he needed to see his handwritten original to be sure the certificate was his. He also said it was his process to issue combined COC/GSCs rather than a standalone COC, and this confirmed that the certificate provided in evidence was not his gas certificate. He stated this was also why he had never been provided with the original certificate.

Summary of investigator's closing submissions

48. Ms Mok submitted that Mr Gwynne accepted that he had installed the heater at Mr Craven's without the brackets required under the manufacturer's instructions. While Mr Gwynne had claimed in his evidence that he had temporarily fixed the heater in place, Ms Mok submitted this was not consistent with Mr Winterson's evidence or Mr Craven's original complaint that the heater was never secured in place. Ms Mok submitted it was also not supported by the Simpro notes provided by Ms Shailer which referred to the need to fix the heater in place. Ms Mok submitted that the Board could and should accept Mr Winterson's evidence in relation to whether or not the heater was secured.

49. With regard to Mr Gwynne's claims as to Mr Winterson's character, Ms Mok submitted that Mr Winterson had been a professional and credible witness. She submitted that it was implausible that he would create a complaint out of nothing simply to get back at an ex-employee. She asked why he would take the steps of ordering the new brackets and flue and going back to the property and reinstalling the heater if it was in the state Mr Gwynne claimed. She submitted that was wholly unlikely and a more likely explanation was that the lack of brackets has led to the heater shifting over time and this was supported by Mr Wood's evidence.

50. Ms Mok accepted Mr Gwynne's claim that the work was incomplete and he had intended to return to the property and install the flashing and brackets. However, she submitted that he should not have connected the installation to the gas supply in the circumstances. By doing so, he was allowing an installation that was not yet compliant to be used.

51. Ms Mok submitted that the Board could find charge one made out on the basis of Mr Winterson and Mr Wood's evidence, along with the documentary evidence supporting the remedial work that needed to be carried out to correct the defect with the installation.

52. Ms Mok submitted that Mr Gwynne accepted that the installation was high risk gasfitting and that he had not issued a GSC for the work. Having connected the installation to the gas supply, Ms Mok submitted that Mr Gwynne was required to issue a GSC. She submitted that the incomplete state of the installation did not prevent Mr Gwynne from issuing a GSC as he could have recorded that he had not been able to return to the property to complete the installation to ensure it was safe and compliant on the GSC. Mr Gwynne also accepted he had not lodged the details of

the work on the Database. Ms Mok submitted that charge two was therefore made out.

53. Ms Mok submitted the decision on charge three would turn on whether or not the Board accepted that the COC provided in evidence had been issued by Mr Gwynne. She submitted that the Board should accept Mr Gwynne had issued the COC because his accusation that Ms Shailer had falsified the certificate was not supported by the evidence. Ms Mok submitted that Mr Gwynne had initially accepted that he had issued the COC and it was only in his evidence to the Board during the hearing that he had changed his position on that despite having been provided with a copy of the COC early in the investigation. Ms Mok submitted that Mr Gwynne's claim as to the origins of the COC was wholly improbable and had been denied by Ms Shailer. She submitted that the classification of the work as low risk on the COC was also consistent with Mr Gwynne's initial classification of the work to Ms Cannell during the investigation.

54. Ms Mok submitted that it was clear on the face of the COC that it contained information that was incorrect and it was therefore false or misleading. This included the classification of the work as low risk when Mr Wood's evidence was that it was high risk, which was now accepted by Mr Gwynne. It also included the confirmation that the installation was safe to connect to the gas supply when Mr Gwynne has conceded it was incomplete and not yet compliant with the manufacturer's instructions. Ms Mok submitted that charge three was therefore made out.

55. Ms Mok submitted that Mr Gwynne's claim that he only hand wrote his certificates was immaterial because Ms Shailer had described the company's process for issuing certificates. This involved her typing up the handwritten certificates from Mr Gwynne and then giving them to him to review and sign before issuing them. Ms Mok submitted that Mr Gwynne's evidence was therefore not inconsistent with the process Ms Shailer had described.

Summary of Mr Gwynne's closing submissions

56. Mr Gwynne submitted that the process for certifying gasfitting work described by Ms Shailer was wrong as he would hand write his certificates in his workshop and Ms Shailer would come from the company's other workshop to collect them. She would then type them up and email them and he did not review them before this happened.

57. Mr Gwynne submitted that the gas heater was gas tight and he had felt sympathy for Mr Craven and he would have returned to his property the very next day to finish the work. He submitted that the heater was secured though not as required by the manufacturer's instructions. The certificate, he submitted, was not his and he had asked for his original certificate and it had not been provided because the company didn't have it. The photo provided with the complaint did not support the claim that the flue on the heater had come apart. In the photo the hole was in the right spot and the flue could move around on the back of the heater. It was not on an angle and

had not been done incorrectly. All that was needed was the flashing installed so the clips provided with the heater could be installed.

58. Mr Gwynne submitted that it was a vindictive complaint made by Mr Winterson and he hoped the Board would see through it. The heater was secure and the flue was correct and he had been concerned for Mr Craven's health. He had tried many times to return and finish the work and he submitted that anyone would have done the same in the circumstances.

Board deliberations

59. The Board began by considering charge one and whether Mr Gwynne had carried out gasfitting work in a negligent or incompetent manner. The Board was satisfied from the evidence, which was not contested, that Mr Gwynne had carried out the gasfitting work at the property including the replacement of the existing gas heater with a new Rinnai energy saver gas heater.

60. The Board noted Mr Gwynne's acknowledgement that the securing brackets for the heater had not been installed, and that this was contrary to the manufacturer's instructions. This was therefore a breach of clauses 2.6.2 and 6.2.2 of the Standard. Mr Gwynne had claimed that he had nevertheless secured the heater in place using a stainless steel stay-wire, but the Board did not accept that this had occurred. Photographic evidence did not indicate the presence of a stay wire, and the Board considered it more likely that Mr Gwynne did not install any such means of securing the heater. His evidence was that he intended to return the next day. Even if a stay wire had been installed, it would not have meant that the work was compliant, because it was not the method of securing the heater contained in the manufacturer's instructions.

61. Mr Gwynne stated that even though the installation was unfinished, he connected it to the gas supply out of concern for Mr Craven's age and poor health. The Board has some sympathy for Mr Gwynne's reasons for doing this in the circumstances. However, the installation was non-compliant at the time he connected it to the gas supply, and the Board accepted Mr Wood's evidence that a non-compliant gas installation should not be connected to a gas supply or left in a state where it is capable of being connected to the gas supply. This being the case, Mr Gwynne's evidence that he made repeated attempts to return to finish the job is not relevant to the question of liability. Insofar as it may have a bearing on penalty, the Board is satisfied that Mr Gwynne likely made some attempts to return to finish the job, but the extent of these efforts is not clear from the evidence and Mr Gwynne ultimately left the installation in a non-compliant state.

62. In relation to the claim that the flue had detached, risking the release of flue gases into the living space, the Board found that there was insufficient evidence to support this claim. It was unclear from the photos of the heater that the flue had come away from the hole. The Board also accepted Mr Gwynne's evidence that the flue on this heater was capable of moving at the back of the heater without necessarily becoming bent or detached. However, the Board also accepted the evidence of Mr Wood that

an unsecured heater creates a risk of movement that can damage the gas pipe or flue.

63. The Board therefore found that charge one was made out in relation to the failure to install the required brackets, but was not made out in relation to the flue coming out of the hole.

64. Turning to charge two, the Board accepted Mr Wood's evidence that the installation was high risk for the purposes of regulation 5A of the Regulations. This was also accepted by Mr Gwynne. The Board also accepted Mr Wood's evidence that a GSC was required to be issued within 20 working days from the date of connection of the installation to the gas supply under regulation 52E. Again, Mr Gwynne accepted this. Finally, the Board accepted that regulation 52H required details of the work to be recorded on the Database.

65. Mr Gwynne's response to the failure to issue a GSC and record the job on the Database was that the job was not finished. While the Board accepts that the work was unfinished in that the installation was not compliant, Mr Gwynne's actions in connecting the installation to the gas supply triggered these obligations. While the Board understands his reasons for not returning to finish the work in time to comply with these requirements of the Regulations, this does not mean he did not breach these requirements. Charge two was therefore made out.

66. The final charge was that the COC issued by Mr Gwynne was false or misleading because it described the work as low risk, compliant, and safe to use when all of these matters were incorrect. Mr Gwynne's position was that he did not issue the COC and he would not have done so because he was aware that the installation was unfinished and did not comply with the manufacturer's instructions because the brackets were not yet installed. A copy of the COC was provided in evidence and Ms Shailer had described the process for issuing gas certificates as her typing up handwritten notes or certificates completed by Mr Gwynne before providing them to him to review and sign. This was disputed by Mr Gwynne and he claimed the signature of the COC was the electronic version of his signature and that he had never prepared a certificate because his certificates were combined COC/GSCs and always contained the serial numbers for any units he installed.

67. Having considered the evidence on this matter, the Board found there was insufficient evidence to establish that Mr Gwynne had issued the COC in this case and charge three was not made out. A signed document will ordinarily be sufficient evidence that it was completed by the signatory. However, there was very clear hostility between Mr Gwynne and his former employer. Having heard from all witnesses the Board was not persuaded that Mr Gwynne had in fact issued the COC.

Decision of the Board

68. The Board found Mr Gwynne:

    a. guilty of carrying out gasfitting in a negligent or incompetent manner for failing to install the brackets in accordance with the manufacturer's instructions but not for the flue coming out the hole in the chimney (charge one)

    b. guilty of carrying out gasfitting in a manner contrary to an enactment for failing to issue a GSC within 20 days of connecting the installation to the gas supply and not recording the details of the job on the Database (charge two)

    c. not guilty of issuing a false or misleading return required under an enactment relating to gasfitting for the COC (charge three).

69. The Board will consider the question of penalty after hearing from the parties.

Appeal

70. If Mr Gwynne is dissatisfied with the whole or any part of this decision, he may appeal to the District Court under section 162(1)(f) of the Act. Any appeal must be brought within 20 working days from the date on which this formal written decision is received, or within any other timeframe the District Court may allow.

Dated 18 February 2024

Signed



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Diana Kuhtz-Covich
Chair
Plumbers, Gasfitters and Drainlayers Board